



INDIAN CONSTITUTION *and* INDIAN POLITY

For Civil Service Preliminary and Main Examinations



HIGHLIGHTS

- Content coverage for both Prelims and Mains for Civil Services Examinations
- Competitive coverage with enhanced pedagogy
- Contains answers to the questions from Civil Services (Main) Examination till 2018
- Includes analysis of current events, contemporary thoughts and discourses, debates and issues dominating in recent times



S. G. Subramanian

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Indian Constitution and Indian Polity

**For Civil Service Preliminary and
Main Examinations**

S.G. Subramanian



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Dedicated
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Preface

Constitution of India and Indian Polity: For UPSC Prelims and Mains Examination title has been conceptualized to bridge the gap between high school textbooks to undergraduate established textbooks. There are so many established titles already available in the market, but still students prefer to read a textbook where conceptual theories are explained in an engaging and interesting way along with full coverage of competitive examinations.

So, there have always been a need for a book on constitution that could cater to the requirements of various competitive examinations, i.e., to answer multiple-choice questions as well as descriptive questions. The same was the need for the candidates preparing for the Civil Services Examination. This book presents all the concepts in a lucid and simple manner, where concepts are supported with pictographs, text-boxes, flowcharts and tabular format to enhance the understanding of the student. Also, the book contains important questions that appeared in the Civil Services Main Examination. Especially, the history of making of the Constitution and the Local Governments have been given in comparative table mode. This book would be of good help to the students preparing not only for the Civil Service Examination, but all competitive exams and the students of LLB (Law), alike.

FEATURES OF THE BOOK

- Focus on Prelims and Mains for Civil Services Examinations
- Provides information in a comparative mode that makes reading and remembering easy and deepens the understanding. Refer History of making of the Constitution, Panchayats and Municipalities, Public Service Commission, chapters for example
- Explains complex concepts using flowcharts and pictures for better understanding
- Comprehension coverage of important concepts such as:
 - Political Socialisation
 - Undischarged Insolvent
 - Contempt of Court
 - Proved Misbehaviour
 - Judicial Standards
 - Alternative Dispute Redressal
 - Tax and Fees
- The book contains several tables that lucidly explains the difference between comparable concepts and ideas over which the students normally get confused and commit mistakes in the exam. Few such tables are as follows
 - Tax and Fees
 - Interim Budget and Vote on Account
 - Finance Bill and Financial Bills
 - National Emergency: Before 44th Amendment and After
 - Borrowing Powers of Union and State Governments
 - Ordinance Making Power State vs Union Territories
- Contains Answers to the Questions that appeared in the Civil Services (Main) Examination in till 2018
- Issues/updates from recent time are also included in the book, such as:
 - Smaller State vs Larger States Debate (Chapter 4)
 - Merger of OCI and PIO Cards (Chapter 5)
 - Rights of Persons with Disabilities Bill, 2014 (Chapter 7)



- o Right to Privacy, Supreme Court Judgment on Right to Privacy, Hate Speech (Chapter 8)
- o Right to pollution-free environment: Supreme Court ruling on burning crackers (Chapter 8)
- o 'Minimum Government Maximum Governance' (Chapter 12)
- o Issue of Constitutional validity of Parliamentary Secretary (Chapter 13)
- o All India Judicial Service (AIJS): Arguments 'For' and 'Against' (Chapter 17)
- o Complexity of the Problem and Adequacy of the Mechanisms for Inter-state river water dispute settlement (Chapter 20)
- Competitive coverage, where additional topics are discussed which are dealt with in any other book.
 - o Reasons for Incorporating Non-federal Features, Drawbacks of Existing System and Aberrations of Parliamentary Democracy etc. (Chapter 2)
 - o Need for the Fundamental Rights (Chapter 6)
 - o Codification of Parliamentary Privileges – Difficulties and Need for Codifying Parliamentary Privileges (Chapter 14)
 - o Other Restrictions on Free Movement (Chapter 8)
 - o Understanding the Office of PM (Chapter 12)
 - o Need for the Procedure for Amendment (Chapter 16)
- Relevant reports of various committees are also included.
 - o Report of Second Administrative Reforms Commission – Chapter 13 and Chapter 19
 - o Fifteenth Anniversary Charter – Chapter 19

Acknowledgement

Though I am the author of the book—*Constitution of India and Indian Polity: For UPSC Prelims and Mains Examination*, it has come to reality only due to the contributions and support of many. First of all, I thank my wife Monica and my sons Kavin Monesh and Mukhil Monesh for their patience and support during the period when I was writing this book. I used to remain at office to complete the book work and be back home very late. I thank them for not raising any complaint about my absence at home. Secondly, I thank Ms. Srishty, my student who helped me prepare the practice questions with explanation. Most importantly, I thank Ms. Santhameena, my student who accompanied me through the journey of this book. Without her help in all efforts, this book would not have come to shape. I also thank all my students since 1999, the time when I began to teach Constitution and Polity. They kept me on my heels to search for knowledge through their inquisitive questions, meaningful debates and support. I also thank Pearson team for keeping in track with me and pulling the best out of me to bring this book to the publishing level.

About the Author

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2005, 2013	Constituent Assembly of India
2012	Making of the Constitution – A Historical Note
2005	Constitution of India

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2005	Modes of Acquiring Indian Citizenship

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2004, 2015

Public Accounts

2000, 2009, 2013

Attorney General

1995, 2013

Zonal Councils

2001, 2012

Comptroller and Auditor General of India

2009

Administrative Tribunals

2002, 2005

Charged Expenditures

2004

Contingency Fund

2004

National Commission for Backward Classes

2000, 2002, 2003

Finance Commission

2001

Special Officer for Linguistic Minorities

2000

Finance Bill

1995

Inter State Council

Constitution: An Overview

Learning Objectives

After reading this chapter, you will be able to:

- Understand the constitution, its types and its importance
- Know the composition and functioning of constituent assembly of India
- Explain the evolution of Indian constitution from the period of British rule to Indian independence
- Discuss whether the Indian constitution needs to be further reviewed or not

INTRODUCTION TO CONSTITUTION

It is a system of beliefs and laws by which a country/state is governed. 'It is a document having special legal sanctity which sets out the framework and the principal functions of the organs of the government of the state and declares the principles governing the operations of those organs'.⁽¹⁾

Constitution is defined as the collection of legal rules providing a framework for the government.

It reflects the dominant beliefs and interests or few compromises between the conflicting beliefs and interests, which are the characteristics of the society. It is a document of people's faith and aspirations.

Constitution derives its power and authority directly from the people. Constitution is the fundamental and supreme law of the land enjoying legal sanctity. Hence, it is above all the laws enacted by the Parliament.

Constitution is a document that reflects or symbolizes the independence of sovereignty of the country. The constitution is a special document that sets out the role and functions of the principal organs of the government namely the legislature, judiciary and executive and the relationships between them.

A constitution, while primarily for the distribution of governmental powers, is, in its last analysis, a formal expression of adherence to that which in the modern times called the higher law and which in ancient times called natural law. – James. M. Beck

Evolved and Enacted Constitutions

The constitutions of the world are broadly categorized into two major groups namely evolved and enacted constitutions.

Evolved Constitutions

They come into existence over a period of time. They do not have a specific date of origin. Generally, they are unwritten and based on conventions and customs. Such constitutions are highly flexible and changes with the changing values and social beliefs from time to time. The legislature creates the constitution and so legislature is supreme. These constitutions are unitary in nature. For example, English Constitution.

Evolved Constitutions	Enacted Constitutions
• No date of origin	• Deliberately created and enacted
• Highly flexible	• Written and rigid
• Legislature is supreme	• Constitution is supreme
• Unitary in nature	• Federal in nature

Enacted Constitutions

They have specific date of origin. They are deliberately created and enacted with purpose and are written constitution. They also have conventions but not to that extent of evolved constitution. Usually, they are rigid constitutions and federal in nature. Examples of enacted constitutions include, Constitutions of the United States of America and India. Here, the constitution is supreme as it creates the governmental organs.

IMPORTANCE OF CONSTITUTION

Constitution intends to offset the inefficiencies of the legal systems that form the basis of the formation of any modern state by creating a system that upholds the sovereignty of the state and the freedom of the people.

The constitution of a country establishes the organs of the government—the legislature, executive and judiciary. It defines the powers of the legislature, executive and judiciary, and makes a clear demarcation of the responsibilities assigned to each of them and regulates the relationship between these organs. Thus, the constitution provides for an efficient government.

Lord Acton stated that, ‘Power tends to corrupt and absolute power corrupts absolutely’. Hence, it is required to restrict the abuse of power and protect people against the ill-effects of such abuse. Therefore, the constitution also imposes certain limitations on power.

Thus, the constitution lays down the basic structure of the government and principles according to which the nation must be governed. It also lays down the goals for the nation which forms the basis of the duties prescribed to the governments as well as the people. It defines the relationship between the government and its people.

Constitution of India

The major achievement of independent India was the framing of a new constitution based on justice, liberty, equality and fraternity.⁽²⁾ The Indian constitution is a complex document not only providing for the democratic functioning of the government, but also contains provisions that are social in nature. The ‘perplexing diversity of language, race, religion and culture’ demanded a complete understanding of Indian society to make a constitution. The constitution, therefore, is a product of research and deliberations of a body of eminent representatives of the people and not a product of political revolution.⁽³⁾

2 Constitutional Government in India: M. V. Pylee

3 Ivor Jennings: Some characteristics of Indian constitution

The constitution prescribes certain values to the society, addresses certain social problems and promotes the modernization of the society. For instance, constitution prescribes socialism as a value to reorganize Indian society on a socialistic pattern. Through fundamental rights and Directive Principles of State Policy (DPSP), the constitution addresses the social problems such as untouchability, gender inequality, etc.

It was essential for the Indian constitution to deal with the social aspects due to certain imminent reasons. According to M. V. Pylee, at the time of independence and making of the constitution, India provided a paradox, certain areas were comparatively advanced and prosperous while others were unbelievably backward, certain classes fabulously rich, others living in abject poverty. Socially, the evils generated by the caste system, the curse of untouchability and the canker of communalism based upon religious differences were destroying the very vitals of once-dynamic Indian society.⁽⁴⁾ In spite of these there was a cultural unity prevailing in India. But that was threatened by the divisive forces and the painful experiences of partition also needed to be taken care of. These conditions presented a baffling political entity before the constituent assembly. Hence, the constitution was a made as an embodiment of the ideals and aspirations of the people of India and a product of the pattern of social forces that prevailed in India at the time of independence.

The Constitution of India is ‘the machinery by which the laws are made’⁽⁵⁾ and is the supreme law of the land. In India, the superiority of the constitution over a law made by Parliament is founded on the following principles:

- That the constitution was made by the people, the ultimate sovereign power lies with the people. The constituent assembly was a representative body elected by the people and the legislatures are also elected by the people. Hence, it is the people who have set-up the constitution and the government. The legislature being only a representative body under the constitution cannot claim the direct authority of the people. Therefore, the constitution is superior to the laws made by the legislature.
- That the source of authority of all organs of the state including the legislature is the constitution. It follows that the legislature cannot exercise any power which is not conferred upon it by the constitution.

In the Minerva Mills case⁽⁶⁾, it was decided that the ‘people of the country, the organs of the government, legislature, executive and judiciary are all bound by the constitution, which is the paramount law of the land and nobody is above or beyond the constitution.’

Do You Know?

- Prem Behari Narain Raizada manually wrote the original constitution in a flowing italic calligraphy.
- Artists from Shanti Niketan beautified and decorated each page.

CONSTITUENT ASSEMBLY OF INDIA

As early as in 1922, Mahatma Gandhi demanded the right of people of India to determine their political destiny by themselves. By this he demanded a constitution of India which will be the ‘self-expression’ of the people ratified by a law.

With the failure of the Simon Commission and the Round Table Conferences, the Indian leaders demanded for a constitution framed by the people of India without outside interference. However, the British did not accept the demand.

4 Constitutional Government in India: M. V. Pylee

5 The Constitution of India: P. M. Bakshi

6 Minerva Mills vs Union of India (1980)

Manabendra Nath Roy, one of the prominent communist leaders, later in the year 1934, proposed the idea of a constituent assembly for India.

Do You Know?

- Constitutional Convention of Philadelphia (1787–1789): Making of American Constitution.
- Constitutional Convention of Quebec (1864): Making of Canadian Constitution.
- National Constituent Assembly was formed from the National Assembly on 9 July 1789 during the French Revolution: Making of French Constitution.

The outbreak of the World War II and the urgency caused by the war forced the British to accept the proposal in order to solve the Indian problem. The British deputed Sir Stafford Cripps with a draft declaration to be adopted after the war. The proposals were:

- That the Constitution of India was to be framed by an elected constituent assembly.
- That the constitution would give India dominion status, equal partnership in the British Commonwealth of Nations.
- That there should be one Indian Union comprising the provinces and Indian states.
- Any Indian state or province which did not want to accept the constitution would be permitted to retain its existing constitutional position.
- With such non-acceding provinces, the British government could enter into separate constitutional arrangements.⁽⁷⁾

The Cripps Mission failed because both Indian National Congress and the Muslim League did not accept the proposal. Indian National Congress rejected the very idea of dominion status and refused to settle down anything less than complete independence. The Muslim League did not accept as there was no mention about the partition and creation of Pakistan.

Subsequently, the Quit India Movement was launched. Lord Wavell, the Governor-General attempted to strike a consensus between Indian National Congress and the Muslim League. However, every such attempt including the Simla conference failed. This led to the British government to send the cabinet delegation.

The Cabinet Mission recommended the following:

- There should be a Union of India comprised of the British Indian provinces and the states.
- The paramountcy of the Crown would lapse.
- With the exception of certain reserved subjects, all the subjects were to be retained by the state. Thus, it provided for a federal set-up with strong states and a weak federal government.
- For the purpose of framing a new constitution a constituent assembly was to be elected.
- An interim government was to be set up having the support of major political parties.

Constituent assembly of India was formed according to the scheme recommended by the Cabinet Mission. The total membership of the assembly thus, was to be 389, with:

1. Through the provincial legislative assemblies 292 members were indirectly elected.
2. Indian princely states were represented by 93 members.
3. Four members represented the Chief Commissioners' provinces.

However, as a result of the partition under the Mountbatten Plan of 3 June 1947, a separate constituent assembly was set up for Pakistan and representatives of some provinces ceased to be members of the assembly. As a result, the membership of the assembly was reduced to 299. The elected members were chosen by indirect election by the members of the provincial legislative assemblies.

Dr. Sachidananda Sinha, the senior most member, was elected as the temporary and first President and later Dr. Rajendra Prasad was elected as its permanent chairman. The constituent assembly had its first meeting on the 9 December 1946. The objectives resolution was introduced by Jawaharlal Nehru on 13 December 1946. This resolution forms the Preamble to the constitution.

Do You Know

- Dr. Sachidananda Sinha was the first Indian who was appointed as a Finance Member of a Province.
- Dr. Sinha is the oldest among members of the constituent assembly of India.

Functioning of Constituent Assembly

The constituent assembly functioned as a political body in three phases:

1. Between 9 December 1946 and 14 August 1947, during which it was not a sovereign body, but only a constituent assembly created under the British authority.
2. Between 15 August 1947 and 25 January 1950, during which it was a sovereign body and acted as the constituent assembly in-charge of making the Indian constitution and also acted as a provisional Parliament.
3. Between 26 January 1950 and March 1952, during which it was only a provisional Parliament. It was handling the transaction phase till the elections to the first Lok Sabha.

The constituent assembly appointed various committees entrusted with drafting different aspects of the constitution such as the drafting committee, union constitutional committee, and committee on fundamental rights, etc. Dr. B. R. Ambedkar was the chairman of the drafting committee.

Important Committees of the Constituent Assembly

Committee on the Rules of Procedure	Rajendra Prasad
Steering Committee	Rajendra Prasad
House Committee	B. Pattabhi Sitaramayya
Committee on the Functions of the Constituent Assembly	G. V. Mavalankar
States Committee	Jawaharlal Nehru
Advisory Committee on Fundamental Rights, Minorities and Tribal and Excluded Areas	Vallabhbhai Patel
Minorities Sub-Committee	H. C. Mookherjee
Fundamental Rights Sub-Committee	J. B. Kripalani
North-East Frontier Tribal Areas and Assam Excluded and Partially Excluded Areas Sub-Committee	Gopinath Bordoloi
Union Powers Committee	Jawaharlal Nehru
Union Constitution Committee	Jawaharlal Nehru
Drafting Committee	B. R. Ambedkar

The constituent assembly functioned on the basis of three principles namely:

1. Consensus approach
2. Principle of accommodation
2. Art of selection and modification

Since the constituent assembly had to accommodate interest of various groups in a polycultural society as that of India, it had to function on the basis of consensus. The constituent assembly followed the principle of accommodation by which even the incompatible concepts were accommodated and incorporated into the constitution. For example, federalism with unitary features and democracy and socialism.

The constituent assembly formulated the Indian constitution by borrowing from ideas and principles of various constitutions of the world in order to get the benefit of the experiences of those constitutions. However, the constituent assembly borrowed the provisions only upon thorough consideration and deliberation. The founding fathers selected the provisions that were suitable and essential for governing a polycultural society like India and modified them suitably so that they would be suiting Indian conditions. Thus, they followed the art of selection and modification.

The constitution was adopted on 26 November 1949. Certain provisions relating to citizenship, election, provisional Parliament, temporary and transitional provisions came into force with immediate effect on that date. Rest of the provisions came into force on 26 January 1950.

The original constitution had 8 schedules, 22 parts and 395 articles. At present the constitution has 12 schedules, 26 parts and about 460 articles.

The assembly adopted the design of the National Flag on 22 July 1947 and National Anthem, which was originally composed in Bengali. It was adopted by the assembly in Hindi version on 24 January 1950. National Anthem was first sung in the Calcutta session of Indian National Congress on 27 December 1911. The state emblem is an adaptation from the Sarnath Lion Capital of Ashoka. The state emblem was adopted by the Government of India on 26 January 1950.

MAKING OF THE CONSTITUTION-A HISTORICAL NOTE

The constitutional development of India can be traced to two distinct phases under the East India Company rule (1765–1858) and the rule of the British Crown (1858–1947). Under the East India Company rule there were two sets of legislations enacted namely:

1. **Regulating Acts:** Aimed at regulating the operation of the East India Company in India and its administration of the Indian territory.
2. **Charter Acts:** Are the legislations that conferred the trading rights to the East India Company and the regulations relating to them.

TABLE 11.1 The Constitutional Development of India (1773–1857)

The Regulating Act, 1773		
Circumstances	Main Features	Comments
<ul style="list-style-type: none"> • Grant of <i>Diwani</i> rights to East India Company by the Indian rulers. 	<ol style="list-style-type: none"> 1) Governor of Bengal made Governor-General of the Company in India. 2) Governors of Madras and Bombay subordinated to him in matters related to war or emergency. 3) Four member council to assist Governor-General. 4) Supreme Court, independent of the Governor-General and the council created at Calcutta. 	<ul style="list-style-type: none"> a) First attempt of British government to regulate administration of Company in India. b) Gave no power to Governor-General against his council, constant friction between him and his Council c) Jurisdiction of Supreme Court, not clarified.

'Ashoka wheel in the national flag also denotes motion.
There is death in stagnation.
There is life in movement. India should no more resist change,
it must move and go forward.
The wheel represents the dynamism of a peaceful change.'

— Dr. Sarvapalli Radhakrishnan

Pitt's India Act, 1784		
Circumstances	Main Features	Comments
• Failure of the Regulating Act, 1773 and its amendment of 1781.	1) Supreme Court, jurisdiction defined. 2) Six member Board of control constituted to control and supervise the affairs of the Company. 3) Chancellor of exchequer and the Secretary of State <i>ex officio</i> members. 4) Council of the Governor-General in India reduced from four to three. 5) Governors of Bombay and Madras completely subordinated to Governor-General.	a) Complete centralization of powers in the hands of Governor-General. b) Casting vote to Governor-General in case of a tie. c) Provided for unitary and stable administration. d) Reduced the powers of directors and proprietors. e) Increased rights of British government in administration of India.
Charter Act, 1813		
Circumstances	Main Features	Comments
• Loss of markets in America and Europe.	1) Specified that sovereignty of British empire in India was in the hands of British Crown. 2) Monopoly of East India Company to trade with India was abolished. 3) Monopoly of East India Company to trade with China in opium and tea remained. 4) Christian missionaries allowed to come to India with the permission of the British government. 5) The Company was required to spend on education of Indians	a) Right of British Crown over the possessions and administration of India asserted. b) Principle of state responsibility for educating subjects accepted. c) Abolition of monopoly of the Company to trade with India to enable all British traders to get access to raw materials. Britain began to produce machine-made goods, economic exploitation of India.
Charter Act, 1833		
Circumstances	Main Features	Comments
• Loss of markets in America and industrial developments in England.	1) Company's monopoly of trade with China abolished. 2) Provinces deprived of right to frame laws. 3) Only Governor-General-in-Council authorized to frame laws for Indian affairs. 4) Fourth member, law member added to Governor-General's council. 5) North Western Province including Agra and western Awadh created. 6) Employment based on merit promised.	a) Made central government strong. b) Macaulay became the first law member. c) Opening of the services to all persons on merit remained only an ideal.

Charter Act, 1853		
Circumstances	Main Features	Comments
<ul style="list-style-type: none"> Company lost its monopoly but enjoyed administrative powers. 	<ol style="list-style-type: none"> British Parliament can give administration of India to the Crown at its choice. Directors of the Company reduced from 24 to 18. Members of Governor-General's councils and the Governor's council to be appointed with the consent of the Crown. Competitive examination system for recruiting civil servants introduced. 	<p>Two important aspects of the act:</p> <ol style="list-style-type: none"> Crown could assume to itself governance of India at any time. Although ineffective a mini-legislative council was established at the centre.

Under the rule of the British Crown there were two sets of legislations enacted namely:

- India Councils Act:** The legislations that dealt with the powers and functions of the executive and legislative councils in India.
- Government of India Act:** These were the legislations enacted for establishing 'Responsible Governments' for India as a consequence of the national freedom movement.

Government of India Act, 1858		
Circumstances	Main Features	Comments
<ul style="list-style-type: none"> 1857 Revolt failure of Company rule. British Attitude change towards Indian Administration. 	<ol style="list-style-type: none"> Administration handed over to British Crown. Court of Directors and Board of Control abolished all their rights handed over to Secretary of State for India. 15-member council of India to assist Secretary of State created. Secretary of State for India with India Council called Home Government. At least half members of the Council must have been from among those persons who had served in India for at least ten years Services and economic affairs Secretary of State bound by India Council. Rest other matters enjoyed discretion. Governor-General called the Viceroy as well and bound to obey instructions of Secretary of State. 	<ol style="list-style-type: none"> It claimed to provide good government for India. But, brought no change in government of India. It concerned only with Home Government. Directors had been reduced to nullity even before Government of India Act, 1858. Hence, 'the transference of authority to the Crown is more nominal than real.' (Lord Derby, the then British Prime Minister).

Indian Councils Act, 1861		
Circumstances	Main Features	Comments
<ul style="list-style-type: none"> • Act of 1858 failed to reform Indian administration. • The provinces were dissatisfied with the legislative power assigned to them by 1853 Act. 	<ol style="list-style-type: none"> 1) Strength of Governor-General's executive council increased. (minimum six and maximum twelve). 2) Additional members to be nominated by Governor-General. 3) At least half of them to be non-officials to be nominated by Governor-General for two years. 4) Finance member added to executive council as fifth member. 5) Council could initiate bills except concerning certain matters like defence, religion, etc. 6) Such bills could be initiated only with prior permission of Governor-General. 7) Governor-General empowered to issue ordinances in cases of emergency. 8) Provinces can frame laws concerning provincial affairs. 9) Provincial executive councils enlarged. 10) Power to nominate members with Governor. 	<ol style="list-style-type: none"> a) A beginning of legislatures in India both at centre and provinces. b) Portfolio and cabinet system introduced. c) Failed to serve the purpose for which it was created knowing the wishes of Indians. d) Mostly princes or big landlords, who did not represent Indian public opinion, were nominated as members. e) Councils were to stamp the wishes of the executive councils no power either concerning legislation or controlling the executives. f) It is called as 'the British policy of association' or 'the policy of benevolent despotism'

Indian Councils Act, 1892		
Circumstances	Main Features	Comments
<ul style="list-style-type: none"> • 1861 Act failed to satisfy even the liberal opinion in India. • Indian government wanted to extend its power to counter the despotic behaviour of Home Government in the pretext of reform. 	<ol style="list-style-type: none"> 1) Number of additional members in central legislature increased (minimum 10 and maximum 20) 2) At least ten were to be non-officials. 3) Number of additional members in provincial legislatures increased (minimum 8 and maximum 20). 4) Power to nominate with Governor-General and Governors respectively. 5) Associations like 'Calcutta Chamber of Commerce' could recommend non-officials to be nominated to council, 'in a way this was a provision for indirect election'. 6) Legislative councils were allowed to discuss the annual budgets but has no voting power. 7) Members not permitted to ask supplementary questions. 8) President of the council could refuse permission for asking any question. 	<ol style="list-style-type: none"> a) A step ahead from 1861 Act laid foundation of responsible government. b) Expanded legislative councils with more Indian members, provision of indirect election and power of members to raise questions in council mark gradual establishment of parliamentary government. c) The Indian members could discuss but did not enjoy right to vote any resolution introduced by the government.

Indian Councils Act, 1909 or the Morley-Minto Reforms

Circumstances	Main Features	Comments
<ul style="list-style-type: none"> • To check the rise of extremism in Indian politics. • To win over the moderates in the Congress to the side of the government. • To buttress Muslim communalism. 	<ol style="list-style-type: none"> 1) Strength of central legislative council increased from 16 to 60. 2) Strength of provincial legislative council increased, 50 in Bengal, Madras and Bombay and 30 for the rest. 3) Members of legislative councils, both at centre and in provinces, were to be of four categories: <ol style="list-style-type: none"> (i) <i>Ex officio</i> members (ii) Nominated official members (iii) Nominated non-official members (iv) Elected members 4) Separate or communal electorate system was introduced. 5) Members of legislative council were permitted: <ul style="list-style-type: none"> • To discuss budgets, suggest amendments and to vote on them except on non-voteable items. • To initiate legislation concerning public welfare. • To ask questions and supplementary questions from the members of the executive council. 6) Governor-General and Governors empowered to refuse the advice of the concerned legislative council. 7) Governor-General empowered to nominate one Indian member to his executive council. 	<ol style="list-style-type: none"> a) The act marked zenith of 'Policy of Association' or 'Policy of Benevolent Despotism' pursued by English in India. b) Introduction of principle of election. c) Electorates received no political educational qualifications of the voters and the members of the councils were very high. d) Communal and class interests in legislative councils hindered unity in work. e) Governor-General and Governors possessed the right to veto the advice of councils. f) Communal electorate system inflamed Muslim communalism.

Government of India Act, 1919 or the Montague Chelmsford Reforms

Circumstances	Main Features	Comments
<ul style="list-style-type: none"> • First World War ends. • Mismanagement in Indian administration. • Home Rule League. • Lucknow Pact. 	<p>Home Government</p> <ol style="list-style-type: none"> 1) Number of members of Council of Secretary of State (India Council) was fixed to be minimum eight and maximum twelve 2) A High Commissioner for India was appointed 3) Power of Secretary of State reduced. <p>Administration of India</p> <ol style="list-style-type: none"> 1) Governor-General given freedom to nominate any number of members to his executive council. 	<ol style="list-style-type: none"> a) It marked the end of the policy of 'benevolent despotism' and the beginning of the responsible government. b) Elections to the legislatures created political consciousness among the people. Indians came in direct contact with the administration for the first time. c) Number of the Indians increased in the civil services.

- 2) Central legislature to have two houses:
- (i) Council of States: Upper House with 60 members (33 elected and 27 nominated)
 - (ii) Legislative assembly: Lower House with 144 members (103 elected and 41 nominated).
- Both Houses enjoyed equal powers in matters of legislation, in case of a tie, the Governor-General was to call a joint meeting where the matter was decided by majority vote.
 - Each of them elected its own President.
- 3) Executive Council was not responsible to Legislature and Governor-General had right to refuse its advice.
- d) Indian women got the right of franchise for the first time.
- e) The dyarchy divided the provincial administration into two independent parts which was impossible to work on it.
- f) Division of subjects remained as a confusion about the rights and duties of different departments
- g) Departments headed by Indian ministers were always short of finances, no control over the members of the Civil Services, depend on the governor for many things.
- h) The ministers did not work on the basis of joint responsibility.

Provincial Administration

- 1) Provincial legislatures consisted only of one house namely legislative council.
- 2) Governors given 'Instrument of Instructions' to guide them in administration.
- 3) Separate electorates expanded to Sikhs, Anglo-Indians, Indian Christians and Europeans.
- 4) Establishment of dyarchy in provinces —Central list and provincial list. Residuary powers given to centre.
- 5) Provincial list was classified into reserved subjects (administered by Governor with executive councillors) and transferred subjects (administered by Governor with the help of his Indian ministers chosen by him from legislative council).

Government of India Act, 1935

Circumstances	Main Features	Comments
<ul style="list-style-type: none"> • Agitation of Indians for self-government. • Simon Commission report and Round Table Conferences. 	<ol style="list-style-type: none"> 1) A federal government with native states included. 2) Dyarchy established at the centre. 3) Complete autonomy to the provinces. 4) The administrative subjects were divided into following three heads for this purpose: <ul style="list-style-type: none"> (i) The federal list subjects assigned to the central government. 	<ul style="list-style-type: none"> a) Ministries did useful works in their respective provinces in several fields like prohibition, education, cottage industries, rural development, etc. Indian leaders gained useful experience of administration and the working of the parliamentary government

- (ii) The provincial list subjects assigned to the provinces.
 - (iii) The concurrent list subjects assigned both to the centre and the provinces.
- 5) A federal court was established at the centre.
 - 6) The Reserve Bank of India was established.
 - 7) Two new provinces, Sindh and Orissa were created.
 - 8) The Governor-General and the Governors were given certain special responsibilities, i.e., the security of the Indian empire, safety of the honour of the British Crown and the native rulers, defence, etc., to act according to their own views.
 - 9) Qualifications for the voters and the members were reduced both at the centre and the provinces.

Home Government

- 1) Indian council was abolished, a few advisers were nominated to help the Secretary of State for India.
- 2) High Commissioner for India appointed by the Governor-General for a period of five years.

Federal Government

- 1) Governor-General remained the head of the central administration.
- 2) No financial bill could be placed in the central legislature without his consent.
- 3) Federal legislature consisted of two houses. The Upper House, the Council of the State was to consist of 260 members (156 elected from British provinces and 104 from native states). It was a permanent body, one third of its members retired every year. The Lower House, the federal assembly, was to consist of 375 members (250 elected by the members of the legislatures of the British provinces and 125 nominated by the rulers of their respective states).

- b) Yet provincial autonomy was only in name. Indians were not given independent powers even in a limited field.
- c) Provision of the nomination was undemocratic.



Provincial Government

- 1) Governor remained the head of the administration of a province assisted by a Council of Ministers.
- 2) Central government and Home Government were not expected to interfere in provincial affairs particularly when the Governor and his ministers agreed with each other, 'Provincial autonomy'.
- 3) Rights of provincial legislature however, were limited by the Governor's power to make ordinances and his special responsibilities.

NEED FOR REVIEWING THE CONSTITUTION^[8]

Important questions from Previous years' on this topics are mentioned below:

1. Examine the need for the review of the Indian constitution. (CSE Mains Question: 2000)
2. Do you think there is a need for a review of the Indian Constitution? Justify your view.

(CSE Mains Question: 2008)

'A constitution which is unchanging and static, it does not matter how good it is, but as a Constitution it is past its use.'^[9] There have been demands for reviewing the Constitution of India in the recent times. The school that places the demand for review states that:

- The constituent assembly itself was not a purely democratic body. It was indirectly elected and there were nominated members too. Even the elected members were chosen 'by an electorate that constituted less than one third of the adult population of India'.
- There is a need to change the political, administrative and other structures and methods that we inherited from the colonial master.
- The constituent assembly worked in a highly uncertain social and political conditions and it was influenced by the events in the wake of partition. As a consequence, there were several restrictions imposed on the rights guaranteed to the people which makes the constitution no different for the laws of British rule. This is largely because the constitution makers feared that the rights would weaken the administrative machinery of the union.
- The unclarity of the position of the princely states after independence and the resultant uncertainty caused fears about the unity and stability of the country.
- The members of the constituent assembly strongly believed that economic and political development of Indian society can happen only through the intervention of the state. This is British opinion about Indians are not capable of governing themselves.
- Another colonial view that predominated the constituent assembly was that 'India is not one nation; it is a conglomerate of numerous minorities.'^[10] Thus, the constitution provides extraordinary protection to minorities. Whereas, the state is empowered to 'reform' the majority religion, the constitution is silent on the reforms of the minority religion. This creates a lop-sidedness of the constitution.

8 CSE Mains Question: 2008 (Do you think there is a need for a review of the Indian Constitution? Justify your view).

9 Jawaharlal Nehru: Speech on Constitution (First Amendment) Act, 1951.

10 <http://cpsindia.org/index.php/art/120-articles-by-jk-bajaj-and-md-srinivas/towards-a-review-of-the-indian-constitution> .

On the other hand, today the circumstances have changed since independence.

- There is another view that the constitution has granted rights to the people without balancing them with their duties. Perhaps present political environment in which the individual aspirations taking over aspirations of the people was not foreseen by the founding fathers of the constitution.
- Another argument supporting the need for reviewing the constitution is that the noble principles incorporated in the constitution have not been made practical tools capable of dispensing justice, ensuring accountability of the government machinery and protect the basic liberties of the common man.
- A constitution does not operate in a vacuum. It functions in a social set-up. So, it has to consider the specific nature of the society and its requirements. Otherwise, the constitution would become redundant and would fail, howsoever sound its design be. Over the years several changes have taken place in our socio-political structures. No more there is a single party domination in the Houses of Parliament. Regional parties have a strong say in the union government.
- The present-day political environment has now become ridden with disagreements that a national consensus on any issue has been evading.
- Not all sections of the society are represented in the political system. Adequate representation of women in legislatures is still evading. Except for the *Panchayats* and the municipalities, reservation of seats for women has not become a reality.
- The impact of caste and religion in the elections and the determination of voting behaviour have become a menace. Introducing proportional representation system to curb this is still evading.

Jawaharlal Nehru in his speech on first amendment bill mentioned, 'After all, the constitution is meant to facilitate the working of the government and the administrative and other structures of this country. It is meant to be not something that is static and which has a static form in a changing world, but something which has something dynamic in it, which takes cognizance of the dynamic nature of modern conditions, modern society.'

Arguments against Review

However, there are equally plausible arguments against the need for reviewing the constitution of India.

- The need for reviewing the constitution was demanded to provide for a stable government and avoid frequent elections in the context of the coalition regime. It was even suggested for shifting to presidential form of government. However, President Dr. K. R. Narayanan asserted that 'political instability' was not a sufficient reason to discard the parliamentary form of government in favour of the presidential system.
- Reviewing the constitution would be politically motivated attempt of 'selectively tampering with the constitution'.
- The move to review the constitution could take away the rights guaranteed by the constitution to the Scheduled Castes and Scheduled Tribes (SCs and STs), the Other Backwards Classes (OBCs) and minority groups in the country.
- The Constitution of India has been amended for about a hundred times. Certain amendments like the 42 and 44 amendments have been very comprehensive that it amounts to reviewing the constitution itself. In fact, the Constitution 42 Amendment is known as 'mini constitution'.
- Furthermore, the constitution has been subjected interpretation by the Supreme Court which has resulted in the establishment of several conventions and doctrines. The 'basic feature' doctrine propounded by the Court in the Kesavananda Bharti case and the landmark judgements in the S. R. Bommai's case and Cooper's case, etc., have ensured the better working of the constitution.

To quote Dr. Rajendra Prasad, the President of the constituent assembly and the first President of India, 'If the people who are elected are capable men of character and integrity, they should be able to make the best of a defective constitution. If they are lacking in these, the constitution cannot help the country.'

Practice Questions

1. Consider the following: Some of the main features of the Government of India Act, 1935:

1. Abolition of the dyarchy in the Governors provinces power of the Governors.
 2. Power of the Governors to veto legislate on their own.
 3. Abolition of the principle of communal representation.

Correct statements

- 2.** Consider the following:

1. Constitution is not to be construed as a mere law, but as the machinery by which laws are made.
 2. A constitution is a living and organic thing which, of all instruments, has the greatest claim to be construed broadly and liberally.
 - (a) 1 only
 - (b) 2 only
 - (c) Both 1 and 2
 - (d) Neither 1 nor 2

- 3.** Which of the following statements about the constitution is correct?

- Function of a constitution is to provide a set of basic rules that allow for minimal coordination amongst members of a society.
 - Function of a constitution is to specify who has the power to make decisions in a society.
 - Constitution decides how the government will be constituted.
 - Function of a constitution is to set some limits on what a government can impose on its citizens.

(a) 1, 2, 3 only	(c) 1, 2, 3, 4
(b) 1, 2, 4 only	(d) 3 only

- 4.** Consider the following:

1. The objectives resolution of the constituent assembly declared that India shall be a Union of erstwhile British Indian territories.
 2. Constitution of India is not merely a maze of rules and procedures, but a moral commitment to establish a government

that will fulfil the many promises that the nationalist movement held before the people.

Correct statements

- ## **5. The Constitution of India:**

1. Enables the government to fulfil the aspirations of a society.
 2. Attempts to create conditions for a just society.
 3. Expresses the fundamental identity of people.
(a) 1, 2 only (c) 2 only
(b) 2, 3 only (d) 1, 2, 3

- 6. According to Government of India Act, 1919:**

1. Apart from the Governor-General's power of veto, a bill passed by the central legislature was also subject to veto by the Crown.
 2. The Governor-General might prevent discussion in the legislature and suspend the proceedings in regard to any bill.

Correct statements

- 7.** Consider the following statements:

1. A constitution is a set of laws setting up the machinery of a government.
 2. A constitution defines and determines the relations between different institutions of the government.

Correct statements

- 8.** Consider the following statements:

1. Indian Councils Act, 1861 for the first time introduced the principle of consultation in British India.
 2. Morley-Minto Reforms, 1909 provided for the widest powers ever given to the legislative council and highest Indian membership.



Correct statements

9. The establishment of provincial autonomy in India is associated with:

- (a) Minto-Morley Reforms
 - (b) Government of India Act, 1919
 - (c) Government of India Act, 1935
 - (d) Mont-Ford Reforms

10. Which of the following sought to change the character of Indian government from unitary to federal?

- (a) Government of India Act, 1919
 - (b) Government of India Act, 1935
 - (c) India Councils Act, 1909
 - (d) Government of India Act, 1858

11. The Government of India Act, 1858 created a system of administration that was:

- (a) Federal with unitary tilt
 - (b) A completely unitary and centralized system
 - (c) Federal set-up
 - (d) Unitary but decentralized

12. Which among the following statements is NOT correct?

- (a) Under the Government of India Act, 1858 there was no separation of functions, civil and military.
 - (b) All powers were vested in the Governor-General.
 - (c) The Governor-General was responsible to the executive council.
 - (d) The Governor-General was responsible to the Secretary of State for India.

13. Which among the following was first introduced by the India Councils Act, 1861?

- (a) Executive council for Governors in the provinces.
 - (b) Including non-official members in the executive council.
 - (c) Power to discuss legislative matters in the executive council.
 - (d) Election to the executive council.

14. By the Indian Councils Act, 1892 the powers of the legislative councils were:

- (a) Increased
 - (b) Decreased
 - (c) Neither increased nor decreased
 - (d) Increased and decreased by an amendment

15. Which among the following is NOT correct?
Under the Indian Councils Act, 1861, when a bill was passed by the legislative council, the bill is presented to the Governor-General for his assent. In that case the Governor-General can:

- (a) Assent to the bill
 - (b) Veto the bill
 - (c) Reserve the bill for the consideration of the English Parliament
 - (d) Reserve the bill for the consideration of the English Crown

16. Match:

List I	List II
A. India Act, 1858	1. All India Federation of provinces and princely states
B. India Council Act, 1861	2. Appointment of Secretary of State for India
C. India Council Act, 1909	3. Beginning of representation and legislative devolution
D. Government of India Act, 1919	4. Dyarchy in provinces
	5. Morley-Minto Reforms

A	B	C	D
(a) 1	2	3	4
(b) 2	3	5	4
(c) 3	4	5	1
(d) 2	3	4	1

17. Which one of the following acts laid the foundation of the British administration in India?

- (a) Regulating Act, 1773
 - (b) Pitt's India Act, 1784
 - (c) Indian Councils Act, 1861
 - (d) Indian Councils Act, 1892



18. What is correct chronological sequence of the following?

1. Montagu-Chelmsford Reforms
2. Inauguration of provincial autonomy
3. Morley-Minto Reforms Bill

Correct answer

- | | |
|-------------|-------------|
| (a) 1, 2, 3 | (c) 3, 2, 1 |
| (b) 2, 3, 1 | (d) 3, 1, 2 |

19. Match:

List I

- A. Designation of the Governor-General of Bengal as the Governor-General of India and his government as the Government of India.
- B. Dyarchy introduced in Indian government.
- C. Twin features of All India Federation and provincial autonomy.
- D. Control of the Government of India transferred from East India Company to the British Crown.

List II

1. Charter Act, 1833
2. Government of India Act, 1858
3. Government of India Act, 1919

Government of India Act, 1935

A	B	C	D
(a) 1	4	3	2
(b) 2	3	4	1
(c) 1	3	4	2
(d) 2	4	3	1

20. Which one of the following was the main feature of Government of India Act, 1919?

- (a) Dyarchy in centre
- (b) Provincial autonomy
- (c) Dyarchy in provinces
- (d) Communal representation

Answer Key

- 1.** (b), **2.** (c), **3.** (c), **4.** (c), **5.** (b), **6.** (c), **7.** (c), **8.** (a), **9.** (c), **10.** (b),
11. (b), **12.** (c), **13.** (b), **14.** (a), **15.** (c), **16.** (b), **17.** (a), **18.** (d), **19.** (c), **20.** (c)

Hints and Explanations

1. (b)

Refer Page 1.11-13

2. (c)

- Constitution of India is the machinery by which the laws are made and is the supreme law of the land.
- It reflects the dominant beliefs and interests or few compromises between the conflicting beliefs and interests, which are the characteristics of the society.

Refer Page 1.2 and 1.3

3. (c)

- Constitution intends to offset the inefficiencies of the legal systems that form the basis of the formation of any modern state by creating a system that upholds the sovereignty of the state and the freedom of the people.

Refer Page 1.2 and 1.3

4. (c)

- The Objectives Resolution was introduced by Nehru which forms the Preamble to the Indian Constitution.
- India shall be a Union of erstwhile British Indian territories, Indian States, and other parts outside British India and Indian States as are willing to be a part of the Union.
- It is a moral commitment to establish a government that will fulfil the many promises that the nationalist movement held before the people.

5. (d)

Functions of the Constitution:

- Enable government to fulfil aspirations of a society
- Create conditions for a just society
- Expresses fundamental identity of people
- Sets some limits on what a government can impose on its citizens

Refer Page 1.3

6. (c)

Also Refer Page 1.10 and 1.11

7. (c)

- Constitution intends to offset the inefficiencies of the legal systems that form the basis of the formation of any modern state by creating a system that upholds the sovereignty of the state and the freedom of the people.

Refer Page 1.2 and 1.3

8. (a)

- Indian Councils Act 1861 provided for nominated Indian members who were consulted to understand the Indian opinion.
- Morley-Minto Reforms or the Indian Councils Act 1909 increased the strength of the legislative Council from 16 to 60.
- Though Indian membership was increased, it was not the highest.

Refer Page 1.9 and 1.10

9. (c)

- Government of India Act 1935 abolished dyarchy in provinces and established provincial autonomy.
- Morley-Minto Reforms of 1909 introduced communal electorate.
- Mont-Ford Reforms or Government of India Act 1919 established responsible government in India.

Refer Page 1.10 and 1.11

10. (b)

- Government of India Act 1935 sought to establish a federation with the inclusion of native states.

Refer Page 1.11-13

11. (b)

- Government of India Act 1858 created a complete unitary system with British Crown at the top.
- Federal setup was proposed by the Government of India Act 1935.

Refer Page 1.8

12. (c)

- Government of India Act 1858 did not bring any change in system of administration in India.

Refer Page 1.8 and 1.9

13. (b)

- Indian Councils Act 1861 introduced nomination of non-official members in the Executive Council.
- Indian Councils Act 1892 gave the power to discuss legislative matters in the Executive Council.
- Indian Councils Act 1909 introduced the principle of elections to the Executive Council.

Refer Page 1.9

14. (a)

- Legislative councils were allowed to discuss the annual budgets but has no voting power.

Refer Page 1.9

15. (c)

Refer Page 1.9

16. (b)

- India Act, 1858 - Appointment of Secretary of State for India
- Indian Councils Act 1861 - Beginning of representation and legislative devolution
- Indian Councils Act 1909 - Morley-Minto Reforms
- Government of India Act, 1919 - Dyarchy in Provinces

Refer Pages 1.8-11

17. (a)

- Regulating Act, 1773 laid the foundation of the British Administration in India.
- It established the Board of Control.

Refer Pages 1.6-9

18. (d)

- Morley-Minto Reforms Bill – 1909
- Montagu-Chelmsford Reforms – 1919
- Inauguration of Provincial Autonomy – 1935

Refer Pages 1.10-12

19. (c)

Refer Pages 1.7-11

20. (c)

- Dyarchy in provinces was introduced by Government of India Act 1919.
- Dyarchy Centre and Provincial autonomy were introduced by Government of India Act 1935.
- Communal representation was introduced by Indian Councils Act 1909

Refer Pages 1.9-11

Indian Constitution: Salient Features And Basic Principles

Learning Objectives

After reading this chapter, you will be able to:

- Understand the salient features of the Constitution of India
- Know the merits and demerits of various salient features of the Constitution of India
- Know the concepts of federation, collective responsibility, ministerial responsibility, causes of politicization of crime and criminalization of politics
- Explain why India adopted parliamentary democracy and the aberrations of parliamentary democracy
- Reflect the additional constitutional features of Indian constitution, reasons for incorporating the non-federal features in the Indian constitution

INTRODUCTION TO INDIAN CONSTITUTION

Dr. Ambedkar in the constituent assembly debates observed, 'Given the facts, all constitutions in their main provisions must look similar. The only new things, if any, are to remove the faults and to accommodate it to the needs of the country.' So, the Constitution of India has many features that are unique to it and sets out certain basic principles for the democratic government.

SALIENT FEATURES OF CONSTITUTION

The salient features of the constitution are as follows:

1. Constitution with Many Sources

When making the constitution, the founding fathers had before them two options, one to make a completely new constitution for India and the other to draw from other constitutions that were working at that time. The founding

Important questions from Previous years' on this topics are mentioned below:

1. What is a constitution? What are the main sources of the Indian Constitution?

(GS Mains: 2007)

fathers chose the second method and made Indian constitution by drawing from many sources due to the following reasons:

- They wanted to make use of and learn from the rich experience of certain running constitutions of that time.
- They also wanted to avoid committing the limited resources and time upon making a constitution since the developmental goals were large in volume with more pressing demands.

TABLE 2.1 Provisions Borrowed from Other Constitutions

Government of India Act, 1935	1. Federal structure 2. Office of Governor 3. Judiciary 4. Public Service Commission 5. Emergency provinces, etc.
American constitution	1. President as executive head and the supreme commander of armed forces. 2. Making vice-president as the <i>ex officio</i> chairperson of the upper House of Parliament. 3. Fundamental rights from Bill of Rights of the USA. 4. Concept of Judicial Review: The judicial review is an acquired power of union judiciary. It has a constitution sanction but in India it was a part of the original constitution.
Canadian constitution	Quasi-federalism with a strong centre, i.e., vesting of residuary power in the union government.
Australian constitution	1. Concurrent list over which states and centre have equal jurisdiction. 2. Parliamentary privileges. 3. Provisions relating to trade, commerce and intercourse throughout the country (Articles 301–307).
Irish constitution	Concept of Directive Principles of State Policy: Certain detailed provisions of Directive Principles of State Policy can be traced back to the instrument of instructions of the Government of India Act, 1935.
Weimer constitution of Germany	Emergency provisions.
Japanese constitution	Procedure established by-law.

So, the constituent assembly decided to have the constitution as a ‘beautiful patchwork’.⁽¹⁾ However, this was not without criticism. Even members of the constituent assembly criticized this as ‘a slavish imitation of the West’ and would be unworkable. There are critics who comment that ‘Indian constitution is a bag of borrowed materials’.⁽²⁾ But this view is not acceptable due to the following reasons.

The founding fathers did not borrow certain features from other constitutions unmindfully. They applied the ‘Art of selection and modification’ and carefully chose such features that were essential and found useful. Further they suitably modified such features so that they fit into the Indian system. That is, those features were appropriately tailored to fulfil needs and suit the conditions existing in India. It resulted in the emergence of certain new concepts such as ‘Democratic Socialism’.

1 Constituent Assembly Debates

2 CSE Mains Question 1995: Public Administration

Do You Know?

- A bill to formulate the Constitution of India was drafted in 1895. It was known as *Swaraj Bill*.
- It is believed that the main inspiration for the bill came from Tilak's concept of *Swaraj*.
- The bill included Myanmar as part of Indian territory.

Further, the founding fathers did not borrow entire set of provisions. They confined to borrowing only the principles and building the details according to the needs of Indian socio-political conditions. For example, the concept of Directive Principles of State Policy has been borrowed from the Irish constitution, but the detailed provisions are unique to India. The concept of 'Living Wage' in Article 43 and 'Organization of Village Panchayat' in Article 48 are few to mention. Hence, it would be a gross fallacy to call Indian constitution a bag of borrowed materials. It is a constitution *sui generis*, the kind of which is not found elsewhere.

2. The Lengthiest Constitution

The Indian constitution is a very detailed document and the lengthiest constitution in the world. The original constitution had 8 schedules and 395 articles. At present the constitution has 12 schedules and about 462 articles (2016, after the Constitution (Hundredth Amendment) Act).

The reasons for the bulkiness

The diverse nature of the Indian society and the complexities of the problems necessitated the founding fathers to frame the constitution comprehensively. The reasons for its elephantine size are:

1. The constitution is the product of an intellectual deliberation that was based on the experiences of all the working constitution of the world and the quest of the framers to avoid all the defects and loopholes of such constitutions.
2. The Indian constitution does not only lay down the structure of union government but also that of the state government. Especially after the 73rd and 74th amendment Acts, it deals with the structure of rural and urban local bodies too. After the Constitution (97th Amendment) Act, 2011 provisions relating to cooperatives have been inserted.
3. The constitution deals with the detailed distribution of the powers between the union and the state governments.
4. The value systems prevailing in the country and the peculiar problems of the Indian society have demanded specific provisions dealing with them. The menace of untouchability resulting from the caste system which is unique to India has necessitated specific provisions dealing with that.
5. The units of India are not uniform and they have certain problems unique to them. The constitution had to include for special provisions to meet the peculiar problems of certain regions. To mention one, north eastern states have required special provisions. (Article 371A, 371B and 371C relating to Nagaland, Assam and Manipur respectively). Constitution (98th Amendment) Act, 2012 has inserted Article 371J for the Hyderabad, Karnataka region.
6. It has a long list of fundamental rights and Directive Principles of State Policy. After, the 42nd Amendment Act, a list of fundamental duties has been inserted.
7. The provisions regarding every individual organ have been provided in order to avoid ambiguity.
8. For instance, all high offices are reserved for Indian citizens, therefore, ambiguity needs to be avoided. Hence, the constitution deals with citizenship in seven articles, which otherwise would have been simple.
9. The constitution deals with every single aspect of governance and the relationship between the constituent governments and the organs of those governments.
10. The adoption of several provisions from the Government of India Act, 1935 has also contributed to the bulkiness of the constitution.

3. A Progressively Rigid Constitution

Indian constitution is a blend of flexibility and rigidity. The rigidity/flexibility of a constitution is determined by the procedure for its amendment. The constitution imparts flexibility to federal constitution. Certain provisions of the constitution can be amended by ordinary legislation of the Parliament passed by a simple majority. For example, Article 4 provides that any amendment after creating a new state shall not be deemed to be an amendment and the procedure given in Article 368 need not be followed.

Whereas, other provisions of the constitution can be amended only by following the special procedure enumerated in Article 368. Such amendment has to be passed in Lok Sabha and Rajya Sabha separately by a special majority prescribed.

Provisions Amended by Ordinary Legislation

- | | | |
|------------------|------------------|-----------------|
| 1. Article 4 | 5. Article 243M | 9. Schedule V |
| 2. Article 169 | 6. Article 243ZC | 10. Schedule VI |
| 3. Article 239A | 7. Article 244A | |
| 4. Article 239AA | 8. Article 312 | |

With respect to certain other provisions like amending Schedule VII, manner of electing President, Article 368 itself, etc., can be amended only after the amendment is ratified at least half the number of state legislatures. Thus, Indian constitution flows from utmost flexibility to rigidity making it a 'Progressively Rigid Constitution'.

4. Residuary Powers Vested in the Union

Unlike the federations of the USA or Australia, the Constitution of India vests the residuary powers in the union. This system has been borrowed from the Canadian constitution. Article 248 vests in the Parliament 'the exclusive power to make any law with respect to any matter not enumerated in the concurrent list or state list'.⁽⁴⁾ This power includes the power impose any tax on such matters.

5. Constitution Supplemented by Legislations

Constitutional provisions are supplemented by the legislations because:

- (i) It was not practically possible to provide for all exigencies; howsoever the Indian constitution is an exhaustive one.
- (ii) There are several temporary and transitional provisions in the constitution which require the Parliament to enact law.

Hence, the founding fathers have empowered the Parliament and the state legislatures make laws to supplement the constitutional provisions. Many articles of the constitution are enabling provisions and lays down the basic principles.

For instance, Article 17 declares practice of untouchability as an offence punishable under law. Parliament enacted Protection of Civil Rights Act. This adds up to the flexibility of the constitution by enabling suitable modifications to the law whenever needed.

Article 285, provides that the property of the union shall be exempt from all taxes imposed by a state, until Parliament enacts a law in this regard. This is a temporary provision to be operative until the Parliament enacts a law.

6. Judicial Review

Judicial review is an important feature of Indian constitution. Judicial review flows out of Article 13 and Article 32. Judicial review is the power of courts to review the actions of the executive and legislative branches of the government.

Judicial review is an essential feature of a democratic welfare state. Judicial review is concomitant to guaranteed fundamental rights and is essential for protecting them. It legitimizes government actions and enables the functioning of 'Rule of Law'.^[5]

According to Ivor Jennings, the Indian constitution provides for a 'limited government' following the American model. However, there are adequate safeguards to ensure that judicial review does not result in 'judicial supremacy'. Further, the fine balance between the sovereignty of the Parliament and the judicial review is indeed a remarkable feature of Indian constitution.

7. Guaranteed Fundamental Rights

Under the British rule, the founding fathers of the constitution were not only a witness to how a state could use its legitimate power brutally to suppress its own subjects but were also victims. Hence, it was decided that the independent India's constitution must have fundamental rights guaranteed to people. Hence, they deviated from the English practice of having unenumerated rights and have provided for 'enumerated and guaranteed' fundamental rights in order to:

- (i) Keep them out of the ever-changing pattern of political controversies.
- (ii) Establish them as legal principles, to be applied by the court, as standards. Hence, they have to be kept away from the reach of the majority in the legislature and officials in the government.
- (iii) Protect the individual citizens from the excesses of the state actions.

8. Directive Principles of State Policy and Fundamental Duties

The Constitution of India has a long list of directives prescribed as 'fundamental to governance'. The concept of DPSP has been borrowed from the Irish constitution. The DPSPs are certain values and ideals to be the basis of policy-making. They also contain certain rights that are to be guaranteed to the citizens on a later date. It is a sort of a reminder.

The Constitution 42 Amendment Act, 1976 added the fundamental duties. They are borrowed from the constitution of erstwhile USSR and are not enforceable. They are included based on the concept that the rights in civilized society must always go with duties.

9. Universal Adult Franchise

Article 326 of the constitution provides for the 'right to vote' to all citizens who have completed 18 years of age. Irrespective of the educational, economic, social and other backgrounds the citizen of India will have the right to vote. It is one of the most important features of 'popular sovereignty'. India being a diverse society, it becomes all the more important to grant this right to promote equality among the citizens.

10. Conventions Under the Constitution

Constitutional conventions are political practices that crystallize into a set of rules over a period of time. According to Professor Dicey, the discretionary powers of the Crown in England are determined by the conventions. Such conventions also act as the rules governing the exercise of such powers. Conventions grow where the law is silent and such a convention will not breach the law but fill the gap.

5 For further reading, refer judiciary Chapter 1

Though Indian constitution is an exhaustive, it has left certain aspects for conventions and hence, has a wide scope for the growth of convention. Since the constitution coming into force, several conventions have been established. For instance, Article 75 empowers the President to appoint the Prime Minister, but the constitution is silent about how the President will select the Prime Minister. This has given room for the growth of convention. By applying the concept of collective responsibility, the President appoints the leader of the party which has won the highest number of seats in the House of the People. However, when no political party gains the required majority the President had to follow the conventional practice as the constitution does not provide a way out. In such circumstances the following conventions are established:

- (i) If there is no single party with an absolute majority, the President may appoint the leader of a pre-poll alliance that has a majority.
- (ii) If there is no such pre-poll alliance that has a majority, the President may invite the leader of the pre-poll alliance who is supported by a sufficient number of Lok Sabha MPs to command an absolute majority.
- (iii) It is only when options A and B are ruled out that the President may invite the leader of a post-poll alliance. The President will make sure that the groups or parties agree to some common programme or policies. The post-poll alliance must elect its leader before the President invites it to form the government.

11. Parliamentary Democracy

'Parliamentary democracy, democratic form of government in which the party (or a coalition of parties) with the greatest representation in the Parliament (legislature) forms the government, its leader becoming Prime Minister. Executive functions are exercised by members of the Parliament appointed by the Prime Minister to the cabinet. The parties in the minority serve in opposition to the majority and have the duty to challenge it regularly'.^[6] It is also known as Cabinet Form of Government with ministerial responsibility. The Constitution of India sets up parliamentary form of government to both the union and the states. Indian system is a legacy of the British rule and follows the English Parliamentary System.

Characteristic Features of Parliamentary Democracy

Parliamentary democracy has certain important features which are:

1. Dual Executive

In the parliamentary democracy, there are two executives namely, the titular head and the real executive head. The former is the head of the state and the latter is the head of the government. In India, the President is the titular head and the Prime Minister and his Council of Ministers is the real executive head. Constitution regulates the relationship between the two.

2. Bicameral Legislature

In the parliamentary democracy, there are two Houses namely, the Council of States and the House of the People.

3. Responsible Government

A responsible government is one which is responsible to the people. It is essential that the government enjoys the confidence of the Parliament for making laws to govern the country.

Responsible government refers to two elements of parliamentary government in British derived parliamentary systems. First, the government— Prime Minister and the Council of Ministers, is accountable to the Lower House of Parliament. Hence, the government must maintain majority support in the Lower House; loss of that support means that the government must resign. In this sense,

6 Britannica Encyclopedia: <https://www.britannica.com/topic/parliamentary-democracy>.

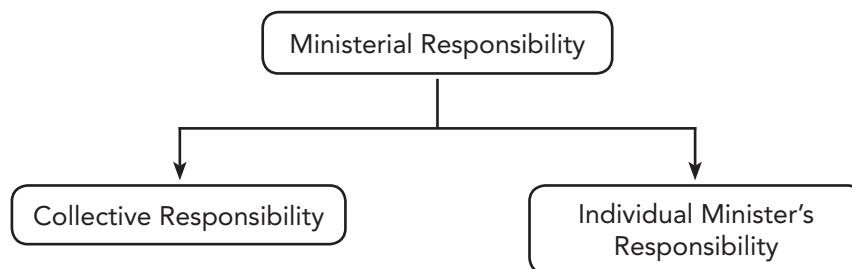
responsible government is another term for parliamentary government; a ministry is 'responsible' to Parliament for the activities of government and must resign if it loses the confidence of the lower house. Thus, a government whose accountability to people is ensured through the answerability to the Houses of the Parliament for all its acts, is a 'Responsible Government'.

Responsible Government

- The system originated in Canada.
- Survives on the support of an elected legislature.
- Upholds 'public accountability'.

This meaning of responsible government, is based on the principle that the ministers must be drawn from the majority party and they remain in office so long as they enjoy the support of the majority of members in the House of the People. From this flow chart the doctrines of ministerial responsibility and collective responsibility.

4. Ministerial Responsibility



The parliamentary form of government is otherwise known as 'Cabinet Form of Government with Ministerial Responsibility'. The collective responsibility of the Council of Ministers to the House of People for all acts of commission and omission of the government and the individual minister being answerable to the Houses of Parliament for the performance of the ministry/department in his charge are two dimensions of ministerial responsibility.

Collective Responsibility: Collective responsibility implies that the whole Council of Ministers is a single unit. The object of collective responsibility is to make the whole body of persons holding the ministerial office collectively.⁽⁷⁾ Every individual minister is held responsible and accountable for the decisions made by the council. According to Supreme Court, even if the individual minister may not be responsible for the decision, he will be deemed to share the responsibility with the council. 'In practice, this means that a decision of cabinet or one of its committees is binding on all members of the government, regardless of whether they were present when the decision was taken or their personal views.'⁽⁸⁾ 'The principle requires that ministers must express their views frankly and argue freely in private while maintaining unity when decisions have been reached. The privacy of opinions expressed in cabinet and ministerial committees should be maintained.'⁽⁹⁾ Therefore, the Council of Ministers 'swim or sink' together.

7 Supreme Court: State of Karnataka versus Union of India

8 Cabinet Manual: Government of UK, Chapter 4 – 'Collective cabinet decision-making' Page 31

9 Cabinet Manual: Government of UK, Chapter 4 – 'Collective cabinet decision-making' Page 31

Individual Minister's Responsibility: According to Article 77(3), the President allocates the portfolios to the ministers and each minister is in-charge of a ministry or department. He is the political head and the secretary to the department is the permanent head. The minister is held accountable before the Parliament for all 'acts of commission and omission' of the secretary. Although the constitution has not expressly provided for the individual responsibility of the ministers to the Parliament, it is practised in India similar to English Parliamentary System. The minister is responsible for answering any question raised on the Floor of the House, defend any bill or policy of the department and reply to queries raised, part of any debate or discussion on motions. Thus, the officials are protected from being questioned in public. This is known as the 'Principle of Anonymity of the Civil Service'.

The 'Principle of Anonymity' is practised to enable the civil servant to be 'apolitical', 'neutral', 'disinterested' and 'professional' advisor to the Council of Ministers. 'Apolitical' refers to the administrators not being aligned to any political party, especially not leaning to political views while discharging their official duties. The civil servant is expected not to be biased and neutralize his value preferences while involved in the official decision-making. Further he must not have any personal interest in any of the official dealings. Thus, he is expected to be 'professional' in advising the Council of Ministers.⁽¹⁰⁾

5. Weak Separation of Powers

Montesquieu, a French social and political philosopher coined the term 'separation of powers' in his book 'Spirit of the Laws'. According to him, the political authority of the state is divided into legislative, executive and judicial powers in order to promote liberty most effectively.

Separation of powers is an essential element of the Rule of Law and limits one branch from exercising the core functions of another and prevents the concentration of power and provides for checks and balances. The legislature enacts the laws, the executive implements and administers the law and public policy and the judiciary interprets the constitution and laws and decide disputes.

In the presidential form of government there is a complete separation of powers. However, this arrangement is weak in the parliamentary system. 'The parliamentary government has a sort of link between the executive, the legislative and the judiciary.'⁽¹¹⁾ In the parliamentary system there is a strong executive branch government but answerable to and controlled by the legislature.

6. Continuous coordination of Legislature and Executive

'The presidential government has complete separation of powers of the three principal organs of the state, each embodying the sovereignty of the people in the different aspects of the state's activities and there is no link between them.'⁽¹²⁾ Hence, in this form the executive is pivoted on the President and he is the chief executive and the source of all executive power. In such a system the imminent danger of personality cult is unavoidable. As a consequence, there is a need for continuous coordination of the executive and legislature. This is a natural feature in the parliamentary form of government as there is no complete separation of powers.

Furthermore, given the low rate of literacy and low level of political socialization in India it would be difficult to resolve any conflict between the three organs of the government. The coordination system inherent to the parliamentary form helps resolving such conflicts by itself without the citizen playing a role. To quote Shri K. Hanumanthaiya, 'Instead of having a conflicting trinity it is better to have a harmonious governmental structure'.⁽¹³⁾

7. Complete and Continuous Responsibility of Executive to Legislature

The founding fathers wanted to establish a responsible and accountable government; they wanted the government to be sensitive to public expectations, hence, they had chosen the parliamentary form of government.

10 Refer this for the governance and ethics also

11 Constituent Assembly Debates

12 Constituent Assembly Debates

13 Constituent Assembly Debates

The 'complete and continuous responsibility' of the executive to the Parliament is the most distinctive characteristic feature of a parliamentary democracy. Hence, the parliamentary system of government is also known as cabinet form of government with ministerial responsibility. According to M. V. Pylee, the parliamentary system works under the 'principle of concentrated authority under strict control'. This on the one hand enables an 'intimate cooperation' between the Council of Ministers and the Parliament and on the other fixes' responsibility of the council to the Parliament. Hence, the council is under the constant vigil of the Parliament which is the 'real merit' of the Parliament system.

Merits of and Reason behind India adopting Parliamentary Form

- (a) **Responsible government:** Government subjected to legislature scrutiny establishing its accountability to the people.
- (b) The Head of Government (Prime Minister) enjoying the support of majority of total membership of the House of People (Lok Sabha).
- (c) **Continuous coordination** between the executive and the legislature in matters of policy-making and implementation.
- (d) **'Society in the Miniature':** In a polycultural society like India enables all sections, even the minuscule minority of the society being represented the Parliament.
- (e) **Economic and financially less burdensome:** A single election to Parliament only and the rest of the offices are elected indirectly.
- (f) **Flexibility:** An incompetent government can be removed before the expiry of the term without changing the composition of the Parliament and new government formed.
- (g) **Simple:** System is very simple to understand and administer in a country like India with high rate of illiteracy.
- (h) The bicameral Parliament makes the law and controls the executive.
- (i) **Experience factor:** India was used to the parliamentary system since the British period.

Demerits of the Parliamentary Form^[14]

In spite of the above merits and the valid reasons for India adopting the system, the parliamentary form also suffers from certain weakness and has demerits. There have been several 'aberrations' in the way the system has worked in the past decades.

1. Sprouting Political Parties

The presence of multiple political parties is a remarkable feature of a vibrant democracy. However, when the number of parties increases beyond a particular limit it becomes detrimental to the functioning of the system itself. In India the presence of too many parties has caused instability. The elections have resulted in 'hung assemblies' and forming the governments has become a problem. Many a times the incumbent governments have fallen due to this.

Before 1978, this phenomenon was found in states only, but after that it is also found in the Central government. Since 1989 till 2014, India had the 'coalition era' in which no political party could secure the majority in the Lok Sabha.

Do You Know?

- Out of political parties registered with Election Commission of there are 2044 parties which are unrecognized.
- Out of more than 3000 political parties, only seven are recognized national parties.

2. Defection

Defection is an evil which threatens the very basis of a democracy causing instability. The power-hungry politicians have toppled the governments by shifting their political affiliations for 'reasons' other than principles and merely political. To check this constitution (52nd Amendment) Act, 1985 was enacted. Schedule X to the constitution was added.

3. National Parties without Cohesiveness and Strong Leadership

The national parties in India lacked unity and cohesion among them. Further they did not have effective mechanisms to resolve the differences within the party. This had deprived them the ability to provide leadership to the nation. This also weakened the position of the Prime Minister and it demanded him to spend more time on resolving the differences than for more vital issues concerning the policy and administration. There have also been a lot of dissensions among the members of the party. This becomes a concern more in the coalition government in which the Prime Minister has to accommodate his alliance partners in his council.

As a consequence, the national parties failed to focus on certain issues concerning the states/regions that caused feeling of being deprived in the states. This gave a fertile ground for the rise of many regional parties.

4. Rise of Regional Parties

Since late 1950's and early 1960's the rise of regional political parties is witnessed. The major reasons for their rise and growth are the indifferent attitude of the national parties and demand for state autonomy. Although the demand for state autonomy is a natural phenomenon and an acceptable in a federal constitution, the approach the parties have taken was appropriate.

In the era of coalition in the post 1989 phase the regional parties had held the Central government to political ransom. National parties lost their standing in many states and no party could muster majority required for forming the government. As a result, they had to depend on the regional parties. Several times the regional parties had shifted their stand toppling the government and causing instability and frequent elections.

5. Fragmentation of House

Due to the multiplicity of political parties and the increased strength of the regional parties and other smaller parties in the Houses of Parliament the House are fragmented. The parties based on religion and castes have contributed to the fragmentation of the House.

The debates and discussions have been more on such considerations as party ideology, interest of the religious and caste groups instead of the merit of the issue being discussed. Further, the whip system and the anti-defection law have done away with members voting on issues cutting party lines.

The founding fathers of the constitution did not envisage this and their vision was to develop a political culture in which the interest of the people is put primary to any political interest. Hence, this is an aberration of the parliamentary form of government.

6. Low Rate of Literacy and Political Socialization among the Voters

The literacy rate in India is generally low which has also contributed to the low level of political socialization among the voters. Therefore, peoples' knowledge about political process, their rights and entitlements and political maturity are very low. As a result, the voting behaviour is based on the issues concerning the nation. The electorate do not consider the national issues and vote instead they vote on the basis of caste, religion and other factors.

In the recent past money has become a powerful determinant of voting behaviour as political parties indulge in bribing the voters. In 2016, in Tamil Nadu the election commission had been forced to countermand the election to two constituencies on the ground that there was a large-scale distribution of money by all the political parties. There have been incidences of seizure and it is reported that 2016 Tamil Nadu Assembly elections saw the highest amount of money seized ever.

7. Criminalization of Politics^[15]

The link that politics and crime have is inseparable and has attained a dangerous proposition. N. N. Vohra Committee report found out the sinister link between the politicians, bureaucrats and the criminals. The National Police Commission, 1977 observed: "The manner in which different political parties have functioned, particularly on the eve of periodic election, involves the free use of musclemen and 'Dadas' to influence the attitude and conduct of sizable sections of the electorate."

Most of the small political parties today are based on caste, religion etc., and do not have a political philosophy. They do not conduct a principle-based politics and do not have a vision for the development of people. They indulge in vote bank politics influencing voters using money and muscle power. The criminals are very helpful to the politicians in this front and the criminalization of politics is a natural outcome.

This is aggravated by the weakness of the Election Commission. The powers of the Election Commission remain largely undefined. Also, the commission depends on the state government officials for its administrative needs. The state officials, especially the police, often show an indifferent attitude and do not cooperate with the commission. Though the commission in the recent past has launched the voter education programme to educate the voters of their rights, the dissemination of knowledge relating to the rules, rights and duties of the voters is still at large.

Aberrations of Parliamentary Form of Government in India^[16]

The term aberration means 'a departure from what is normal, usual, or expected, typically an unwelcome one'. The demerits mentioned above are also the aberrations of the parliamentary form of government. They are considered as aberrations because they represent a deviation from the expected system.

The presence of multiple political parties keeps the democracy vibrant and is an important feature of parliamentary democracy. The presence of multiple parties which represent the interest of the people is welcome. But political parties formed on the basis of caste and communal lines do not represent the people's interest but inculcate parochial interests. In the recent times we also witness political parties formed without any political principles and solely based on the popularity of the leader. Hence, it is an aberration.

The rise of regional political parties is another important feature of parliamentary democracy. It is essential that the regional interests are heard and adequately represented in the policies, in a polycultural and diversified society like that of India. This becomes all the more needed when the national parties fail to do the same. However, the regional parties must genuinely represent the regional interests and must not breed regional parochialism. There have been political parties that have fuelled the local parochial tendencies resulting in unrest and at times riots. Hence, it is considered an aberration.

When any issue is discussed in the House of the Parliament every member expressing a different view is an expected behaviour. Any member will view the issue from his standpoint which could be aligned with the party to which he belongs. Moreover, he may present his view keeping the interest of the constituency in accordance with the manifesto on which people was elected by the people. It is a natural and welcome feature of democracy. But in the recent times it is found that the members either support or oppose any issue not on the basis of the merit of the issue, but more on political lines. Neither the general public interest nor the national outlook nor the interest of the constituency forms the basis of the debate. Hence, it is an aberration.

'Whip' is a traditional practice in any democracy. The party through the chief whip issues periodic notices and directives informing them of the important debates and the manner in which they participate and vote in the debate. It is mainly to discipline the members of the party in the Houses of the

15 IAS MAINS (2007)-What is criminalization of politics?

16 CSE Mains 2001 Question, Bring out the aberrations of the Parliamentary Democracy in India.

Parliament. According to the Schedule X⁽¹⁷⁾, any member who votes or abstains from voting against the party whip, it is defection and he will be disqualified. He cannot vote exercising his individual judgement, articulate his opinion and vote. He has to tow the party stand. Thus, the system results in a 'forced consensus' and reduces the democracy to a mere number game. Hence, it is an aberration.

'Defection' is definitely an evil practice. It had been the main reason for the political instability in the past. There had been occasions when the members of Parliament defected from one party to another in day. Political parties had accommodated them in the cabinet when the members shifted their loyalties. This had made the democracy a mockery. This practice was witnessed in 1977 and in many states. This was the main reason for the introducing the Schedule X. But the definition of defection as given in the Schedule X has effectively stopped the free exchange of views among the Members of Parliament. The MPs today remain fragmented and keep themselves away from each other. It has completely done away with 'cross voting' (voting in the legislature cutting across the party lines if the issue is meritorious and any member wants to support even if the party to which belongs took an opposite view) which makes democracy more vibrant. Hence, it is an aberration.

12. Federal Constitution

Usually any constitution that satisfies the following five conditions is considered as federal constitutions. The conditions are as follows:

- Division of powers and dual government
- Written constitution
- Rigid constitution
- Independent judiciary
- Supremacy of constitution

Division of Powers and Dual Government: It is 'the principle that sovereignty should be divided between the federal government and the states'.⁽¹⁸⁾ 'The basic principle of federation is that the legislative and executive authority is partitioned between the centre and the states, not by any law to be made by the centre but by the constitution itself....'⁽¹⁹⁾ Thus, the division of powers is vertical distribution of powers between the centre and the states. It results in the duality of governments—centre and states. It is the most fundamental principle of a federation.

According to M. V. Pylee, 'In the modern age, there is a need for reconciliation between two divergent tendencies, the widening range of common interests and the need for local autonomy'. Certain matters have a national impact and have to be dealt with a national outlook. On the other hand, there are certain other matters that need to deal with at the local level. For instance, when a policy is made it required to take a national outlook in order to cater to the common interest of all states. But when such policy is implemented the local needs, values and problems need to be considered. This is enabled by the concept of division of powers. The Schedule VII of Indian constitution contains three lists of subjects namely, union list upon which the union government has the exclusive power to legislate and state list upon which the state government has the exclusive power to legislate.⁽²⁰⁾

Written Constitution: A written constitution is a single document that formally defines the nature of the political system and the rights guaranteed to the citizens. It codifies the rules that govern the political system. It is need to ensure that the distribution of powers between the centre and the states must be

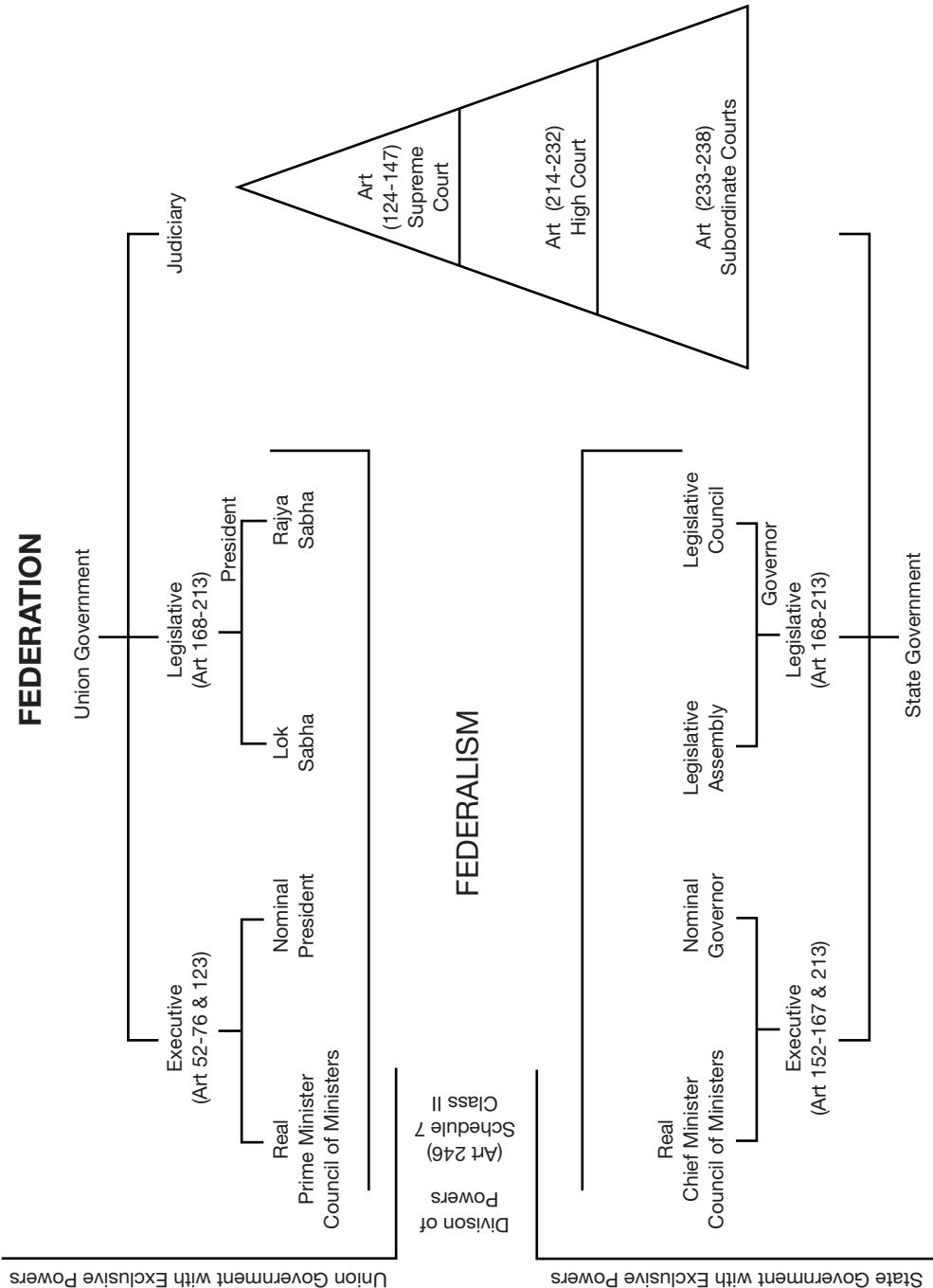
17 Added by the Constitution (52nd Amendment) Act, 1985

18 Merriam Webster's English Dictionary

19 Dr. B. R. Ambedkar—Constituent Assembly Debates

20 Article 246. (1) ...Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the 'Union List').

Article 246 (3) Subject to clauses (1) and (2), the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Schedule VII (in this Constitution referred to as the 'State List').



clear and without any ambiguity. Further, it lays down the procedure for amendment to the constitution if it is needed.

Rigid Constitution: Whether a constitution is rigid or flexible is determined by the process by which it is amended. If the amendment process is difficult such constitutions are known as rigid constitution. A rigid constitution is not one which is not subjected to any amendment. Any constitution that does not adapt to the changing circumstances is bound to fail. Usually federal constitutions lay down complex procedure. Neither the centre nor the state governments can amend the constitution affecting the distribution of powers, without the consent of the other.

Indian constitution is a progressively rigid constitution. It lays down a procedure in article 368. Any provision of the constitution can be amended passing a constitution amendment bill by a special majority. In case of any amendment to the certain provisions the ratification by atleast half the number of state legislatures is required. Thus, the Indian constitution is a rigid constitution.

Independent Judiciary: A written constitution has a higher potential to be ambiguous and its meaning might not be understood as same by all at all times. Disputes arising between the centre and the states upon the terms of the division of powers and the respective areas of their authority are unavoidable. Such disputes have to be settled in accordance with the constitution by an independent and impartial arbiter. An independent judiciary is, therefore, is an essential part of a federal system. The Indian constitution provides for judiciary whose independence is ensured by several provisions.

Supremacy of Constitution: Constitution is the supreme law to which the union and states are sub-ordinated. They are obliged to obey and honour the constitution. Neither the union nor the states can override the constitution. In certain cases, the union has overriding powers, but that does not permit encroachment of the state's jurisdiction.

India—A Federation or Not?: 'The Indian constitution is basically federal in form and is marked by the traditional characteristics of a federal system, namely, supremacy of the constitution, division of power between the union and state governments, existence of an independent judiciary and a rigid procedure for the amendment of the constitution. It establishes a duly polity, with clearly defined spheres of authority between the union and the states, to be exercised in fields assigned to them respectively.'⁽²¹⁾

'There is an independent judiciary to determine issues between the union and the states, to be exercised in fields assigned to them respectively. There is an independent judiciary to determine issues between the union and the states, or between one state and another.' Hence, Indian constitution is a federal constitution. However, the Indian constitution also has several non-federal features. Professor K. C. Wheare called the Constitution of India as, 'Quasi-federal' and that Indian union is 'a unitary state with subsidiary federal features rather than a federal state with subsidiary unitary features'.

Non-federal Features in the Constitution

1. The word 'federal' is not found anywhere in the Constitution of India. On the contrary, Article 1 provides that 'India shall be a union of states'.
2. **Single Citizenship:** The constitution provides only for a single citizenship. Only the union has the right to make laws on citizenship. The states do not have such powers.
3. **Single Constitution:** Unlike the USA where states have their own constitution, in India there is only one constitution for both centre and states.
4. **Residuary Powers:** The residuary powers being vested in the union (Article 248).
5. **No Right to Territorial Inviolability:** The boundaries of the states in India can be altered by an ordinary law of the Parliament. According to Article 3, 'Parliament may by-law form a new state by separation of territory, from any state or by uniting two or more states or parts of states or by uniting any territory to a part of any state.'
6. **Single Unified Judiciary:** There are no separate federal court and high court. The Supreme Court is the federal court and the apex court in India. All the high courts are subordinate to the Supreme

Court. The judges of high courts are appointed by the President and are removed by the President only on the resolution of the Parliament.

7. **Centralized Emergency Powers:** The emergency powers are vested in the centre only and the states do not have any powers regarding emergency. Even the constitutional emergency is proclaimed by the President on the advice of the union council of ministers.
8. **Centralized Amendment Powers:** The power to amend the constitution is vested in the Parliament. The states do not have any power to initiate or influence the constitutional amendment.
9. **Unequal Representation of States in the Rajya Sabha:** The states are not equally represented in the Rajya Sabha. The seats in Rajya Sabha are distributed in proportion to the population of the states. This curtails the autonomy of the smaller states.
10. **Office of the Governor:** The Governor to the states is appointed by the President. He holds office during the pleasure of the President. Governor plays a dual role as the constitutional head of the state and also as the representative of the union government in the states. According to Article 356, the report of the Governor is a base on which the constitutional emergency is proclaimed.
11. **All India Services:** All India service officers are appointed by the President of India on the recommendation of the Union Public Service Commission. They enjoy immunity from the state governments. The state government does not have any authority to take disciplinary actions on the All India Service Officers (Articles 310 and 311).
12. **Centralized Election Machinery:** The Central Election Commission conducts the election to legislative assemblies and legislative councils of state.
13. **Centralized Auditing of State Accounts:** The Comptroller and Auditor General of India is responsible for the maintenance of the accounts of the state governments and also audits them.
14. **Control of Union over States:** The union government has the powers to control the state governments. The union government has the powers to issue binding directions to the states. In case any state did not comply with such directions then, 'it shall be lawful for the President to hold that a situation has arisen in which the government of the state cannot be carried on in accordance with the provisions of the constitution.'⁽²²⁾ In such case the President can proclaim constitutional emergency on the state.
15. **Power of the Parliament to enact on State Subjects:** There are certain provisions of the constitution under which the Parliament can enact law on the matters enumerated in the state list. Such provisions are:
 - (a) **Article 249:** In case the Rajya Sabha passes a resolution that 'it is necessary or expedient in the national interest', then the Parliament can legislate on any matter in the state list.
 - (b) **Article 250:** While a Proclamation of National Emergency is in operation, the union government will have unlimited powers to legislate on any matter given in the state list.
 - (c) **Article 251:** In case of any law made the state legislature was inconsistent with the laws made by the Parliament under Article 249 or Article 250 then the law made by Parliament shall prevail over the laws made by the state legislature.
 - (d) **Article 252:** If two or more states pass a resolution requesting the Parliament to enact a law common to them on any matter in state list then the Parliament can enact such a law.
 - (e) **Article 253:** The Parliament can enact any law on any matter including the state subjects in order to give effect to any international agreement or treaty.

The above-mentioned are only a few of the non-federal features. As result of this at times the Indian constitution is known as a 'Quasi-federal Constitution'. However, the inclusion of the non-federal features is not accidental and those features have been added after considerable deliberation in the constituent assembly.

"The union of India is a federal union, with a distribution of powers, of which the judiciary is the interpreter. Although there has been considerable controversy whether India is or is not a federation and although some writers have called it 'quasi-federal', it would seem that essentially the Indian constitution is a federal one."⁽²³⁾

Reasons for Incorporating Non-federal Features⁽²⁴⁾: The non-federal features have been deliberately incorporated due to certain reasons which are as follows:

1. The bitter experience of partition demanded the founding fathers of the constitution to incorporate certain features to maintain the territorial integrity of the country.
2. The presence of divisive forces even after the partition also made required to incorporate certain features to maintain the territorial integrity of the country.
3. India being a polycultural society, the tendency towards division was prone to be high. Hence, it was necessary to have a strong centre for preserving the territorial integrity of the country.
4. The polyculturalism has the potential to provide a fertile ground for the rise and growth of regionalism which could eventually escalate as divisive force. The centre needs to be strong enough to handle any such crisis that could be endangering the territorial integrity of the nation.
5. The centre has to be strong enough to take proper actions against any state which at times function against the basic spirit of the constitution. For this the constitution has vested the power to control the states in the union.
6. As a welfare state, the welfare policies need to be uniform for the whole nation in their letter and spirit. The presence of institutions like All India Service enables this. Further, it is also necessary to have All India Services with the national outlook in order to promote the welfare policies of the polycultural society with the conflicting interests.

Going by the above reasons, it can be concluded that the presence of such features are not accidental but are deliberately done. Moreover, the non-federal features have an emergency character and coming to play only when such emergency circumstances arise. Hence, one shall not be apprehensive about this.

To conclude whether the constitution is federal or otherwise on the basis of theoretical precepts is not completely correct. It is because both unitary and federal are functional concepts rather than theoretical conditions. Therefore, to conclude on the nature of a constitution one has to observe its operation.

Further the conditions of federation are derived as an inference from the American constitution. It is not essential for every constitution to satisfy such conditions because every constitution reflects and has social values relevant to its society as its basis. On this line the Indian constitution has a number of unitary features not as a deviation from federal path but as a basic requirement.

Further, the mode of formation of Indian federation is different from that of the USA; while the federation is evolved in the USA, India inherited the federation from the Government of India Act 1935, before entering into the federation the states of America were sovereign states whereas in India it is not so.

Hence, the Indian constitution cannot be called as quasi-federal rather it is better to call it as federation *sui generis*.

Cooperative Federalism⁽²⁵⁾: According to Granville Austin, the founding fathers expected Indian constitution to function on the basis of cooperative federalism. The concept of cooperative federalism means that the Indian constitution can assume the federal nature only on the basis of cooperation between the union and the states. It is to be based on the commitment to the constitution goals of the union and the state government. 'Cooperative federalism is intended to ensure a minimum bundle of basic services and a nationally acceptable level of living for all the people of the country.'⁽²⁶⁾

The essence of cooperative federalism is that the centre and the state governments should be guided by the broader national concerns of using the available resources for the benefit of the people. Cooperative federalism encourages the government at different levels to take advantage of a large

23 Supreme Court - Keshav Singh vs Speaker, legislative assembly, 10 March, 1965- AIR 1965 SC745, 762.

24 Though the federal principle is dominant in our constitution and that principle is one of its basic features, but it is equally true that federalism under the Indian constitution leans in favour of a strong centre, a feature that militates against the concept of strong federalism. – IAS Mains (GS) – 2014.

national market, diverse and rich natural resources and the potential of human capabilities in all parts of the country and from all sections of the society for building a prosperous nation.⁽²⁷⁾

Cooperative federalism makes it possible to raise all the available resources by the government at different levels in a coordinated way and channel them for use for the common good of the people. This requires a harmonious relationship and cooperative spirit between the centre and the states and among the states themselves. While a healthy competition among the states for evolving efficient and socially desirable policies and programmes is welcome, any competition which nullifies each other's advantages in development and erodes the resource base of the states should be avoided.⁽²⁸⁾

The state government is expected to understand the difficulties faced by the union government in achieving the constitution goals. On the other hand, the union government is expected not to interfere into the states' autonomy and extend to them all possible assistance. The use of unitary powers shall be resorted to only at times of crisis. But due to the lack of vision and commitment, Indian federation turned out to be a bargaining federation. The political causes and exigencies made the union and the state government to bargain for cooperation, ultimately resulting in 'bargaining federalism'.

Drawbacks of the Existing System: The following reasons can be quoted for the expected 'cooperative federalism' turning out to be a 'bargaining federalism'.

1. Attempt to Thwart the Doctrine of Supremacy of the Constitution

Doctrine of supremacy of the constitution is an essential feature of federalism. However, several attempts have been made to encroach on the constitution and thwart the constitutional supremacy. The quotable example is the Constitution 25th Amendment Act, which sought to usher into parliamentary supremacy. This resulted in the Supreme Court propounding the doctrine of basic structure in the Kesavananda Bharati case.

2. Absence of a Non-political Advisory Body

It is a healthy process to review the intergovernmental relations by a neutral and non-political body. According to Rajamannar Committee on Centre-State Relations, the Inter State Council (ISC) is best fit to be such neutral and non-political body. The ISC is an advisory body and its recommendations are not binding on the government. But the committee recommended that the recommendations of the ISC must be 'ordinarily binding' on both the centre and the states.

All decisions of national importance and decisions that affect the interest of the states must be taken only after consulting the ISC. Similarly, any bill that will affect the interest of the states must be referred to the ISC before being introduced in the Parliament. But the ISC is not involved in policy-making nor has decision-making authority. In fact, the ISC meetings have been conducted sporadically and have been a victim of politics.

Even the National Commission to review the working of the constitution recommended for a permanent institution for enabling a healthy consultation between the centre and the states. The commission also opined that the ISC can play this role effectively.

3. Abuse of the Constitutional Provisions

In several occasions, various constitutional provisions were subjected to abuse in such a manner that it adversely affected the federal structure. For instance, Article 356 which provides for constitutional emergency has been abused. Only after Bommai's case judgment the practice was discontinued. Even then the judgement is not complied with fully. The recent cases in Arunachal Pradesh and Uttarkhand are examples.

25 The concept of cooperative federalism has been increasingly emphasized in recent years. Highlight the drawbacks in the existing structure and the extent to which cooperative federalism would answer the shortcomings. –IAS Mains (GS) 2015.

26 Planning Commission of India: 9th Five Year Plan (Volume-1), Chapter 6—Cooperative Federalism and Decentralization.

27 Planning Commission of India: 9th Five Year Plan (Volume-1), Chapter 6—Cooperative Federalism and Decentralization, Introduction.

28 Planning Commission of India: 9th Five Year Plan (Volume-1), Chapter 6—Cooperative Federalism and Decentralization, Introduction.

4. Extra constitutional Factors influencing Federal Polity⁽²⁹⁾

Apart from the factors discussed above, there are certain extra constitutional factors that influence the federal polity in India. Extra constitutional factors those which are not provided in the constitution but are established by the order of the executive. Such factors are:

1. NITI Ayog
2. Centrally Sponsored Schemes
3. National Integration Council
4. Prime Minister's Office
5. Governor's Conference
6. District Collectors Conference convened by Union Government

5. Absence of Regular Opposition Conclaves

One of the symbols of a healthy and responsible federalism is the opposition conclaves, the meetings of the parties that are not in power and the opposition party. Such a practice is a regular feature in the English system where the opposition organizes a shadow cabinet. Such an arrangement helps in developing a perspective from the other side and strengthens the democracy. Therefore, such conclaves must be organized regularly. A matured and responsible role of opposition is essential for such conclaves to be organized regularly and institutionalized. The present political system in India today lacks such responsible opposition.

6. Confrontationist attitude of the Regional Parties

The responsible role of opposition is hampered by the confrontationist attitude of the opposition parties especially the regional parties. The regional parties still tend to hold the stand of forming a 'Federation without Centre'. This view was openly expressed in 1996 when the opposition Chief Ministers met in Hyderabad. The United Front government was formed with this slogan which grossly weakened the Central government against the constitutional scheme.

7. Role of Governor

The office of Governor has always been in the centre of controversy with respect to federalism. The union governments had used the office to establish their dominance on the states. The states have been constantly resented to this practice. The recommendations of the Sarkaria Commission are noteworthy in this regard. The practice of President withdrawing his 'pleasure' on the Governor of certain states, with the change of regime in the centre after the general election to Lok Sabha.

In 2004 when the UPA government took charge the Governors appointed by the NDA government were removed on the ground of their ideological base. They were called as 'tainted Governors' and their removal was justified. Similarly, in 2014 when the NDA formed the union government the Governors appointed by the UPA government were forced to resign.

In the present times, with respect to the state of Tamil Nadu a separate Governor was not appointed for a period of one year after the term of the previous Governor expired. Though the constitution (Article 153) permits the appointment of the Governor of a state to be appointed as the Governor of another state, it has to be a contingency arrangement. It must not be practised as a regular feature. It will adversely affect the federal character of the constitution adversely.

The foregoing points clearly explain the drawbacks of the existing system in achieving the 'cooperative federalism'. At this juncture it is also worthwhile to understand other challenges to federalism in the present times.

Challenges to Federalism: In the present times the problems and challenges transcend borders and demand an integrated approach for resolving them. This has become the order in the globalized world. Such issues are:

- The environmental issues relating to pollution, climate change and sustainable development transcend borders.

29 Discuss the major extra constitutional factors influencing the federal polity in India.

- Disasters, both man-made and natural do not confine to borders and require united and cooperative approach. The Uttarkhand floods in (the river Alaknanda floods) in 2013 and the Chennai floods in 2015 are examples.
- The interpretations of the constitutional goals by the Supreme Court also demand absolute cooperation between the centre and the states for achieving them. For instance, the Doctrine of Public Trust evolved by the Court (M. C. Mehta versus Kamal Nath case) makes it clear that the state does not enjoy ownership right over the resources but only a trustee to manage for the welfare of the people. The court struck down the sale of the telecom spectrum on this basis.
- In the globalization era the states also have stakes with respect to development and investments. Any international agreement or project relating to this demands true cooperation of the centre and the states based on mutual trust and confidence.
- Similarly, the external powers tend to take advantage of the globalization phenomenon to interfere into the internal affairs, especially security issues. In 2006 the US ambassador to India bypassed the hierarchy and offered the USA assistance to the Assam government to investigate the terror attack. This requires the union and the states to maintain absolute cooperation to protect the national unity and integrity.
- Another development in the recent times is that the states, especially the border states, have asserted themselves by demanding a role in the foreign policy. It is now essential for the union government to consider the interests of and the challenges faced by the states in this regard. The issue of 'International River Water Sharing', terrorism and the steps taken by the union, the issue of refugees, etc., demand cooperation of the union and the states. The Teesta river agreement in which West Bengal resented and the Srilankan naval attack on Tamil fisherman are examples to quote.
- The issue of cross-border terrorism and externally promoted insurgency demand coordinated action of the union and the state forces. This makes the cooperative federalism an essential.
- On the same lines the menace of the organized crimes and cybercrimes also reinforce the need for the strengthening of the cooperative federalism.

Practice Questions

- 1.** Which among the following are included in the general criticism of the Indian constitution?
 1. No part of the constitution represents the ancient Indian polity.
 2. Indian federation has a strong bias towards the union.
 3. Constitution grants extraordinary benefits to the minorities.

(a) 1 only	(c) 1, 2, 3
(b) 2 only	(d) None

- 2.** Which among the following are considered as implications of democracy?
 1. People are given the chance of making the government under which they live.
 2. Securing and maintaining a set of fundamental rights to citizens.
 3. 'Supremacy of Rule of Law' to check arbitrary use of power.

(a) 1, 2, 3	(c) 1 only
(b) 1, 2 only	(d) 2, 3 only

- 3.** A federal constitution is bulky because:
 - (a) It has detailed provisions embodying the division of powers.
 - (b) It has detailed provisions relating to aboriginal tribes and vulnerable sections of the society.
 - (c) It has detailed provisions of fundamental rights.
 - (d) All of the above.

- 4.** Which of the following explains the meaning of 'Republic'?
 1. An elected head of state
 2. Not having a hereditary rule
 3. All the authorities of the state are directly or indirectly elected by the people

(a) 1, 2 only	(c) 2 only
(b) 1 only	(d) 1, 2, 3

- 5.** Which of the following federal principles are found in the Indian federation?
 1. Equal representation of states in the second House of Parliament
 2. Double citizenship
 3. Bicameral legislature at federal level
 4. Independent and impartial judiciary

Correct answers

- | | |
|-------------|-------------|
| (a) 1, 2, 3 | (c) 3 and 4 |
| (b) 2, 3, 4 | (d) 1 and 3 |
- 6.** Which of the following statements truly reflect the meaning of the phrase 'indestructible union with indestructible states'?
1. The union cannot be destroyed by secession.
 2. No state possesses the right to separate itself from then federation.
 3. The federal government has no power to diminish or increase the number of states or their territory.
 4. It may be done only with the concurrence of the state concerned.

(a) 1 only	(c) 3, 4 only
(b) 1, 2 only	(d) 1, 2, 3, 4
- 7.** Which one of the following is a feature common to both the Indian Federation & the American Federation?
- (a) A single citizenship
 - (b) Three lists in Constitution
 - (c) Dual citizenship
 - (d) A federal supreme court to interpret the Constitution
- 8.** Which of the following legislations those seek to modify the constitution through ordinary legislative process?
1. Changes made in the name and boundaries of a state.
 2. Abolition or creation of legislative councils of the state.
 3. Creation of legislatures in the Union Territories.
 4. Language of the Supreme Court and the high courts.

(a) 1, 2, 3	(c) 3 and 4
(b) 1 and 2	(d) 1, 2, 3, 4
- 9.** Consider the following statements regarding Indian federation:
1. Indian federation is a result of an agreement among the states.
 2. The states in India do not have the right to secede.

Which of these is NOT correct?

- 10.** Which among the following is NOT unitary feature of the Indian constitution?

 - (a) Independent judiciary.
 - (b) Judicial review.
 - (c) Civil and criminal laws and procedure are basically the same in all states.
 - (d) States not having vested with defence powers.

- 11.** The doctrine of 'basic structure of the constitution' as a principle of judicial review.

 - (a) Is strictly in accord with the principle of procedure established by law.
 - (b) Is inconsistent with the principle of due process of law.
 - (c) Accepts the theory that the legislature is the supreme law-making body.
 - (d) Assumes the power of judging the wisdom of the sovereign legislature.

12. Assertion: A democracy must ensure that individuals have certain rights and that the government will always recognize these rights.

Reason: Therefore, it is often a practice in most democratic countries to list the rights of the citizens in the constitution itself.

- (a) Both A and R are true and R is the correct explanation of A
 - (b) Both A and R are true but R is NOT the correct explanation of A
 - (c) A is true but R is false
 - (d) A is false but R is true

- ### 13. The Constitution of India:

1. Enables the government to fulfil the aspirations of a society.
 2. Attempts to create conditions for a just society.
 3. Expresses the fundamental identity of people.

(a) 1, 2 only	(c) 2 only
(b) 2, 3 only	(d) 1, 2, 3

14. 'It' is marked by the traditional characteristics of supremacy of the constitution, division of power between the union and state governments, existence of an independent judiciary and a rigid procedure for the amendment of the constitution. 'It' establishes a dual polity, with clearly defined spheres of authority between the union and the states, to be exercised in fields assigned to them respectively.

Here 'It' refers to:

- (a) Federal constitution
 - (b) Unitary constitution
 - (c) Parliamentary democracy
 - (d) Presidential form of democracy

- 15.** The quotation, 'The new Indian constitution establishes, indeed, a system of government which is at the most quasi-federal, almost revolutionary in character, a unitary state with subsidiary federal features, rather than the federal state with unitary features', is attributed to:

- 16.** Which of the following have caused the growth of cooperative federalism in India?

1. Union-state collaboration in economic matters
 2. Union-state legislative relations
 3. Compulsion of developmental finance
 4. Dynamics of electoral politics

Correct answers

- 17.** Which one of the following is NOT a characteristic of Indian administration?

- (a) Uniformity
 - (b) Decentralization
 - (c) Dyarchy
 - (d) Independent judiciary

- 18. Match: List I**

(Features of the Indian Constitution)

- A. Fundamental rights
 - B. Directive Principles of State Policy
 - C. Emergency powers
 - D. Rule of Law

List II (Their Sources)

1. Germany
2. USA
3. UK
4. Ireland

A	B	C	D
(a) 4	2	3	1
(b) 2	4	1	3
(c) 4	2	1	3
(d) 2	4	3	1

19. Which among the following provisions of the constitution are NOT self-executory (To be implemented by a law)?

1. Citizenship
2. Safeguards against preventive detention
3. Abolition of untouchability

- | | |
|---------------|---------------|
| (a) 1, 2, 3 | (c) 3 only |
| (b) 2, 3 only | (d) 1, 2 only |

20. The Constitution provides for enumerated and guaranteed' fundamental rights in order to:

1. Keep them out of the ever-changing pattern of political controversies.
2. Establish them as legal principles, to be applied by the court, as standards.
3. Protect the individual citizens from the excesses of the state actions

Correct Statements

- | |
|---------------|
| (a) 1, 2 only |
| (b) 2 only |
| (c) 3 only |
| (d) 1, 2, 3 |

Answer Key

-
- | |
|---|
| 1. (c), 2. (a), 3. (a), 4. (d), 5. (c), 6. (d), 7. (c), 8. (d), 9. (b), 10. (d), |
| 11. (d), 12. (b), 13. (b), 14. (a), 15. (c), 16. (c), 17. (c), 18. (b), 19. (a) 20. (d) |

Hints and Explanations

1. (c)

Refer Page 2.3 below the Box

2. (a)

Refer Page 2.6 – Parliamentary democracy

3. (a)

- The diverse nature of the Indian society and the complexities of the problems necessitated the founding fathers to frame the constitution comprehensively.
- The constitution deals with the detailed distribution of the powers between the union and the state governments.

Refer Page 2.3 – The reason for the bulkiness

4 (d)

Refer Page 3.6 -Republic

5. (c)

Federal principles in Indian Constitution:

- Division of powers and dual government
- Written constitution
- Rigid constitution
- Independent judiciary
- Supremacy of constitution

Refer Page 2.12 – Federal Constitution

6. (d)

Also refer Page 4.5 – formation of new states

7. (d)

- Single citizenship and three lists in Constitution are non-federal features of Indian Constitution.
- Dual citizenship is available in America but not in India.

Refer Page 2.12-17 under Federal Constitution

8. (d)

Refer – Page 16.4 – Amendment by ordinary legislation

9. (b)

- Indian federation is not a result of agreement among States.
- Parliament has the power to diminish or increase the area of a State under Article 3.

Refer Chapter 4

10. (a)

- Not unitary indicates a federal feature of the Indian Constitution.
- Independent judiciary is one of the 5 such federal features.

Refer Page 2.12 and 2.13 – Federal Constitution

11. (d)

- The doctrine of basic structure was propounded in the Kesavananda Bharati case (1973).

Refer Page 17.27 and 17.28 – Judicial review

12. (b)

- It is often a practice in most democratic countries to list the rights of the citizens in the constitution itself.
- This is done so because a democracy must ensure that individuals have certain rights and that the government will always recognize these rights.

13. (d)

Functions of the Constitution:

- Enable government to fulfil aspirations of a society
- Create conditions for a just society
- Expresses fundamental identity of people
- Sets some limits on what a government can impose on its citizens

Refer Page 1.2 and 1.3

14. (a)

Federal characteristics are:

- Supremacy of the Constitution,
- Division of power between the Union and State Governments
- Independent judiciary
- Dual polity, with clearly defined spheres of authority between the Union and the States

Refer Page 2.12 and 2.13 - Federal Constitution

15. (c)

Refer Page 2.13

16. (c)

Refer Page 2.16 – Cooperative Federalism

17. (c)

- Dyarchy divided the provincial administration into two independent parts.
- This was a colonial policy and is not part of administration of independent India.

Refer Page 2.12-14 and Chapter 1

18. (b)

- The Indian constitution was made by drawing from many sources.

Refer Page 2.3 – Box

19. (a)

- Citizenship is executed by the Citizenship Act 1955.
- Untouchability (Offences) Act 1955 enforces abolition of untouchability (Article 17).

- Prevention Detention Act 1950 enforces safeguards against preventive detention (Article 22)

20. (d)

- The founding fathers of the constitution were not only a witness to how a state could use its legitimate power brutally to suppress its own subjects but were also victims.
- Hence, it was decided that the independent India's constitution must have fundamental rights guaranteed to people.

Refer Page 2.5 – Guaranteed Fundamental Rights

CHAPTER 3

Preamble and The Philosophy of The Constitution

Learning Objectives

After reading this chapter, you will be able to:

- Understand the purpose/significance/relevance/utility of the Preamble
- Know why the Preamble is unique feature of Constitution of India
- Understand the philosophy of the Indian constitution
- Define the importance of the ‘adjectives’ to the word republic in the Preamble
- Learn the concepts of socialism, secularism and democracy

The Preamble is a sort of introduction to the constitution and is very helpful to understand the policy and intend of the constitution. It is an embodiment of all ideals and aspirations of the constitution. Preamble reflects the ideals embodies in the objective resolution of the constituent assembly which was adopted by the constituent assembly on January 22 1947. It contains the theme or philosophy of the constitution and is the essence of the constitution.

Traditionally, the Preamble was considered as a separate entity and not to form a part of the constitution. Even the Supreme Court of India, in the Berubari case ruled that the Preamble was not a part of the Indian constitution. However, the view was reversed in the Kesavananda Bharati case, in which the court ruled that Preamble was part of the constitution.

Do You Know?

In the constituent assembly debates on Preamble:

- H. V. Kamath wanted the Preamble to begin with 'In the name of God'.
- Shibban Lal Saksena and Pandit Govind Malaviya wanted the Preamble to begin with expressions such as 'By the grace of the Supreme Being, Lord of the universe, called by different names by different peoples of the world'.



Purpose/Significance/Relevance/Utility of the Preamble

Important questions from Previous years' on this topics are mentioned below:

1. What is the significance of a Preamble to a constitution? Bring out the philosophy of the Indian polity as enshrined in the Preamble of the Indian constitution. *(IAS Mains 2004)*
3. 'The Preamble to the constitution is a key to open the minds of the makers.' Comment. *(IAS Mains 1997)*

The Preamble to the constitution serves the following purposes namely:

- It indicates the sources of all power from which the constitution derives its authority.
- It contains the enacting clause that brings the constitution to force.
- It declares the aims and aspirations of the people.
- It declares the objectives and purposes of the constitution.
- It contains the philosophy of the constitution.
- It declares the rights and freedom that the people are entitled and intended by the constitution.
- It helps the interpretation of the constitution whenever there arise a conflict between the two provisions or if certain provisions are ambiguous. In the Berubari case the Supreme Court has held this view. Further in the Kesavananda Bharati case, the Chief Justice observed that, 'The Preamble of our constitution is of extreme importance and the constitution should be read and interpreted in the light of the grand and noble vision expressed in the Preamble.' For example, Part III (fundamental rights) has been given utmost safeguard and sanctity which no other part of the constitution enjoys. The reason for this could be understood when one reads Part III along with the Preamble. Preamble declares 'dignity of individual' as the objective of the constitution and hence, Part III has been accorded such high significance. This reflects the minds of the framers of the constitution.

PREAMBLE: A UNIQUE FEATURE OF CONSTITUTION

Important questions from Previous years' on this topics are mentioned below:

Why is the Preamble to the Indian constitution considered as a unique feature? What are its main objectives? *(IFS Mains 2016)*

According to the Supreme Court, 'A glance over the Preambles of all constitutions all the world over will show that both in ideas and ideals and in expression, ours is unrivalled. It embodies the spirit of the constitution, determination of the Indian people to unite them in a common adventure of building up a new socialist, secular nation'.^[1]

- The objectives specified in the Preamble contain the basic structure of our constitution.
- The cornerstone of Indian culture is pluralism and Indian secularism is built on the foundation of religious tolerance.
- Preamble declares the commitment of Indian constitution to the ideal of a welfare state by establishing socio-economic justice. According to Acharya Kripalani 'The Preamble contains the mystic principle of a welfare state.'
- The right to social and economic justice envisaged in the Preamble are elongated in the fundamental rights and 'Directive Principles of the Constitution' are to make the equality of the life of the poor, disadvantaged and disabled citizens of the society, meaningful.

¹ Excel Wear vs Union of India case, 1978 AIR 25, 1979 SCR (1) 1009

- India is committed to democracy and respects individual liberty, providing to all her citizens, the equality of status and opportunity. The Directive Principles of State Policy involving social, economic, political and cultural goals are like instructions to the state. They, aim at establishing a welfare state in India.

AMENDABILITY OF THE PREAMBLE

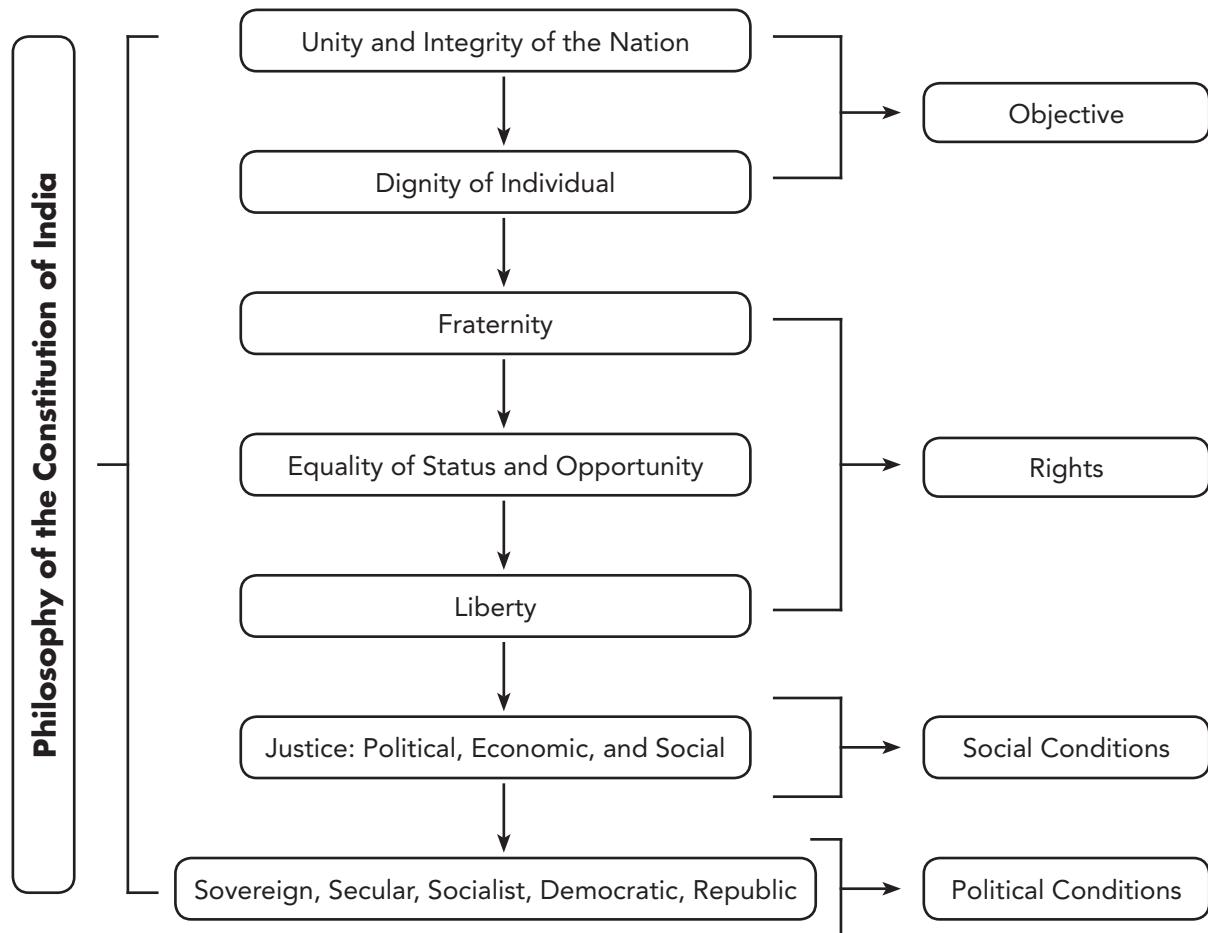
In the Berubari case the Supreme Court held that the Preamble was not a part of the constitution. According to the court, the Preamble cannot be a source of any powers. The powers of the organs of administration are conferred on them by the express provisions of the constitution. Hence, it was considered that the Preamble could not be amended using the provisions of Article 368.

However, the court reversed its position in the Kesavananda Bharati case, 1973. The court held that the Preamble of the constitution is more important than the Preamble of an ordinary law.

Subsequently, the Preamble was amended by the Constitution 42 Amendment Act, 1976. The terms 'socialist, secular, unity and integrity of nation' were added to the Preamble.

PREAMBLE AND PHILOSOPHY OF THE CONSTITUTION OF INDIA

Philosophy of the constitution refers to the basic beliefs, values and concepts of the Constitution of India. They are the basic values and principles which the constitution prescribes for governing the nation.



Unity and Integrity of the Nation

Unity and Integrity of the people of India is an essential feature for maintaining the independence of the country. Given the diverse nature of the nation, those factors which contribute for the diversity such as multi-ethnicity, multi-language, etc. can become divisive forces. Hence, unity is a fundamental requisite. Also, unity among the people is essential for the successful operation of the democracy as the constitution prescribes democracy to be adopted as an individual value. However, the original constitution did not have the word "integrity". The words 'socialist, secular and integrity' were added in the Preamble, by the 42nd Constitutional Amendment Act, 1976. This is in a way an objective of the Indian constitution.

Dignity of Individual

The constitution guarantees every citizen of India 'the right to live with human dignity which means a life that is free from exploitation'.⁽²⁾ This creates a constitutional obligation for the state that the fundamental right of any person must not be violated. This becomes all the more important in case of the weaker, vulnerable and marginalized sections. This is the philosophy that explains the objective of the fundamental rights.

Fraternity

Fraternity is essential to ensure the twin objectives of 'dignity of individual' and 'unity of the nation'. Given the heterogeneity of the population, the spirit of brotherhood (fraternity) is essential for integrating the people and the democratic system. Without spirit of fraternity, democracy will not be complete and will be hollow. Infusing the spirit of brotherhood is basic essential in the multi-ethnic, multireligious and multilingual Indian society is fraught with multiple problems, social ills like untouchability and divisive forces. The UN Human Rights Declaration proclaims that 'All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.'

Equality

The fullest development of an individual necessitates conditions of equality of status and opportunity. Without equality the rights guaranteed would be meaningless. The concept of equality envisaged by the founding fathers of the constitution is of wide scope. It is not merely mental and physical equality, but it is the equality of the status of free individuals and equality of opportunity.

Equality of the status of free individuals requires that all forms of inequality in the social structure be eradicated. Towards this the constitution makes all discriminations, on ground of religion, race, caste, sex and place of birth. According to M. V. Pylee, equality of opportunity implies the availability of opportunity to everyone to develop his potential capacities. In addition, the constitution also provides for political equality by way of universal adult franchise. All citizens of India who have completed the age of 18 have the right to vote. Further, Article 325 prohibits any discrimination of the citizens from being excluded in the electoral roll on the grounds of 'religion, race, caste, sex or any of them'.

Liberty

Liberty and equality are complimentary. Without guaranteeing rights, equality cannot be established. Guaranteeing rights is central to democracy. Liberty signifies the:

- The freedoms of any individual are not restrained arbitrarily.
- Presence of the conditions essential for the fullest development of the individual.

2 Supreme Court of India - Maneka Gandhi vs Union of India case AIR, 1978 SC 597

Justice

Justice implies a harmonious reconciliation of the individual conduct with the general welfare of the society. Attaining the common good is the quintessence of 'justice'. It embraces the social, economic and political spheres. The expression 'justice, social, economic and political' while not committing this country and the assembly to any particular form of polity coming under any specific designation, is intended to emphasize the fundamental aim of every democratic state in the present day.⁽³⁾ As mentioned by Jadubana Sahaya⁽⁴⁾ in the constituent assembly debates, justice refers to create a social order in which 'the community will own what belongs to the community by the gift of nature'.

Connect

Social justice enables the courts to uphold legislation:

- To remove economic inequalities.
- To provide a decent standard of living to the working people.
- To protect the interests of the weaker sections of the society.
 1. Reference: Supreme Court: Lingappa versus State of Maharashtra.
 2. Nakara versus Union of India.
 3. Sadhuram versus Polin.

Social Justice

Three judges' bench of the Supreme Court in the Air India Statutory Corporation versus United Labour Union and others case explained the concept of social justice as follows:

'Social justice, equality and dignity of person are cornerstones of social democracy. Social justice and equality are complementary to each other so that both should maintain their vitality. Rule of law, therefore, is a potent instrument of social justice to bring about equality in results. Social justice consists of diverse principles essential for the orderly growth and development of personality of every citizen. Social justice is not a simple or single idea of a society but it an essential part of complex social change. The constitutional concern of social justice, as an elastic continuous process, is to transform and accord justice to all sections of the society by providing facilities and opportunities to remove handicaps and disabilities with which the poor, etc., are languishing. It aims to secure dignity of their person. 'Social justice' is thus an integral part of justice in the generic sense. Justice is the genus, of which social justice is one of its species. Social justice is a dynamic device to mitigate the sufferings of the poor, weak, *dalits*, tribals and deprived sections of the society and to elevate them to the level of equality to live a life with dignity of person.'

Economic Justice

It is to establish a 'welfare state' by promoting economic democracy as envisaged by the Directive Principles of State Policy. It is the ideal of promoting equality by way of removing inequality in status and of the opportunity. This is essential for removing the difference between the 'haves' and the 'have-nots'.

Political Justice

There should not be any arbitrary discrimination of any person with respect to participating in the political processes. The access to political system/institutions to all persons shall be free. Constitution seeks to achieve this by granting 'universal adult franchise'.

3 Constituent assembly debates (19th December 1946) Volume I.

4 He is a member of constituent assembly representing Bihar.

Republic

Important questions from Previous years' on this topics are mentioned below:

Discuss each adjective attached to the word 'Republic' in the 'Preamble'. Are they defendable in the present circumstances?

IAS Mains (GS: 2016)

Republic implies that the head of the state be elected by the people and the state is not subordinated to external authority. According to Madison, 'Republic' means that form of government in which the ultimate power is vested in the people. People elect a set of men from among themselves and vest in them all authority to govern them so as to ensure smooth and harmonious life'. Hence, unlike in a democratic government in a republican government the head of the state has to an elected one, especially elected by the people directly.

Although the President of India is elected, he is not elected directly but indirectly by the members of Union and state legislatures. Hence, the critics are of the view that the term 'Republic' in Indian constitution is redundant and irrelevant. However, this view is not acceptable. The constitution prescribes certain conditions which injects the republican character into the constitution and makes it a truly republican constitution. The conditions are as follows:

- The electoral college to elect the President includes the elected members of the state legislative assemblies also.
- A special formula has been prescribed to calculate the value of the votes of the members of Legislative Assembly (MLAs) and members of Parliament (MPs).
- The President is elected by a system of proportional representation.

By including the members of the state legislative assemblies in the electoral college the lopsided result in the election to the office of the President is avoided and republican character is retained. About half of the population of India are settled in few larger states such as UP, Maharashtra, West Bengal, Bihar, Tamil Nadu and Madhya Pradesh. If one counts the number of seats in the House of People allocated to these states he can understand that the count is 278. This is more than 50% of the strength of the House. So, if the electoral college comprised of only on the members of the Parliament then, only these large states will have the upper hand and the smaller states will be neglected. It will be worse in case of the North-eastern states as those states get more alienated.

The MPs and MLAs vote on behalf of the people in the election to the office of the President. Since the President is the representative of the entire population of the country, the value of the votes of the members of the electoral college must be calculated based on whole population of the country. Moreover, the size of the constituencies, both in terms of geographic size and population is not uniform. Therefore, in order to bring about uniformity throughout the nation the special formula is prescribed by the constitution. The system of proportional representation makes the President the representative of not only the nation but also the people.

Socialism and Democracy

The true spirit of the Constitution of India demands that the concept of socialism and democracy need to be viewed together. The original constitution did not have the express mention of 'socialism'. The term 'Socialist' was inserted in the Preamble by the Constitution (42 Amendment) Act, 1976.

The concept of socialism for Indian constitution is different from the meaning it assumes elsewhere. Indian constitution does not create a 'socialist state' which will have the complete control over the means of production and factors of production. Instead the constitution envisages a social order that is based on the socialistic morals and objective of 'egalitarianism'. Founding fathers of the constitution envisaged to create 'social order based on justice'—Article 38, state to secure a social order for the promotion of welfare of the people'. Pandit Jawaharlal Nehru interpreted this as 'Democratic Socialism'.

Connect

1. Socialism is not identical with planning.
2. Socialism is not equal to nationalization and statism.
3. Statism is repugnant to economic democracy, because it makes the state the employer in all industrial or other business undertakings.

Socialism in the Indian context does not mean collectivism or complete nationalization of all means of production. India assumes the goal of socialism to usher into an egalitarian society through democratic means. Constitution of India seeks to build a socialistic pattern of society in which democracy is inculcated as a value. The role envisaged for the state in this is to facilitate the process.

Indian constitution views democracy not only from political standpoint but also from social and economic standpoints. In the socialistic order envisaged, equality and equity will be assured to every individual by providing unconditional 'right to access' to all institutions—social, political and economic. This will be possible only by democratizing all institutions. Only such a society can be an egalitarian society.

Establishing 'justice—social, political and economic,' is a prerequisite for ushering in such a social order. Establishing such a social order is essential for securing the dignity of individual.

Given the multidimensional character of Indian society with certain evil practices like untouchability, discrimination, differential and preferential treatments were socially accepted. As a consequence, the 'right to access' to institutions were denied. This, in turn, had rendered a section of the society weak, vulnerable and suffers from certain 'undeserved wants'. To set this right and achieve egalitarianism, a democratic social order is needed and the constitution seeks to achieve this by ushering in a 'socialistic pattern of society'. To create 'socialistic pattern of society', the constitution envisages a voluntary socio-economic reorganization. Hence the constitution prescribes democracy more as a 'value'—individual, social, economic and political. The following figure provides a representation of 'socialistic pattern of society' as envisaged by the Constitution of India.

Important questions from Previous years' on this topics are mentioned below:

The word 'socialist' in the Preamble to our constitution requires to be defined. Comment.

(IAS Mains 1994: Public Administration Paper)

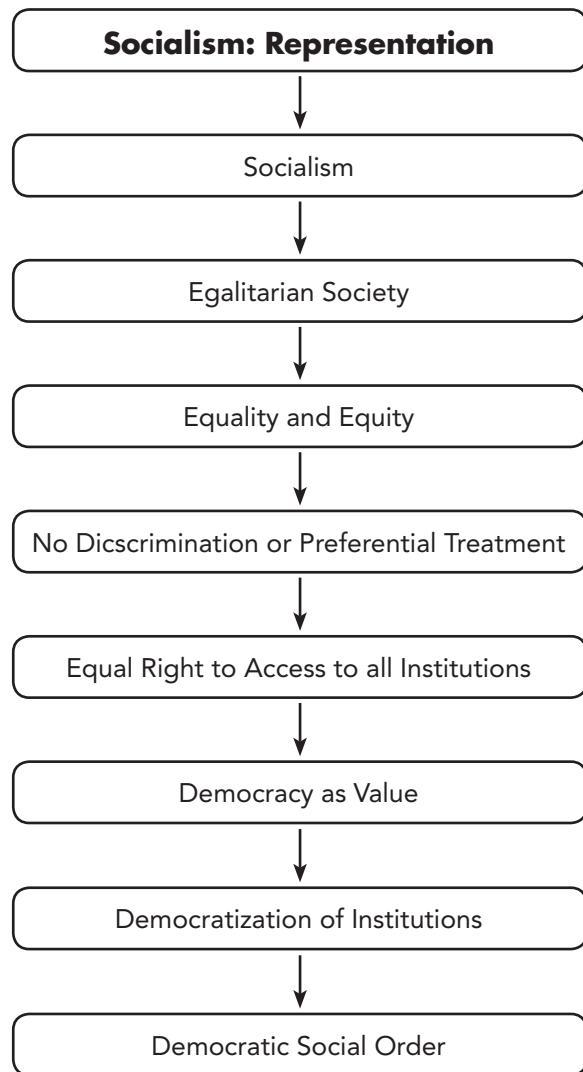
The use of word 'socialist' in the Indian constitution has become redundant in the context of liberalization of economy. Comment.

(IAS Mains 2001: Public Administration)

'Socialist'- Has it Become Redundant?

There is a view that the use of word 'socialist' has become redundant in the context of the liberalization of Indian economy after 1992. There is also a view that the word 'socialist' in the Preamble to our constitution requires to be defined. These views are put forward because the reforms under the New Economic Policy provided for the minimal role of the state and bring forth the concept of 'free market'.

An increased role of market and private players in providing the goods and services to the people is advocated. The concept of 'minimum government and maximum governance' is being put forward. The government is expected to give way to the private players in supplying goods and services with assured 'value for money', wherever it is possible. The role of the government is only to regulate and



ensure that services are promptly provided, create appropriate economic climate, for example, maintaining fair competition, preventing cartelization, etc. This is known as 'rollback of state' giving way to the market.

In the liberalized market the Public Sector Undertakings (PSUs) enjoy more autonomy and are expected to make profits like the private. The budgetary support to the PSUs is no more available. The PSUs are to compete in the market with the private players and their monopoly is done away with. Furthermore, the concept of 'weakening of the welfare state' given by Margaret Thatcher advocates doing away with the subsidies and reduce the government expenditure.

However, the above views are not acceptable in the context of Indian constitution because these views attribute a state-centric interpretation to the word 'socialist'. Whereas the constitution views socialism as a value for building a social order based on justice. In that social order socialism is prescribed as value, a social moral.

The concept of socialism is centred on the objective of providing right to access and not state centrism. Therefore, the steps taken by the government in respect of LPG (Liberalization, Privatization and

Globalization) have to be viewed from this standpoint. The LPG only enhances the role of the private sector and does not result in complete pulling out the state. The state has:

- Pulled out only from such areas where its presence is not necessary or where the private sector can perform better than the state.
- Pulled out in order to avoid exposing the public money to an unnecessary risk by way of partaking them with the non-strategic sectors.
- Liberalized to provide better qualities of services to the people.
- Liberalized to ensure the 'value for their money'.

By this, the state has permitted the private sector in order to shoulder the responsibilities and the risks so that the welfare objectives are achieved. In any case, the state has not absolved itself of the responsibility to regulate the market. Hence, the meaning of socialism is nowhere compromised.

Furthermore, the concept of democratic socialism provides for a mixed economy which does not exclude the presence of private participants. In the context of liberalization, the scope of mixed economy is widened only with the view to promote the welfare, by way of providing better quality of services, value for money to the people and conserving the state's resources—finance, human and time that could be meaningfully spent on such sectors as social and economic so as to promote the welfare goals. Hence, the term socialist is very much relevant, its meaning remains intact and not required to be defined.

Secularism

The term secular was not included in the original constitution. But, the spirit of secularism was ever found in the constitution. The Preamble declares that the constitution secures 'to all citizens liberty of thought, expression, belief, faith and worship'. The 42 Amendment Act, 1976 inserted the term 'secular' in the Preamble.

Secularism: Western View

Important questions from Previous years' on this topics are mentioned below:

How do the Indian debates on secularism differ from the debates in the West?

(IAS Mains 2014: GS Paper I)

Give your views on the right to freedom of religion as enshrined in the Indian Constitution. Do they make India a secular state?

(IAS GS Polity: Mains 2005)

The concept of secularism refers to guaranteeing every individual the liberty of managing his religious affairs, embracing a religion and worship. According to Encyclopaedia Britannica, 'secularism means being non-spiritual and having no concern with religious matters. It is used in the sense of being opposed to religion. However, secularism and religion are not hostile to each other but are mutually exclusive. Secularism does not oppose religion or advocate the abandonment of religion. Religion and secularism can perfectly coexist. It refers to being neutral to religious affairs.'

Secularism in India: A Progressive Concept

The western view of secularism is not acceptable in the Indian context. The founding fathers of the constitution sought to establish India as a secular state. It is 'the state that is not going to make any discrimination whatsoever on the ground of religion or community against any person professing any particular form of religious faith. This means, in essence that no particular religion in the state will

receive any state patronage whatsoever. The state is not going to establish, patronize or endow any particular religion to the exclusion of or in preference to others and that no citizen in the state will have any preferential treatment or will be discriminated against simply on the ground that he professed a particular form of religion. In other words, in the affairs of the state the professing of any particular religion will not be taken into consideration at all.⁽⁵⁾

Progressive Features of Indian Secularism

- Irreligious state
- Equality and tolerance
- Absolute right to conscience
- Reasonable restrictions
- Right not to pay tax
- Prohibition on discrimination or preferential treatment
- Right to property as fundamental right

The constitution guarantees the following freedoms to all persons in India:

1. Freedom of conscience and the right to profess practise and propagate a religion of his faith (Article 25).
2. Freedom to establish and maintain institutions for religious and charitable purposes and administer their affairs (Article 26).
3. Freedom to own and acquire properties (Article 26).
4. The right not pay any tax for the promotion of any particular religion (Article 27).
5. Prohibition on imparting religious instructions in the state-run/state-funded educational institutions (Article 28).
6. Prohibiting discrimination with regard to places of public importance (Article 15).
7. Providing equal opportunity in matters of public employment (Article 16).
8. Right of the minorities to conserve their language, script and culture (Article 29).
9. Right of the minorities to establish and administer educational institutions of their choice (Article 30).

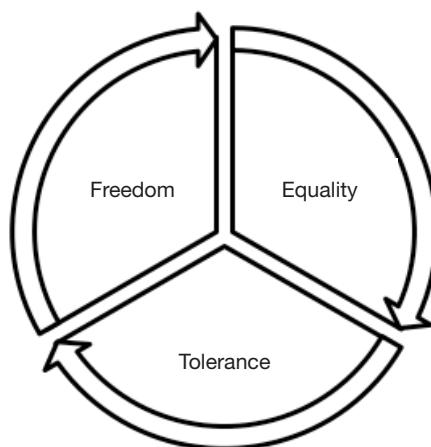


FIGURE 3.1: Secularism in India

This clearly indicates that secularism in Indian context is based on 'freedom, equality and tolerance'. The constitution does not erect a wall separating state and religion. It requires the state to be non-partisan. The state will not identify itself with any religion. The state is neither theistic nor theocratic nor an atheistic state. The state is envisaged as an 'Irreligious State'. Moreover, the constitution guarantees the right to religion subject to reasonable restrictions so that equality is established. Thus, Indian secularism is a 'progressive' concept.

Every individual is guaranteed with the right to conscience that is, one can embrace any religious faith, or remain agnostic or even atheistic. The state shall keep itself away from 'man-God' relations and shall only regulate the 'man-man' relations. The Supreme Court has held that the right to conscience is an absolute right and must not be subject to regulation. Irrespective of this the state shall treat every individual equally and must not treat any one preferentially or discriminate any of them.

The state must keep equidistance from all religions. In case of any privilege or patronage accorded to any religion shall be available to all religions equally. All religions must be provided with equal opportunity for development. The provisions of Articles 14, 15 and 16 guarantee equality by prohibiting any discrimination on the ground of religion. Towards promoting equality, Article 44 directs the state to secure a uniform civil code for all citizens.

The religious denominations/groups are guaranteed the freedom to manage their religious affairs and establish institutions for that purpose. They also have the right to acquire and own property as a fundamental right even after the constitution (44 Amendment Act) which repealed the right to property as a fundamental right. On the same lines the educational institutions established by the minorities also enjoy the right to property as fundamental right.

Further, the constitution guarantees the right not to pay tax if the proceeds of such tax are to be used for the promotion of any particular religion. This is a towering feature of Indian secularism. Tax is compulsory exaction of money and the power to impose tax is an important feature of sovereign power.

The state-run or state-funded educational institutions are prohibited from imparting any religious instructions. However, the institutions set-up by the religious groups, imparting religious instructions are permitted but no one should be compelled to receive them. In case of minors, the consent of their parents or guardians is essential for imparting religious instructions. This is fully in conformation with the Preamble and Article 25 (1) which guarantees the right to conscience as an absolute freedom.

Given the complexities of Indian culture, the debate on secularism is different from that in other countries. In India the religion happens to be the basis for the caste and the associated discriminatory practices. Traditionally the social evil practices such as untouchability, gender disparity, etc., were justified on ground of religion. Hence, the restrictions on this right are essential. Further, the state needs to be empowered to regulate the right in order to promote social reforms. It is also essential to regulate the economic, financial, political or other secular activity which may be associated with religious practice.

Components of Secularism

- Samanata (equality) is incorporated in Article 14.
- Prohibition against discrimination on the ground of religion, caste, etc., is incorporated in Articles 15 and 16.
- Freedom of speech and expression and all other important freedoms of all the citizens are conferred under Articles 19 and 21.
- Right to practice religion is conferred under Articles 25 to 28.
- Fundamental duty of the state to enact uniform civil laws treating all the citizens as equal, is imposed by Article 44.
- Sentiment of majority of the people towards the cow and against its slaughter was incorporated in Article 48.

Similarly, the educational institutions established by the minorities are also subjected to the regulation of the state with respect to the quality of education. The state must prevent any regressive education in the garb of religious freedom.

The constitution guarantees the right to the individuals and conferred power on the state to create conducive conditions for the smooth and harmonious exercise of the same. Thus, the concept of secularism in India is a progressive one.

Sovereignty

Sovereignty refers to the power of any state to manage its affairs on its own and without being controlled or influenced by any external force. Preamble declares the resolve of the people of India to establish India as a sovereign country not subjected to the paramountcy of any power. The state apparatus derives its power from the constitution which in turn derives its power from the people. Thus, sovereignty in India is 'popular sovereignty'. Popular sovereignty is established by conferring voting rights on the people by means of universal adult suffrage (Article 326).

Sovereignty and Commonwealth Membership

After independence, India became the member of Commonwealth of British Nations. The Commonwealth membership indicates that the member countries accept the suzerainty of the British Crown and the people of such countries to be subjects of the Crown. This created a debate that India being a member of Commonwealth was incompatible with the constitutional values. However, Pandit Jawaharlal Nehru explained that India's decision to be part of Commonwealth was by itself a sovereign decision. It is the expression of goodwill to maintain amicable and friendly relations with Britain after independence. He also explained that India reserved the right to continue the membership and it is India's sovereign decision to be exercised by India without any external influence in accordance with the circumstances.

Sovereign: Is it Defendable in the Present Circumstance?

It is often debated that the concept of sovereignty has become irrelevant and therefore indefensible in the present globalization era. Globalization has increased the mutual dependency among the nations that no nation can be truly independent. Further the regional blocs like Association of Southeast Asian Nations (ASEAN), European Union, etc., and the regional arrangements like Brazil, Russia, India, China and South Africa (BRICS) have also been establishing the concept of 'shared sovereignty'. However, the concept of sovereignty is all the more relevant in the present circumstances because every country needs to protect its national interest.

Furthermore, the constitution of India prescribes these as values to be inculcated to each individual. Sovereignty as an individual value refers to the right of an individual to make his choices with respect to his needs and wants. In the era of globalization and marketization, the individual is subject to the 'corporate colonialism and corporate imperialism'. The corporates through their powerful marketing seek to 'engineer' the minds of the individuals and impose decisions on them. The issue of 'paid news' has made the role of media questionable in this regard. The media, instead of keeping the citizen informed and sensitized, so that he is capable of making informed decision, is imposing decisions. This defeats the purpose of the right to freedom of expression that aims to make the citizen self-fulfilled person. Therefore, sovereignty has to be completely defended in the present context.

In this context, the state is expected to drive its policies more towards protecting and actively guaranteeing the fundamental rights. The state also needs to maintain transparency and ensure public accountability of not only the public organizations but also the private. For instance, there was a debate on holding the celebrities, who act as brand ambassadors of certain products, accountable for the products and the information about the products that are displayed in the advertisements. Though it is a debatable issue, presence of such an accountability mechanism could act as a deterrent and could safeguard citizen's right to choose.

Practice Questions

- 1.** ‘Economic justice’ as one of the objectives of the Indian constitution has been provided in:

 - The Preamble and the fundamental rights.
 - The Preamble and the directive principles of state policy.
 - The fundamental rights and the directive principles of state policy.
 - None of these

2. Consider the following:

 - Preamble is not a source of power. Power must be founded on a specific provision.
 - Preamble cannot be regarded as a source of prohibition or limitation upon the powers of a legislature.

Correct statements

(a) 1 only	(c) Both 1 and 2
(b) 2 only	(d) Neither 1 nor 2

3. The words ‘social justice’ in the Preamble of the constitution, aims the primary duty of the state to:

 - Make sure that justice was not based on caste, community, race or religion.
 - Work for creating a fruitful environment where a reasonable attitude towards social relations strengthened.
 - Both a and b
 - None of these

4. The Preamble of the Constitution of India secures ‘justice, liberty, equality and fraternity’ to:

 - All persons
 - All persons who reside within the territory of India
 - All citizens
 - The citizens who reside within the territory of India only

5. Upholding and protecting the sovereignty, unity and integrity of India is:

 - A part of Preamble of the constitution
 - Fundamental duty
 - Basic structure of the constitution
 - A part of Preamble, fundamental duty as well as basic structure of our constitution

6. Which one of the following does NOT find mention in the Preamble to the constitution?

 - Dignity of the individual
 - Dignity of the constitution
 - Fraternity
 - Unity and integrity of the nation

7. Reading through the Preamble, one can see the purposes that it serves namely,

 - The declaration of the source of the constitution.
 - The statement of its objectives.
 - The declaration of the date of its enactment.

(a) 1 only	(c) 1 and 3 only
(b) 2 and 3 only	(d) 1, 2, 3

8. Which among the following is NOT common in Preamble and fundamental duties?

 - To uphold and protect the sovereignty.
 - To uphold and protect unity and integrity.
 - To promote the spirit of common brotherhood.
 - To defend the country and render national service.

9. Concept of ‘social justice’ includes legislation seeking to:

 - Remove economic inequalities.
 - Provide a decent standard of living to the working people.
 - Protect the interests of the weaker sections of the society.
 - Enact uniform civil laws treating all the citizens as equal.

(a) 1, 2, 3 only	(c) 1, 2, 4 only
(b) 2, 3, 4 only	(d) 1, 3, 4 only

10. Consider the following:

 - Republican character of the polity and the sovereignty of the people is reflected by declaration in the constitution that it has been ‘given by the people to themselves.’
 - The democratic character of the Indian polity is illustrated by the provisions conferring, on the adult citizens, the right to vote, and by the provisions for elected representatives and responsibility of the executive to the legislature.



Correct statements

11. The concept of secularism is that the state will:

12. Which among the following are the features of a secular democracy as contemplated by the Constitution of India?

1. The state will not identify itself with any religion.
 2. The state will also protect those who are antagonistic to religion.
 3. Every citizen shall have the right to enter any office under the state.

(a) 1, 2, (c) 1 only
(b) 1, 2 only (d) 2, 3 only

13. Which among the following are considered as implications of democracy?

1. People are given the chance of making the government under which they live.
 2. Securing and maintaining a set of fundamental rights to citizens.
 3. 'Supremacy of Rule of Law' to check arbitrary use of power.
 - (a) 1, 2, 3
 - (b) 1, 2 only

14. What is the most appropriate meaning of the term 'Secularism' in the Indian context?

- (a) Separation of religion from politics.
 - (b) Freedom of religion.
 - (c) There shall not be any religion of the state.
 - (d) Equality of all religions (*Sarva Dharma Sambhav*).

15. Consider the following:

'The state shall direct its policy that:

- The citizens, men and women equally, have the right to an adequate means of livelihood.
 - The operation of the economic system does not result in the concentration of wealth and the means of production to the common detriment.
 - The childhood and youth are protected against exploitation and against moral and material abandonment.'

The above represent:

- (a) Socialism
 - (b) Economic democracy
 - (c) Democracy
 - (d) Gandhian philosophy

16. Consider the following:

1. The concept of justice in the Preamble is indeed very wide and is not confined to the narrow legal justice as administered by the courts.
 2. The Preamble places justice higher than the other principles of liberty, equality and fraternity.

Correct statements

17. Which of the following pairs are correctly matched?

1. Socialism: Security and decent standard of living
 2. Secular: Liberty of belief, faith and worship
 3. Democracy: Exercise of adult franchise
 - (a) 1, 2, 3
 - (b) 1 and 3
 - (c) 2 only
 - (d) 2 and 3

18. Which of the following is NOT a feature of the parliamentary democracy?

- (a) An independent election commission to conduct free and fair elections.
 - (b) The rule by majority with the existence of an opposition.
 - (c) Clear-cut separation of powers between executive and the legislature.
 - (d) Party whip system through which the party decisions percolate.

Answer Key

1. (b), **2.** (c), **3.** (c), **4.** (c), **5.** (d), **6.** (b), **7.** (a), **8.** (d), **9.** (a), **10.** (c),
11. (c), **12.** (a), **13.** (a), **14.** (a), **15.** (a), **16.** (c), **17.** (a), **18.** (c), **19.** (b), **20.** (c)

Hints and Explanations

1. (b)

- Preamble reads.. 'to secure to all its citizens, - Justice, social, economic and political'
- Article 38(1) under Directive Principles of State Policy requires the State to secure a social order in which justice, social, economic and political informs all institutions of national life.
- Article 38(2): The State shall strive to minimise inequalities in income and eliminate inequalities in status, facilities and opportunities
- Article 39 focuses on preventing concentration of wealth, distribution of common good, equal opportunities and equal pay
- Fundamental Rights are aimed at political justice while Directive Principles are aimed at social and economic justice.

Refer Page 3.2

2. (c)

- Preamble reads 'we, the people of India having solemnly resolved.... Thus it clearly mentions that the source of all power of the constitution is the People of India.
- Hence, it cannot be regarded as a source of prohibition or limitation upon powers of legislature

Preamble serves two purposes:

- Indicates the source of power (people of India) from which Constitution derives its authority
- States the objects which Constitution seeks to establish and promote

Refer Page 3.2 and 3.3

3. (c)

- Social Justice aims to transform and accord justice to all sections of the society by providing facilities and opportunities to remove handicaps and disabilities with which the poor, etc., are languishing.
- Primary duty of the state is to prohibit discrimination on the grounds of race, religion, caste, sex or place of birth.
- It aims to secure dignity of their person

Refer Page 3.5

4. (c)

- Preamble to the Indian Constitution secures ideals of justice, liberty, equality and fraternity to ALL ITS CITIZENS

5. (b)

- Fundamental Duty under Article 51A(c): to uphold and protect the sovereignty, unity and integrity of India

Refer Chapter 10 – DPSP and Fundamental Duties

6. (b)

- Preamble mentions about promoting fraternity and assuring dignity of the individual and the unity and integrity of the Nation
- Fraternity aims to promote spirit of universal brotherhood beyond the bounds of national territory

Refer Page 3.4

7. (d)

Purpose of the Preamble:

- Indicates the source of power (people of India) from which Constitution derives its authority
- States the objects and philosophies which Constitution seeks to establish and promote
- Date of enactment of Constitution – 26 November 1949

Refer Page 3.2

8. (d)

- Fundamental Duties, Article 51A(b): "To defend the country and render national service when called upon to do so"

Refer Chapter 10

9. (a)

- Enacting uniform civil code (Article 44) is indicative of liberal principles under Part IV – DPSP (REFER Chapter 10)
- Social justice consists of diverse principles essential for the orderly growth and development of personality of every citizen.

- Social justice is not a simple or single idea of a society but it is an essential part of complex social change.

Social justice aims at

- Removing economic inequalities (Article 38(2) - elimination of economic inequalities)
- Provide a decent standard of living to the working people (Article 43 – Living wage, etc. for workers)
- Protect the interests of the weaker sections of society (Article 46 - Promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections)

Refer Page 3.5

10. (c)

Republic character of polity means:

- Head of State is elected by the people.
- The source of all authority under the Constitution is the people of India
- Office of the Head of State is open to all citizens

Democratic character means:

- People exercise their sovereignty through Parliament/State Legislature – representative democracy
- Right to vote based on universal adult franchise
- Collective responsibility of executive to the legislature

Refer Page 3.6

11. (c)

Indian concept of secularism means:

- State has no official religion
- State shall treat all religions and religious groups equally
- State shall not discriminate anyone on the grounds of religion (Articles 15, 16)
- State may help or hinder religious communities depending on which mode of action promotes values such as freedom and equality (Article 25)

Refer Page 3.9 and 3.10

12. (a)

Features of Secular democracy

- State has no official religion and hence, will not identify with any religion

- Constitution not only guarantees a person freedom of religion and conscience, but also ensures freedom for one who has no religion. (Article 25)
- It prevents State from discriminating on the grounds of religion (Article 15, 16)
- This gives right to every citizen to enter any office under the State (Article 325) and restricts State from discriminating on grounds of race, religion, caste, sex or any of them.

Refer Page 3.10

13. (a)

Implications of democracy

- Final decision making power rests with those elected by the people by means of free and fair elections
- Ensure that individuals have certain rights and that the government will always recognise these rights.
- Ensures that there is no individual or group dictatorship by protecting rule of law and ensuring supremacy of law
- Each adult citizen has one vote and each vote has same value

14. (a)

- Indian concept of secularism means religion does not have public or official importance while the people have freedom of religion (Articles 25-28).
- This results in separation of religion from politics.
- The implication of this is that the State has no official religion and is required to treat all religions equally.

Refer Page 3.9 and 3.10

15. (a)

- Articles 39(a), 39(c) and 39(f) broadly represent socialism in India.
- Principal aim of socialism is to eliminate inequality of income and minimise inequality of status and opportunity and to provide a decent standard of life to working people
- Equitable distribution of wealth and social ownership of means of production are characteristics of socialism

- Socialism in the Indian context does not mean collectivism or complete nationalization of all means of production. India assumes the goal of socialism to usher into an egalitarian society through democratic means.

Refer Page 3.6 and 3.7

16. (c)

- Justice implies a harmonious reconciliation of the individual conduct with the general welfare of the society.
- Preamble envisages a State that promotes social, economic and political justice.
- Justice is placed higher than the principles of Liberty, Equality and Fraternity.

Refer Page 3.5

17. (a)

- Socialism means distribution of wealth and serving the common good.
- This would help ensure security and decent standard of living
- Secular means religion does not have public or official recognition.
- It would promote liberty of belief, faith and worship by restricting religious values and thoughts.
- Democracy means a form of government that allows people to choose their rulers/representatives.
- This involves the exercise of adult franchise (right to vote).

Refer Pages 3.7-11

18. (c)

- In a parliamentary system, the government is held accountable and responsible. (Article 75(3))
- The executive is sourced from the legislature. Hence, there is weak separation of powers between executive and legislature.
- The people elect their representatives through free and fair elections conducted by an independent Election Commission. (Article 324)
- Based on votes won, the rule is by a majority forming the government and a group of opposition.

- Party whip system operates to ensure unanimity and stability in decision making,
- Other features of parliamentary democracy
 - Dual Executive (Head of State and Head of government)
 - Bicameral legislature
 - Continuous coordination between executive and legislature
 - Flexibility – in changing existing government without elections

Refer Chapter 2

19. (a)

Preamble declares;

- Source of the Constitution that is, the people of India.
- Type of government (State) – Sovereign, socialist, secular, democratic and republic
- Objectives of the political system – Securing dignity of the individual and promoting unity and integrity of the nation
- Date of coming into force of the Constitution – 26th November 1949.
- Rights to be guaranteed by the State to its citizens – Liberty, equality and fraternity

Refer Page 3.2

20. (c)

- Growth of cooperative federalism indicates the growing interdependency between Centre and states to realise the objectives of any law/policy.
- Union-State Legislative relations are given in Articles 245-255.
- Federalism is characterised by division of powers between Centre and States and a dual polity.
- Division of powers exists in legislative and executive matters and not in financial matters.
- Dynamics of electoral politics does not always aid in growth of cooperative federalism.

Refer Chapter 2

Territory of the Union

Learning Objectives

After reading this chapter, you will be able to:

- Learn what is the Territory of the Union, and about acquiring and ceding of territories
- Understand how new state is admitted to the Indian Union and a new state is created
- Answer merits and demerits of smaller states and bigger states
- Explain the process and the bases of reorganization of states

INTRODUCTION

Although India is a federation, the constitution defines India as 'Union of States'. The Union of India comprises 29 States and 7 Union Territories (UTs). The provisions of the constitution apply to all states and UTs uniformly, except for Jammu and Kashmir which enjoys a special status under the constitution.

Territory of the Union

According to Article 1 of the constitution, the territory of India shall comprise:

1. The territories of the states.
2. The Union Territories.
3. Such other territories as may be acquired.

Do You Know?

- At the time of independence there were 600 units known as Indian or princely states.
- 216 states with a population of about 19 million merged into provinces.
- 61 states with a population of about 7 million were constituted into new centrally-administered units.
- 275 states with a population of about 35 million were integrated to create new administrative units, namely, Rajasthan, Madhya Bharat, Travancore-Cochin, Saurashtra and Patiala and East Punjab States Union (PEPSU).

According to Article 366 (15), 'Indian State' means any territory which the Government of the Dominion of India recognized as such a 'State'. The names of these states are mentioned in Schedule I of the constitution.

'Union Territory' means any UT specified in the First Schedule and includes any other territory comprised within the territory of India but not specified in that Schedule. (Article 366 (30)) There are seven UTs namely, Delhi, the Andaman and Nicobar Island, Lakshadweep, Dadra and Nagar Haveli, Daman and Diu, Pondicherry and Chandigarh. Of these, Delhi and Pondicherry have their own legislative assemblies. Other five UTs are administered by the President through an 'Administrator' appointed by him and in accordance with the aid and advice of the union council of ministers.

According to the United Nations Convention on the Law of the Sea, 1982, Territory of India also includes the territorial waters, the continental shelf, the exclusive economic zone or any other maritime zone of India with reference to the mainland of India as well as the individual or composite group or groups of islands constituting part of the territory of India.

Acquiring and Ceding of Territory

The power to acquire foreign territory and the power to cede any territory to a foreign nation are 'two essential attributes of sovereignty'.⁽¹⁾ The constitution contemplated changes of the territorial limits of the constituent states, not merely their reorganization and there was no guarantee of their territorial integrity.⁽²⁾ Therefore, the states in India do not have the 'Right to Territorial Inviolability'. Hence, Article 1 (3) (c) provides for the acquisitioning of territories.

However, according to Supreme Court, the acquisition of foreign territory is governed by international law and does not fall within Article 1.⁽³⁾ 'Parliament has power only to pass law in respect of territory over which it has jurisdiction'.⁽⁴⁾ Therefore, a foreign territory would not come under Article 1(3) (c) until there is legal transfer of territory to India, so as to constitute its 'acquisition' in international law.

⁽⁵⁾Foreign territories which become part of India on acquisition may:

- Either be admitted into the Union or;
- Constituted into new states under Article 2 or;
- Merged into an existing State under Article 3 (a) or 3 (b) or;
- Formed into a UT.

Similarly, any part of Indian territory can be conceded to any other state or any adjustment of borders to settle border disputes is permitted under the constitution of India. The Union has the right to cede territory if and when the occasion arises. Such a right vest in every sovereign state and can be implied even when not specifically conferred by its constitution.

However, the cession of territory can be done only by legislation under Article 3 of the constitution. According to the Supreme Court in Berubari case, by implication, Article 1 (3) (c) does not exclude the power to cede national territory. This is because the power of acquisition expressly mentioned in Articles 1 and 2 excludes the power to cede.

The French ceded their settlements in Pondicherry, Mahe and Yanam in 1954, by the treaty of cession. These territories were administered as 'acquired' territories until 1962 as the French Parliament had not ratified the treaty of cession. After ratification, it was constituted as a Union Territory.

1 Supreme Court: Berubari Case AIR 1960 SC 845 para 34.

2 Supreme Court: Berubari Case AIR 1960 SC 845 para 35.

3 Jose De Costa vs Bascora, AIR 1975 SC 1843, para 24.

4 Supreme Court: Berubari Case - AIR 1960 SC 845.

5 Supreme Court decisions in Harivansh vs State of Maharashtra, (1971) 2 SCC 54, 56, Masthan Sahib vs Chief Commissioner, Pondicherry, AIR 1962 SC 797, Amar Singh vs State of Rajasthan, AIR 1955 SC 504.

States Reorganization Commissions

1948: S. K. Dhar Committee, rejected linguistic reorganization.

1948: JVP Committee (Jawaharlal Nehru, Vallabhbhai Patel, Pattabhi Sitaramayya), rejected linguistic reorganization.

1953: Fazl Ali Commission, recommended linguistic reorganization.

ADMISSION OR ESTABLISHMENT OF NEW STATES

Article 2, empowers the Parliament to:

- Admit into the Union or
- Establish new states

by law. 'Admission' refers to admitting of a state which has been already formed, established and is in existence. 'Establishing' a new state refers to admitting a territory into the Indian Union and forming a new state. Such state would not have existed before. In accordance with this provision, Sikkim was admitted as a new state into the Indian Union in 1976.

Admission of Sikkim

Before the Indian independence, Sikkim was a princely state ruled by the hereditary monarch Chogyal. At the time of independence, the people of Sikkim expressed willingness to merge with India. But the ruler was against the view and was interested in merging Sikkim with China. The strategic position of Sikkim was also an important reason for China to have interest in Sikkim.

State Reorganization Commission 1956: Approach

1. Linguistic homogeneity conducive to administrative convenience and efficiency.
2. Communicational, educational and cultural needs of the different language groups.
3. Continuing composite states:
 - If economic, political and administrative considerations are balanced.
 - With the necessary safeguards to ensure that all sections enjoy equal rights and opportunities.
4. Financial viability of the state to sustain.
5. Geographical contiguity of the states.
6. The commission rejected:
 - Concept of 'homeland' opposed to equal opportunities and equal rights for all citizens.
 - Theory of 'One Language' because:
 - A language can be spoken in more than one state.
 - People speaking different languages can be living in the same state.
 - It could result in growth of parochial tendencies.

Once the British paramountcy ended, Sikkim and India entered into a treaty. India was responsible for the defence, external affairs and communication under the terms of the treaty. Government of India appointed a political officer to be represented in Sikkim. Thus, Sikkim became the Protectorate of India. In May 1974, the Sikkim Assembly passed the Government of Sikkim Act, 1974. The main features of the act were as under:

- Ending the monarchical rule and Chogyal made a constitutional head.
- Transferring all powers to Sikkim Assembly.

- Progressive realization of a responsible government for Sikkim as objective.
- To seek representation of people of Sikkim in the political institutions of India.

By the powers conferred by this law, the Sikkim Assembly passed a resolution that expressed the will for political and economic association with the India. It also sought for representation in Indian Parliament.

After the promulgation of the Government of Sikkim Act, the Chief Minister of Sikkim had made formal requests to the Government of India and requested to take such steps to give effect to the Government of Sikkim Act, 1974 particularly for providing representation for the people of Sikkim in Parliament.⁽⁶⁾

Subsequently, the Constitution (Thirty-fifth Amendment) Act, 1974 was passed. The main features of the amendment are:

1. Article 2A was inserted after Article 2 and Schedule 10 was added.
2. Sikkim became the 'Associate State' of the Indian Union.
3. One seat in the Council of States and one seat in the House of the People was allotted to Sikkim.
4. The representative of Sikkim in the Council of States shall be elected by the members of the Sikkim Assembly.
5. The representative of Sikkim in the House of the People to be chosen by direct election and for this purpose, the whole of Sikkim shall form one parliamentary constituency.

Major Bases for State Reorganization

- Geographical contiguity.
- Financial self-reliance.
- Administrative viability.
- Potential for development.
- Linguistic and cultural homogeneity.
- Preservation and strengthening of the unity and security of the nation.
- Financial, economic and administrative considerations.
- Planning and promotion of the welfare of the people in each state as well as of the nation as a whole.

These provisions were not in conforming to the original scheme of the constitution. The constitution had the provision for admitting a new state but not for an 'associate state'. Had the amendment been challenged in the Supreme Court, it would have been struck down as unconstitutional.

However, such eventuality did not occur and the criticism lost its relevance and significance within one year.⁽⁷⁾ The Sikkim Assembly unanimously adopted a resolution on the 10th April, 1975. The resolution noted that the Chogyal was indulging in the persistent harmful activities which not only violated the objectives of the Agreement of 1973, but also ran counter to the wishes of the people of Sikkim. They also impeded the democratic development and participation of people of Sikkim in the political and economic life of India. The Assembly solemnly declared that the institution of the Chogyal was abolished and Sikkim shall henceforth be a constituent unit of India, enjoying a democratic and fully responsible government. Subsequently, the Constitution (36 Amendment) Act was enacted. The amendment:

1. Repealed Article 2A and the tenth Schedule.
2. Admitted Sikkim as the twenty second state of India.
3. Inserted Article 371F providing for special provisions for Sikkim.

6 Statement of Objects and Reasons: Constitution (Thirty-fifth Amendment) Act, 1974.

7 Statement of Objects and Reasons: Constitution (Thirty-sixth Amendment) Act, 1975.

FORMATION OF NEW STATE AND ALTERATION OF AREAS, BOUNDARIES OR NAMES OF EXISTING STATES

Article 3 empowers the Parliament to formation of new state and alteration of areas, boundaries or names of existing states. According to Article 3, Parliament can enact a law to form a new state by:

- Separation of territory from any state or; Uniting two or more states or parts of state or;
- Uniting any territory to a part of any state.

Also, the Parliament can enact law to: Increase the area of any state.

- Diminish the area of any state.
- Alter the boundaries of any state.
- Alter the name of any state.

Thus, the constitution provides for an 'indestructible union of destructible states'. This power is one of the non-federal features of the constitution because the consent or concurrence of the affected states is not needed. However, the power is liberally conferred on union government with reasons which are as follows:

- Indian federation is different from other federations and is unique. It is not formed by the alliance of compact and independent states. So, if the national interest demands, the union government must have the power to reorganize the states in accordance with the needs of the circumstances.
- The existing provincial organization at the time of independence was made by the British. Such organization was 'the result of accident and the circumstances attending the growth of the British power in India and partly a by-product of the historic process of the integration of former Indian states.'⁽⁸⁾ But after independence, the states had to be organized according to the natural alignments.

Procedure

The procedure for the creation of new states or altering the names, area or boundary of any state is provided in Articles 3 and 4.

1. A bill to reorganize the state(s) can be introduced in either Rajya Sabha or Lok Sabha. The bill is an ordinary bill.
2. The bill must be introduced only with the previous recommendation of the President.
3. The President must refer the bill to the legislatures of those states that will be affected by the reorganization before he recommends the introduction of the bill in the Parliament.
4. While referring to the legislatures of state, the President will prescribe the time period within which the states have to express their opinion on the bill.
5. The time limit prescribed by the President is binding on the legislatures of states and they must express their views within the said time.
6. The opinion of the state legislatures is not binding on the President. Even if the state expressed a negative view the President can introduce the bill.
7. On the introduction of the bill, the two Houses of the Parliament shall pass the bill and upon passage, the state(s) get reorganized.
8. Any amendment to Schedule I and the Schedule IV as a consequence of the reorganization of the state under Article 3 or admission of any state under Article 2 is not considered as an amendment for the purpose of Article 368. The law enacted for the purpose shall itself make the necessary amendments.

Application to Jammu and Kashmir

The provisions of Article 3 will not be applicable to the Jammu and Kashmir. According to article the Constitution (Application to Jammu and Kashmir) order, 1954, no bill providing for increasing or diminishing the area of the State of Jammu and Kashmir or altering the name or boundary of that state shall be introduced in Parliament without the consent of the legislature of that state.

SMALLER STATES VS LARGER STATES: THE DEBATE

Important questions from Previous years' on this topics are mentioned below:

Creation of smaller states and the consequent administrative, economic and developmental implication.
(IAS Mains 2011: Essay)

Whether to have smaller states or larger states has been debated many a time. The debate was vibrant when Chhattisgarh, Jharkhand and Uttarakhand were created. However, both smaller states and larger states have their own merits and demerits.

Merits of Smaller States

1. When the state is smaller in size, it can lead to better administration because the geographic area to be governed is less.
2. Further, it will have more homogeneity which will improve the understanding of the needs, aspirations and problems of the people, so that the policy formulation and implementation becomes more rational and citizen-centric.
3. The homogeneity in the small states will improve social capital and trust, political consensus and increase the potential for the participation of common man.
4. Size of the government expenditure becomes smaller which in turn could reduce the possibility of corruption or atleast reduce the amount of corruption.
5. A small state will not have more powers to be hegemonic as they will not enjoy high political clout. Larger states have at times attempted to use their political importance to hold the union government to ransom for their political demands and cater to their parochial tendencies. The union government had been left to embarrassment as they could not control the larger states. For instance, the union government had not been able to resolve the interstate river water disputes if it was between two larger states—Cauvery water dispute between Tamil Nadu and Karnataka is an example.
6. Uttar Pradesh, the largest state had attempted to bring the union government to a halt by pulling all its civil servants in the central deputation when there was a misunderstanding with the union government. This is remotely possible in case of a smaller state.
7. Economic backwardness was one of the important grounds for demanding smaller states. Lack of development since independence was the main reason for the demand for Telengana, which was formed in 2014. The demand for the formation of Vidarbha, Bodoland and Saurashtra, as separate states gained strength after the formation of Telengana. States like Punjab, Kerala are quoted as examples for the development of a state, when it is small.

However, the size of the state alone is not a reason for development. The North-Eastern states and states like Haryana which are small had not developed. On the contrary, states like Tamil Nadu, Karnataka or Gujarat have shown remarkable development although they are larger in size. Kerala, being a small state has performed in the social development but in economic front its performance is not countable.

The growth and development of a state do not depend on the size of the state but several other factors. There should be scope for development in the state in terms of the resources, financial capability, human resources, etc.

Further, the style of governance is an important factor contributing to the development of the state. Although Tamil Nadu is one among the developed states in India today, the state has lost its place in the rank list of the industrialized states. But during 1960s Tamil Nadu was one of the top-ranking state in the list. In the post 1969 phase, the state came under the rule of the *Dravidian* parties which have not been as positive as it was before.

Another important factor contributing to the development of a state is the visionary leadership. To quote as an example Kamaraj as Chief Minister of Tamil Nadu is remembered for his vision and making the state a topper in industrial growth. After him the visionary leadership is still at large.

To quote more, one can take the example of Jharkhand and Chhattisgarh, though these states are small, with relatively high social homogeneity and being blessed with natural resources, have been suffering from the left-wing extremism and are struggling to develop.

Hence, it is not the size of the state alone, a reason for the development, but is other important factors like the availability of resources and more specifically the style of governance and visionary leadership that bring development to a state.

Practice Questions

- 1.** Which one of the following schedules of the Indian constitution lists the names of states and specifies their territories?
- First
 - Second
 - Third
 - Fourth
- 2.** Consider the following events:
- Fourth general elections in India
 - Formation of Haryana state
 - Mysore named as Karnataka state
 - Meghalaya and Tripura become full states
- Which one of the above is the correct chronological order?
- 2, 1, 4, 3
 - 4, 3, 2, 1
 - 2, 3, 4, 1
 - 4, 1, 2, 3
- 3.** Which one of the following is the correct chronological order of the formation of the following as full states of the Indian Union?
- Sikkim-Arunachal Pradesh-Nagaland-Haryana
 - Nagaland-Haryana-Sikkim-Arunachal Pradesh
 - Sikkim-Haryana-Nagaland-Arunachal Pradesh
 - Nagaland-Arunachal Pradesh-Sikkim-Haryana
- 4.** Which was the capital of Andhra state when it was made a separate state in the year 1953?
- Guntur
 - Kurnool
 - Nellore
 - Warangal
- 5.** The reorganization of states in India has been based on the:
- Preservation and strengthening of unity and security of India.
 - Linguistic and cultural homogeneity.
 - Financial, economic and administrative considerations.
 - Successful working of the national development plans.
- 6.** Consider the following:
- 1, 3 only
 - 2, 3, 4 only
 - 1, 2, 4 only
 - 1, 2, 3, 4
- 7.** Which among the following statements about the reorganization of states is NOT correct?
- The acceptance of the principle of linguistic states means that all states immediately became linguistic states.
 - Language did not remain the sole basis of organization of states in India.
- 1 only
 - 2 only
 - Both 1 and 2
 - Neither 1 nor 2
- 8.** Foreign territories which become part of India on acquisition may be:
- Admitted into the Union.
 - Constituted into new states under Article 2.
 - Merged into an existing state under Articles 3 (a) or 3 (b).
 - Formed into a Union Territory.
- 1, 2, 3, 4
 - 1, 2, 3 only
 - 1, 3, 4 only
 - 4 only

9. Consider the following:

1. A federation is an intimate legal association between two units the centre and the states whereas, a confederation is a loose association of two or more sovereign states usually born of a treaty.
2. A confederation is usually indissoluble and the states have no right to secede whereas, the federation allows the states to secede.

Correct statements

- (a) 1 only
- (b) 2 only
- (c) Both 1 and 2
- (d) Neither 1 nor 2

10. The word 'Union' in Article 1 (1) of the constitution which states 'India, that is Bharat, shall be a Union of States' has certain advantages namely:

1. The Indian federation is not the result of an agreement among the states.
2. The states have no right to secede.
 - (a) 1 only
 - (b) 2 only
 - (c) Both 1 and 2
 - (d) Neither 1 nor 2

11. Which of the following statements truly reflect the meaning of the phrase 'indestructible union with indestructible states'?

1. The union cannot be destroyed by secession.
2. No state possesses the right to separate itself from the federation. The federal government has no power to diminish or increase the number of states or their territory.
3. It may be done only with the concurrence of the state concerned.
 - (a) 1 only
 - (b) 1, 2 only
 - (c) 3, 4 only
 - (d) 1, 2, 3, 4

12. Consider the following:

A bill for the formation of new states and alteration of areas, boundaries or names of existing states:

1. Shall not be introduced in either House of Parliament except on the recommendation of the President.

2. If the proposal contained in the bill affects the area, boundaries or name of any of the states, the bill has to be referred by the President to the legislature of that state for expressing its views.

Correct statements

- (a) 1 only
- (b) 2 only
- (c) Both 1 and 2
- (d) Neither 1 nor 2

13. Which of the following are the bases for the creation of states in India?

- (a) Demand for linguistic states.
- (b) Remnants of earlier foreign rule.
- (c) Claims of tribal dominated areas for more freedom.
- (d) All of the above.

14. The bill seeking to reorganize the states must be referred by the President to the state legislature concerned for eliciting its views:

- (a) Before introducing in the Parliament.
- (b) Before giving assent to the bill.
- (c) Before being voted in the Parliament.
- (d) After being passed by the Lok Sabha.

15. The Constitution of India describes India as:

- (a) Federal state
- (b) Unitary state
- (c) A quasi-federal state
- (d) A union of states

16. Which of the following is NOT possible by a law of the Parliament under Article 3 of the constitution?

- (a) Merger of states
- (b) Splitting the states
- (c) Cessation of territory
- (d) Acquisition of territory

17. The conditions laid by the Constitution of India for the creation of new states are

1. Bill seeking to create a new state shall be introduced only on the recommendation of the President
2. '...If the Bill affects the area, boundaries or names of the states the President shall refer the Bill to the concerned state legislature'

Which of these are true?

- (a) 1 only
- (b) 2 only
- (c) Both 1 and 2
- (d) None

18. The Bill creating a new state can be introduced

- (a) Only in Lok Sabha
- (b) Only in Rajya Sabha
- (c) Into either Houses of the Parliament on the recommendation of the President
- (d) Either Houses of the Parliament

19. After creating a new state, the Parliament, can by law make all consequential changes in the constitution, which shall not be deemed to be an amendment to the constitution. This is provided in

- (a) Article 4
- (b) Article 3
- (c) Article 2
- (d) Article 5

20. The Parliament of India is empowered to admit new states into the union & establish new states by

- (a) Article 3
- (b) Article 2
- (c) Article 4
- (d) None

Answer Key

- 1.** (a), **2.** (a), **3.** (b), **4.** (b), **5.** (d), **6.** (d), **7.** (a), **8.** (a), **9.** (a), **10.** (c),
11. (d), **12.** (c), **13.** (d), **14.** (a), **15.** (d), **16.** (c) **17.** (c) **18.** (c) **19.** (a) **20.** (b)

Hints and Explanations

1. (a)

- The names of States and their territories are mentioned in First Schedule.

Refer Page 4.2

2. (a)

- Formation of Haryana State – 1966
- 4th general elections – 1970
- Meghalaya and Tripura as full States - 1972
- Mysore named as Karnataka State – 1973
- Article 3 allows Parliament to create new state and alter areas, boundaries or names of existing states

Refer Page 4.5

3. (b)

By Article 3, formation as full States:

- Nagaland - 1963
- Haryana – 1966
- Sikkim – 1975
- Arunachal Pradesh - 1987

4. (b)

Self-explanatory

5. (d)

State Reorganisation Commission set up in 1956 approached reorganization based on:

- Geographical contiguity.
- Financial self-reliance.
- Administrative viability.
- Potential for development.
- Planning and promotion of the welfare of the people in each state as well as of the nation as a whole.

Refer Page 4.3 and 4.4

6. (d)

- Article 3 enables Parliament to create new States and alter areas, boundaries or names.
- 'State' includes Union Territory.
- Article 4 relates making amendment to First and Fourth Schedules.

Refer Page 4.5

7. (a)

- Acceptance of principles of linguistic states means giving into growth of parochial tendencies.
- It did not mean that all states became linguistic states immediately.

Refer Box on Page 4.3

8. (a)

Foreign territories which become part of India on acquisition may:

- Either be admitted into the Union or;
- Constituted into new states under Article 2 or;
- Merged into an existing State under Article 3 (a) or 3 (b) or;
- Formed into a UT.

Refer Page 4.2

9. (a)

Federation

- Result of agreement/legal association between Centre and States.
- It is usually indissoluble.
- States have no right to secede.

Confederation

- A loose association formed as a result of treaty between of two or more sovereign States
- States are allowed to secede.

Refer Page 4.5

10. (c)

- Indian federation is different from other federations because it was not formed by alliance of compact and independent states.

Refer Page 4.5

11. (d)

Indestructible union means:

- Union cannot be destroyed by secession
- States have no right to secede

Indestructible states means:

- Federal government has no power to diminish or increase the number of States or their territory

- It may be done only with the concurrence of the State concerned

Refer Page 4.5

12. (c)

- Article 3 requires Parliament to provide a Bill for formation of new States and alteration of areas, boundaries or names of existing States.
- Such a Bill can be introduced in Parliament only upon the recommendation of the President.
- If the provisions are regarding that of a State (does not include UT) then, Bill has to be referred to the State Legislature by the President.

Refer Page 4.5

13. (d)

Basis for creation of states:

- Language – Andhra Pradesh & Tamil Nadu, Haryana & Punjab
- Remnants of foreign rule – Goa, Madras Presidency to Madras state
- Claims of tribal dominated areas for more freedom – Jharkhand, Chattisgarh
- Economic backwardness - Telangana

Refer Page 4.4

14. (a)

- The President must refer the bill to the legislatures of those states that will be affected by the reorganization before he recommends the introduction of the bill in the Parliament.

Refer Page 4.5

15. (d)

Article 1 describes India as a Union of States comprising of

- Territories of the states.
- Union Territories.

- Such other territories as may be acquired.

Refer Page 4.1

16. (c)

Article 3, Parliament can enact a law to form a new state by:

- Separation (Splitting) of territory from any state or;
- Uniting (Merger) two or more states or parts of state or;
- Uniting any territory (Acquisition) to a part of any state

Refer Page 4.5

17. (c)

- Article 3 requires Parliament to introduce a Bill to create new state only on the recommendation of the President.
- Alteration with respect to States (not UTs) requires that Bill to be referred to State Legislature.

Refer Page 4.5

18. (c)

- Article 3 requires the Bill to be introduced in either House of Parliament only upon the recommendation of President.

Refer Page 4.5

19. (a)

- Any amendment to Schedule I and the Schedule IV as a consequence of the reorganization of the state under Article 3 or admission of any state under Article 2 is not considered as an amendment for the purpose of Article 368.

Refer Page 4.5

20. (b)

Article 2: Parliament, by law, can

- Admit into the Union
- Establish new states

Refer Page 4.3

CHAPTER 5

Citizenship

Learning Objectives

After reading this chapter, you will be able to:

- Define the concept of citizenship and its importance
- Understand why constitution deals with the citizenship provisions elaborately
- Analyze various modes of Acquiring and Losing Indian Citizenship
- Know the concept of Overseas Citizenship of India, its benefits and reasons and benefits of merging PIO scheme and Overseas Citizenship of India

INTRODUCTION

Part II of the constitution, between Articles 5 and 11 deals with citizenship. This is one of the provisions of the constitution that came into force immediately after the constituent assembly adopted the constitution in 1949. It was required to bring it to force before the commencement of the constitution, to conduct the election.

Citizenship: Meaning

A ‘citizen’ is different from an ‘alien’. Citizen of a state is one who enjoys all civil and political rights guaranteed by the constitution. Whereas an alien is not entitled to such rights. In case of a friendly alien, he may be entitled to certain civil rights including fundamental rights. However, an enemy alien may be deprived of such rights.

There are certain rights and constitutional privileges which are available only to citizens.

- Protection from discrimination on grounds only of religion, race, caste, sex or place of birth (Article 15).
- Equality of opportunity in matters of public employment (Article 16).
- Freedoms of speech, assembly, association, movement, residence and profession (Article 19).
- Cultural and educational rights of minorities (Articles 29 and 30).

IMPORTANCE OF CITIZENSHIP

The constitution deals with citizenship in two different modes:

1. Before the commencement of the constitution.
2. After the commencement of the constitution.

The constitution deals with citizenship elaborately because:

- India being a republic, various constitutional offices are to be filled by the citizens only. Being a citizen of India, the primary qualification for holding the office of President or Prime Minister or members of Parliament, etc. Since the constitution provides only for a single citizenship it has to be unambiguously defined.

- The problems faced due to partition of the country which resulted in transmigration of people across the border. This demanded that the constitution must have adequate provisions to handle the situation.
- At the time of independence, a large number of Indians and PIO lived in other countries which complicated the problem.

CITIZENSHIP BEFORE THE COMMENCEMENT OF THE CONSTITUTION

The constitution contains certain provisions which deal with the citizenship before the commencement of the constitution. The following are the classes of citizenship dealt with by the constitution directly:

- Article 5: Citizenship by domicile
- Article 6: Right of citizenship of immigrants from Pakistan.
- Article 7: Right of citizenship of immigrants to Pakistan.
- Article 8: Right of citizenship of PIO living abroad.

Article 5: Citizenship by Domicile

Domicility is a legal status and does not possess any practical applicability. Domicile status depends on the place of ordinary residence of a person and his intention to reside and settle in the place permanently. Any person can become a citizen of India by domicility if at the commencement of the constitution, he is domiciled in India and either:

1. He was born in the territory of India; or
2. Either of whose parents was born in the territory of India; or
3. Who has been ordinarily resident in the territory of India for not less than five years immediately preceding commencement of the constitution.

Any person acquiring citizenship by this mode needs to take an oath of allegiance to the constitution of India.

Citizenship before Commencement of Constitution

Article 5: Citizenship by domicile

Article 6: Right of citizenship of immigrants from Pakistan

Article 7: Right of citizenship of immigrants to Pakistan

Article 8: Right of citizenship of PIO living abroad

Article 6: Right of Citizenship of Immigrants from Pakistan

Due to partition, India was divided into two and Pakistan was created. A citizen of united India was permitted to either remain in India or Pakistan or migrate to India from Pakistan or from Pakistan to India. The constitution guarantees the right to acquire the citizenship of India to any person who migrates from Pakistan.

However, the immigrants did not migrate and settle down in India. They either returned to Pakistan or transited through India. This became unmanageable. To resolve this, 'permit system' was introduced. Any person who migrates on or before 19 July 1948 will automatically become a citizen of India. However, any person who migrates after this date must have to register with the designated authority.

Article 7: Right of Citizenship of Immigrants to Pakistan

Any citizen of India, who migrated to Pakistan, will lose his Indian citizenship automatically. However, if the same person returns back to India, then he shall have the right to get back his Indian citizenship. Irrespective of anything in Articles 5 or 6, he can acquire his Indian citizenship.



However, this provision will not be applicable to Jammu and Kashmir. In case a permanent resident of the state of Jammu and Kashmir migrated to Pakistan returns to the state (any part of Jammu and Kashmir) under the permit for resettlement in that state or permanent return issued by or under the authority of any law made by the Jammu and Kashmir legislature, then shall be deemed to be a citizen of India.

Article 8: Right of Citizenship of PIO Living Abroad

At the time of independence, there was a large population of Persons of Indian Origin living in many countries other than India. Many of them were transported to the respective countries as indentured labourers by the British Indian government. Article 8 of the Constitution provided an opportunity for such persons to acquire Indian citizenship. The constitution guarantees this as a right to such persons. However, article 9 provides that if such a person of Indian origin had acquired the citizenship of a foreign country, then they are not eligible to acquire citizenship of India.

According to Article 10,

- (a) a person who had acquired the Indian citizenship by domicile (Article 5)
- (b) an immigrant from Pakistan who has acquired citizenship of India (Article 6)
- (c) A citizen of India who had returned after migrating to Pakistan and acquired Indian Citizenship (Article 7)
- (d) A person of Indian origin who had acquired Indian citizenship (Article 8)

Will be subject to regulation of the law enacted by the Parliament. They do not enjoy any special status after the commencement of the constitution.

CITIZENSHIP AFTER THE COMMENCEMENT OF THE CONSTITUTION

Article 11, of the constitution confers upon the Parliament, the power to enact law to regulate the affairs relating to citizenship. In accordance with the power, the Parliament has enacted the Citizenship Act, 1955. The law provides for five modes of acquiring citizenship and three modes of losing Indian citizenship.

Modes of Acquiring Indian Citizenship

Any person can acquire Indian citizenship by:

1. Birth
2. Descent
3. Registration
4. Naturalization
5. Incorporation of territory

Connect

Person acquiring citizenship by domicile, registration and naturalization:

1. Need to take an oath of allegiance to the constitution.
2. Can be deprived of their citizenship.

Citizenship by Birth

A person born in India on or after 26 January 1950 but before 1 July 1987 is citizen of India by birth, irrespective of the nationality of his parents.

A person born in India on or after 1 July 1987 but before 3 December 2004 is considered citizen of India by birth, if either of his parents is a citizen of India at the time of his birth.

A person born in India on or after 3 December 2004 is considered citizen of India by birth, if both the parents are citizens of India or one of the parents is a citizen of India and the other is not an illegal migrant at the time of his birth.

Citizenship by Descent

A person born outside India on or after 26 January 1950 is a citizen of India by descent, if his father was a citizen of India by birth at the time of his birth.

A person born outside India on or after 10 December 1992 but before 3 December 2004, is considered as a citizen of India if either of his parents was a citizen of India by birth at the time of his birth.

A person born outside India on or after 3 December 2004 shall not be a citizen of India, unless the parents declare that the minor does not hold passport of another country and his birth is registered within one year of the date of birth.

Citizenship by Registration

Indian citizenship by registration can be acquired by:

1. Any person who is not an illegal migrant.
2. PIO who are ordinarily resident in India for seven years before making application.
3. PIO who are ordinarily resident in any country or place outside undivided India.
4. Persons who are married to a citizen of India and who are ordinarily resident in India for seven years.
5. Minor children whose both parents are Indian citizens.
6. Persons of full age whose both parents are registered as citizens of India.
7. Persons of full age who or either of the parents were earlier citizen of independent India and residing in India for one year immediately before making application.
8. Persons of full age and capacity who has been registered as an Overseas Citizen of India (OCI) for five years and residing in India for one year before making application.

Any person acquiring citizenship by this mode needs to take an oath of allegiance to the constitution of India.

Citizenship by Naturalization

Citizenship of India by naturalization can be acquired by a foreigner who is not an illegal migrant, if he is ordinarily resident in India for:

1. Twelve years throughout the period of twelve months immediately preceding the date of application.
2. Eleven years in the aggregate in the fourteen years preceding the twelve months.

Any person acquiring citizenship by this mode needs to take an oath of allegiance to the Constitution of India.

Citizenship by Incorporation of Territory

When a territory that is not part of India becomes part of India, the persons inhabited in the territory will become citizen of India automatically.



Modes of Losing Indian Citizenship

According to Citizenship Act 1955, there are three modes of losing Indian citizenship namely:

1. Renunciation
2. Termination
3. Deprivation

Renunciation

Renunciation is a voluntary act. Any citizen of India can voluntarily renounce the Indian citizenship. In case, a male citizen of India renounces his Indian citizenship, all his minor children will also lose their Indian citizenship. However, such a child can reclaim citizenship by making a declaration in this regard. Such declaration must be made within one year from the date on which the child completed his 18 years of age.

Connect

Modes of Losing Indian Citizenship
Renunciation: Voluntary act
Termination: Automatic process
Deprivation: Compulsory termination

Termination

Termination is an automatic process. If any citizen of India acquires citizenship of any foreign country, then his Indian citizenship automatically terminates even if he did not renounce his Indian citizenship.

Deprivation

Deprivation is compulsory termination of citizenship. It is applicable only in cases of citizenship acquired by domicile, registration or naturalization. The central government may, by order, deprive any such citizen of Indian citizenship, if it is satisfied that:

1. The registration or certificate of naturalization was obtained by means of fraud, false representation or the concealment of any material fact; or
2. Citizen has shown himself by act or speech to be disloyal or disaffected towards the Constitution of India as by law established; or
3. Citizen has, during any war in which India may be engaged, unlawfully traded or communicated with an enemy or been engaged in, or associated with, any business that was to his knowledge carried on in such manner as to assist an enemy in that war; or
4. Citizen has, within five years after registration or naturalization, been sentenced in any country to imprisonment for a term of not less than two years; or
5. Citizen has been ordinarily resident, out of India for a continuous period of seven years, but not for the purpose of:
 - (i) Education
 - (ii) Serving Government of India
 - (iii) Serving any international organization

OVERSEAS CITIZENSHIP OF INDIA SCHEME [1]

The Indian diaspora living abroad especially those living in the developed countries had been demanding for 'dual citizenship'. They had been demanding this to revive their link with India and stay connected. But the Constitution of India does not provide for 'dual citizenship'.

PIO Card Scheme

Keeping in view of this demand the Government of India had introduced the 'PIO Card Scheme', in 1999, with aim of 'making the journey back to roots, simpler, easier, and flexible and absolutely hassle-free' for the PIO.

The scheme was an attempt to integrate the Indian diaspora and use their potential for the development of the country. Uniting and integrating the sizeable Indian diaspora would be mutually benefitting the community and the country. Opportunity to integrate the PIOs will give the PIOs

- A chance to revive their ancestral link with India and satisfy their psychological demand.
- Their knowledge resource can enable transfer of technology and experience much required for the industrial and economic growth of India
- Their economic capacity will benefitting India by bringing large scale investments to the economy.
- Many of the members of the Indian diaspora have been occupying higher positions, both politically and administratively in many countries. This will help India
 - (a) To conduct harmonious relationship with such countries.
 - (b) In the international forums.

Especially, when India is aspiring for an important role in the international politics, this support would be more significant.

NRI, PIO, OCI: A Comparison		
NRI	Person of Indian Origin	OCI cardholder
An Indian citizen who is ordinarily residing outside India and holds an Indian passport.	A person who or whose any of ancestors was an Indian national and who is presently holding another country's citizenship/nationality, i.e., he/she is holding foreign passport.	A person registered as Overseas Citizen of India (OCI) Cardholder under Section 7A of the Citizenship Act, 1955

To go through the demand, the Government of India appointed a high powered committee under the chairmanship of L. M. Singhvi. The committee recommended for amending the Citizenship Act 1955, to accommodate the demand. Subsequently, the PIO card scheme introduced in 1999 was modified in 2002. Under the scheme any person becomes eligible to hold the PIO card if:

1. He/she held an Indian passport at any time; or
2. He/she or either of his/her parents or grandparents was
 - i. Born in India as defined in the Government of India Act, 1935 and other territories that became part of India thereafter
 - ii. Permanently resident in India as defined in the Government of India Act, 1935 and other territories that became part of India thereafter
 - iii. Provided neither was at any time a citizen of any country as may be specified by central government from time to time; or
3. He/she is a spouse of a citizen of India or a PIO as mentioned above.



Thus, the scheme is broad-based, covers up to four generations and also the foreign spouse of a citizen of India or a PIO. Under the scheme, for a PIO cardholder, no visa is required for visiting India. He is exempt from the requirement of registration, if his stay on any single visit in India does not exceed 180 days. Parity with non-resident Indians in respect of facilities available to the latter in economic, financial and educational field is another benefit.

Overseas Citizenship of India Scheme

The Citizenship Act was further amended in 2005 and the OCI scheme was introduced under Section 7A of the act.

Eligibility for OCI

Any person, who is a foreign national but:

1. Who was a citizen of India at the time of, or at any time after the commencement of the constitution, i.e., 26 January 1950; or
2. Who was eligible to become a citizen of India on 26 January 1950; or
3. Who belonged to a territory that became part of India after 15 August 1947; or
4. Who is a child or a grandchild or a great grandchild of such a citizen; or
5. Who is a minor child of such persons mentioned above; or
6. Who is a minor child and whose both parents are citizens of India or one of the parents is a citizen of India; or
7. Spouse of foreign origin of a citizen of India or spouse of foreign origin of an OCI cardholder registered under Section 7A of the Citizenship Act, 1955 and whose marriage has been registered and subsisted for a continuous period of not less than two years immediately preceding the presentation of the application.

Do You Know?

- OCI will not apply to the citizens of Pakistan and Bangladesh.
- A person born aboard a ship or aircraft is deemed to have been born in the place in which the ship or aircraft is registered
- For the purpose of Citizenship Act and OCI only 'natural persons' are eligible. Companies and corporates are not eligible

Benefits to the OCI Cardholder

An OCI cardholder is entitled to the following benefits:

- Multiple entry lifelong visas for visiting India for any purpose.
- Exemption from registration with Foreigners Regional Registration Officer (FRRO) or Foreigners Registration Officer (FRO) for any length of stay in India.
- Parity with NRIs in respect of all facilities available to them in economic, financial, and educational fields except in matters relating to the acquisition of agricultural or plantation properties.
- Registered OCI cardholder shall be treated at par with NRI in the matter of intercountry adoption of Indian children.
- Registered OCI cardholder shall be treated at par with resident Indian nationals in the matter of tariffs in air fares in domestic sectors in India.
- Registered OCI cardholder shall be charged the same entry fee as domestic Indian visitors to visit national parks and wildlife sanctuaries in India.

- Parity with NRI in respect of:
 - » Entry fees to be charged for visiting the national monuments, historical sites and museums in India.
 - » Pursuing the following professions in India, in pursuance of the provisions contained in the relevant acts, namely:
 - o Doctors, dentists, nurses and pharmacists
 - o Advocates
 - o Architects
 - o Chartered accountants
 - » To appear for the All India Pre-Medical Test or such other tests to make them eligible for admission in pursuance of the provisions contained in the relevant acts.

However, an OCI cardholder shall not be entitled to the rights conferred on a citizen of India under:

1. Article 16 of the constitution with regard to equality of opportunity in matters of public employment.
2. Article 58 of the constitution for election as President.
3. Article 66 of the constitution for election as Vice-president.
4. Article 124 of the constitution for appointment as a Judge of the Supreme Court.
5. Article 217 of the constitution for appointment as a judge of the High Court.
6. Section 16 of the Representation of the People Act, 1950 in regard to registration as a voter.
7. Sections 3 and 4 of the Representation of the People Act, 1951 with regard to the eligibility for being a member of the House of People or of the Council of States, as the case may be.
8. Sections 5, 5A and Section 6 of the Representation of the People Act, 1951 with regard to eligibility for being a member of the legislative assembly or the legislative council, as the case may be, of a state.
9. 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 by special order in that behalf specify.

Renunciation of OCI Card

This is a voluntary act. Any OCI cardholder, of full age and capacity, can renounce that by making a declaration renouncing the card. He ceases to be an OCI cardholder once the government registers his declaration. If a person ceases to be an OCI cardholder, then:

1. His/her spouse will also cease to be an OCI in case the spouse is a foreign national.
2. Every minor child of that person registered as an OCI cardholder loses his/her OCI card.

Cancellation of the OCI Card

This is a compulsory termination. The central government may cancel the registration, by order if it is satisfied that:

1. An OCI card was obtained by means of fraud, false representation or the concealment of any material fact.
2. The OCI cardholder has shown disaffection towards the Constitution of India.
3. The OCI cardholder has unlawfully traded or communicated with an enemy or been engaged in, or associated with, any business or commercial activity in such manner as to assist an enemy during any war in which India may be engaged in.
4. The OCI cardholder has been sentenced to imprisonment for a term of not less than two years within five years after registration.
5. It is necessary so to do in the interests of the sovereignty and integrity of India, the security of India, friendly relations of India with any foreign country, or in the interests of the general public.



Merger of PIO and OCI Schemes

The PIO card notification has been withdrawn and it was notified that all existing PIO cardholders will be deemed to be OCI cardholders. At present only one OCI card with enhanced benefits is in existence. An ordinance was promulgated on January 6 2015 whereby the eligibility and additional benefits of PIO card have been incorporated in OCI card and certain other relaxation to OCI cardholders have been given by amending the Citizenship Act, 1955.

The main features of the ordinance and benefits are:

- At present, one-year continuous stay in India is mandatory for Indian citizenship which is relaxed stating that if the central government is satisfied that special circumstances exist, it may, after recording such circumstances in writing, relax the period of twelve months specified up to a maximum of 30 days which may be in different breaks.
- To enable for registration as OCI by a minor, whose parents are Indian citizens.
- To enable for registration as OCI by a child or a grandchild or a great grandchild of such a citizen.
- To enable for registration as OCI by such spouse of a citizen of India or spouse of an OCI registered under Section 7A and whose marriage has been registered and subsisted for a continuous period of not less than two years immediately preceding the presentation of the application under this section.
- In respect of existing PIO cardholders central government may, by notification in Official Gazette, specify a particular date from which all existing PIO cardholders will be deemed to be OCI cardholders.



Practice Questions



Answer Key

1. (b), **2.** (a), **3.** (c), **4.** (c), **5.** (d), **6.** (d), **7.** (b), **8.** (c), **9.** (d), **10.** (a),
11. (a), **12.** (a), **13.** (c), **14.** (a) **15.** (d) **16.** (b) **17.** (b) **18.** (b) **19.** (b) **20.** (d)

Hints and Explanations

1. (d)

Parity with NRIs except in matters relating to the acquisition of agricultural or plantation properties

Refer Page 5.8

2. (a)

All the provisions require a law to execute them. Therefore they are not self-executory

Associated legislations:

- Citizenship Act, 1955
- Preventive Detention Act 1950
- Untouchability (Offences) Act, 1955

Refer Page 5.3

3. (c)

For the purpose of Citizenship Act, only 'natural persons' are eligible. Companies and corporates are not eligible.

Refer Box on Page 5.7

4. (c)

- Citizenship can be deprived in case the citizenship was acquired by domicile, registration or naturalization
- To contest an election, it is required to be a citizen of India irrespective of the manner of acquiring citizenship.

Refer Page 5.5

5. (b)

- Any person who migrates on or before 19 July 1948 will automatically become a citizen of India.
- Any person who migrates after this date must have to register with the designated authority.

Refer Page 5.3

6. (d)

- Citizenship is one of the provisions of the constitution that came into force immediately after the constituent assembly adopted the constitution in 1949.
- It was required to bring it to force before the commencement of the constitution, to conduct the election.

Refer Page 5.1

7. (b)

- Deprivation is compulsory termination of citizenship.
- It is applicable only in cases of citizenship acquired by domicile, registration or naturalization.

Refer Pages 5.4 and 5.5

8. (c)

- Single citizenship allows citizens to participate in the elections at all 3 levels – national, state and local bodies.

Refer Pages 5.1 and 5.2

9. (d)

Article 5: Citizenship by domicile

- A citizen is considered domicile if:
- He was born in the territory of India; or
- Either of whose parents was born in the territory of India; or
- Who has been ordinarily resident in the territory of India for not less than five years immediately preceding commencement of the constitution

Refer Page 5.2

10. (a)

A citizen of a country which prohibits Indian citizen from becoming citizen of that country by naturalization cannot become a citizen of India by naturalisation.

Other grounds for deprivation of citizenship

- Within five years after registration or naturalization, been sentenced in any country to imprisonment for a term of not less than two years
- Been ordinarily resident, out of India for a continuous period of seven years

Refer Page 5.5

11. Consider the following

(a)

- Articles 6 and 7 provide the right of citizenship for persons who had migrated from Pakistan at the time of Partition.
- PIO card scheme was first introduced on the recommendations of the High Level committee on Indian Diaspora. The OCI scheme was later introduced.

Refer Pages 5.2, 5.3 and 5.6

12. (a)

- Article 11, of the constitution confers upon the Parliament, the power to enact law to regulate the affairs relating to citizenship.
- Termination means automatic loss of citizenship due to acquisition of citizenship of any foreign country

Refer Page 5.5

13. (c)

- Article 258: Power of the Union to confer powers, etc., on States in certain cases
- A person who obtained passport from a foreign country only loses Indian citizenship.
- It does not serve sufficient grounds for deportation or prosecution.

14. (a)

- Article 29(1) provides for any section of citizens having a distinct language, script or culture of its own, the right to conserve the same.
- Article 30 gives religious and linguistic minority groups the right to establish and maintain institutions for religious and charitable purposes

Refer chapter 6

15. (d)

Indian citizenship can be acquired by registration by:

- A person is ordinarily resident of India for seven years before making application.
- Persons who are married to a citizen of India
- Minor children of citizens of India born within the territory of India will be citizens of India by birth

Refer Page 5.4

16. (b)

- Deprivation is compulsory termination of Indian citizenship.
- It can be done by an order of Central Government upon certain conditions.

Refer Page 5.5

17. (b)

- Article 5: Citizenship by domicile
- Article 6: Right of citizenship of immigrants from Pakistan.
- Article 7: Right of citizenship of immigrants to Pakistan.
- Article 8: Right of citizenship of PIO living abroad

Refer Page 5.2

18. (b)

- A minor child can reclaim his/her citizenship by making a declaration made within one year from the date on which the child completed his 18 years of age.

Refer Page 5.5

19. (b)

- A person is to take an oath of allegiance it acquires citizenship through naturalisation registration and by domicile.

Refer Page 5.5

20. (d)

Modes of acquiring Indian citizenship:

- Birth
- Descent
- Registration
- Naturalization
- Incorporation of territory

Refer Page 5.3

CHAPTER 6

Fundamental Rights: Conceptual Framework

Learning Objectives

After reading this chapter, you will be able to:

- Learn the concept of fundamental rights and classification of the fundamental rights
- Understand the reason for the rise of the concept of fundamental rights and guaranteed rights
- Explain the fundamental rights were included in the Indian constitution
- Analyze the reasons for omitting the right to property
- State the difference between fundamental rights and human rights

INTRODUCTION

In India fundamental rights can be traced to Motilal Nehru Committee Report 1928. The term fundamental rights have not been defined objectively. There are widely accepted meanings of the term. Fundamental rights are defined as the rights which are essential for a human being, in a civilized society, to utilize his fullest possible potential to the fullest possible extent to achieve the fullest possible development.

'Nehru Report'

- All Parties Conference on 19 May 1928 appointed committee headed by Motilal Nehru to work out details of the constitution.
- It recommended for inclusion of a Declaration of Rights in the constitution to assure fullest liberty of conscience and religion.
- Syed Ali Imam and Shoaib Qureshi were the two Muslims members of the nine-member committee.

Reasons for Having Fundamental Rights

According to Professor Laski, the civil liberties enjoyed by the citizens determine whether a democracy succeeds or fails. A true democracy needs to limit the will of the majority so that it does not become a 'tyrannical rule by majority'. In a modern democracy, this is sought to be done by guaranteeing the bill of rights. Unlimited political power vested in a body of men will eliminate the liberties to express dissent and ensure the government accountability. Instead, it will breed submissiveness and will result in a totalitarian system. This requires the

incorporation of fundamental rights in any modern constitution. The following are the main reasons for incorporating fundamental rights in any modern democratic constitution:

- According to the political philosophy, any good rule has to ensure the presence of all the conditions which are essential for the pursuit of 'happiness' of a human being. It is the ultimate aim of human birth. This can be possible only by guaranteeing the fundamental rights.
- The conflict between the liberties of the individual and those of the society is common in any society. This conflict is balanced by the fundamental rights and conditions for the peaceful and harmonious coexistence is created.
- The state personifies the collective liberties of the society and in that process may assume absolute power resulting in tyranny. This can be prevented only by guaranteeing the fundamental rights. India under the British rule witnessed the state using its legitimate power against the subjects to suppress them.
- Every society has its own historical errors which has rendered a section of the population underprivileged or deprived. For instance, in India the practice of untouchability had resulted in the discriminative treatment of people which was justified as an accepted social practice. To correct these historical errors fundamental rights are needed.
- Every society aims at modernizing its social, cultural, and economic institutions. Such modernization requires changes to be brought in the social values, attitudes and aspirations of the people. Such changes have to be smooth and harmonious. This can be possible only by guaranteeing the fundamental rights.
- Lastly, democracy has rights of the citizens as its central element. The 'success and failure of the democracy depends on the extent to which the liberties are enjoyed by the citizens'.^[1]

A common device to ensure this is the fundamental rights.

Why Fundamental Rights?

- Creating conditions for pursuit of happiness.
- Resolving conflict between collective liberties of society and the individual liberties.
- Preventing state tyranny.
- Correcting historical errors of the society.
- Modernizing the society.
- Preserving democracy.

Why Fundamental Rights are Needed for India?

Indian society is characterized by religious and linguistic diversity and cultural differences. So to build confidence in the minds of the religious and linguistic minorities fundamental rights need to be guaranteed. Guaranteed fundamental rights are the antidote to communalism and casteism. When the individual is guaranteed with the rights such problems might get resolved on their own.

Secondly, the guaranteed fundamental rights would build a set of values in the society and regulate the conduct of the individuals and state, especially the legislature and the executive.

Thirdly, the fundamental rights will act as a reminder for the legislature and the executive whenever there is a violation of the rights.

Fourthly, the rights would enable the citizen to organize himself against any such measure.

Fifthly, the experience India had under the British rule. The brutal use of the state's power against its own subject was witnessed before independence and hence, such situations must be prevented in the free India.

¹ Professor Laski: Liberty in the Modern State: Discussion on implications of democracy.

Sixthly, Indian society has been a strictly hierarchically organized society in which the status differential was prominent. The status difference has conferred the special status and associated privileges to certain sections and rendered another section deprived. As a consequence, the 'enterprising middle class was denied equality of opportunity in securing a fair share in the administration'.⁽²⁾ To remedy such wrongs, they were elevated as fundamental rights.

There is another view that Indian society is different from other societies that Indian society is a 'state built society' within the framework of the constitution. Though India existed as a cultural space for centuries, the political unification and organizing the society of modern times is more done by the state. This can be understood by the prescription of values like socialism by the constitution to the society. Article 38 expressly provides for 'securing social order' based on justice. So, in this process there is every possibility for the state to assume a greater power that may be adversely affecting the rights of the citizen. Hence, the fundamental rights are guaranteed.

GUARANTEED FUNDAMENTAL RIGHTS: MEANING AND NEED

Guaranteed fundamental rights refer to such rights that are enforced in a court of law. Without being enforceable, the fundamental rights become meaningless. Hence, they need to be guaranteed due to the following reasons:

- Pattern of politics and associated controversies are not constant and they are ever-changing. Fundamental rights have to be kept out of such uncertainties and so they need to be guaranteed. Otherwise, the rights will be subjected to the free interpretation of political conditions.
- Fundamental rights must be established as legal principles which the court will apply as standards while determining the cases. Hence, they have to be kept away from the reach of the majority in the legislature and officials in the government.
- To protect the individual citizens from the excesses of the state actions.

UNENUMERATED AND ENUMERATED FUNDAMENTAL RIGHTS

Certain constitutions do not expressly enumerate the fundamental rights. They are left to be understood by the citizen by deducing them from the law. For this the citizen is required to know law. English constitution is an example. Certain other constitutions expressly mention the list of fundamental rights. For instance, Indian constitution contains a list of fundamental rights. Given the low rate of literacy in India, people cannot be expected to know law for exercising their fundamental rights. Hence, the founding fathers of the constitution chose to provide enumerated fundamental rights.

FUNDAMENTAL RIGHTS AND HUMAN RIGHTS

Important questions from Previous years' on this topics are mentioned below:

1. Discuss the provisions of the Human Rights Protection Act (1993) relating to the following:
 - (a) Definition of human rights.
 - (b) Composition of the National Human Rights Commission (NHRC).
 - (c) Functions of the commission.
 - (d) What suggestions have been made for amending the act for making the role of the NHRC effective?
2. Discuss the proposition made by the Supreme Court of India in the context of torture in prisons and human dignity.

IAS Mains 2000: GS Polity

2 Fundamental rights constituent assembly view as given in 'Constitutional Government in India': M. V. Pylee

Human rights, according to the UN Human Rights Declaration, 1948, are the rights that are fundamental to all men and women that enable them to use all possible talents, skills abilities, the power of reasoning in order to achieve maximum possible extent their material and spiritual goals. Almost all the fundamental rights included the meaning of human rights. However, these two sets of rights differ in the following

Fundamental Rights	Human Rights
Confined to the territory to which the constitution guaranteeing the fundamental rights is applicable.	Do not have any geopolitical limitations.
They are politically guaranteed. Article 32 ⁽⁴⁾ of the constitution guarantees the fundamental rights.	No political guarantee. No such guarantee is available.
Fundamental rights are enforceable by a court of law. Often, the remedies are prescribed.	Not enforceable. No remedies are prescribed.
They are not absolute. Are subjected to reasonable restrictions imposed by law. Constitution itself prescribes the grounds on which such restrictions may be imposed.	They are relatively more absolute. No restriction can be imposed on whatsoever grounds.
They are classified as those rights applicable to citizens exclusively and those available to all persons.	They are applicable to all men irrespective of citizenship.
Narrow in scope of working.	Broader in scope and encompasses even the fundamental rights.

CLASSIFICATION OF FUNDAMENTAL RIGHTS

The fundamental rights in the constitution can be classified on the certain bases such as:

- Those available to citizens and aliens
- Negatively worded and positively worded
- Limitations imposed
- Against state and/or private
- Public and private rights

Those Available to Citizens and Aliens

Some of the fundamental rights are granted only to citizens and these rights are addressed to 'citizens'. Such rights are:

- Article 15: Protection from discrimination on grounds only of religion, race, caste, sex or place of birth. Article 16: Equality of opportunity in matters of public employment.
 - Article 19: Freedoms of speech, assembly, association, movement, residence and profession.
 - Article 30: Cultural and educational rights of minorities.
- Certain other rights are available to both citizens and also to aliens. These rights are worded as 'persons'. Such rights are:
- Article 14: Equality before the law and equal protection of the laws.

⁴ Article 226 is not mentioned here because the guarantee of the fundamental rights is expressly provided in the Article 32 and Article 226 is the power of the High Courts to enforce fundamental rights. Article 32 (1) reads, 'The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this part is guaranteed'.

- Article 20: Protection in respect of conviction against *ex post facto* laws, double punishment and self-incrimination.
- Article 21: Protection of life and personal liberty against action without authority of law.
- Article 23: Right against exploitation.
- Article 25: Freedom of religion.
- Article 27: Freedom as to payment of taxes for the promotion of any particular religion.
- Article 28: Freedom as to attendance at religious instruction or worship in state educational institutions.

Negatively Worded and Positively Worded

Some of the fundamental rights are negatively worded and act as prohibitions to the state.

- Article 14: The state shall not deny to any person equality before the law.
- Article 15 (1): The state shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.
- Article 16 (2): No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the state.
- Articles 18 (1) and (2): No title, not being a military or academic distinction, shall be conferred by the state. No citizen of India shall accept any title from any foreign state.
- Article 20: No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence. No person shall be prosecuted and punished for the same offence more than once. No person accused of any offence shall be compelled to be a witness against himself.
- Article 21: No person shall be deprived of his life or personal liberty except according to procedure established by law.
- Article 22 (1): No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice.
- Article 28 (1): No religious instruction shall be provided in any educational institution wholly maintained out of state funds.

Some of the fundamental rights are positively worded which confer some benefits upon the individual. Such rights are:

- Article 25: Subject to public order, morality and health and to the other provisions of this part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion.
- Article 26: Freedom to manage religious affairs.
- Article 29: Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same.
- Article 30: All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.

Limitations Imposed

Fundamental rights are classified on the basis of the limitation they impose on the executive and legislature.

For instance, Article 21 imposes limitation on the executive but does not impose limitation on the legislature. On the other hand, the fundamental rights guaranteed by Articles 15, 17, 18, 20 and 24 completely and absolutely restrict the legislatures. The legislatures cannot regulate or restrict the exercise of the said rights.

Article 19, falls in-between these two categories of fundamental rights. Article 19 empowers the legislatures to impose restrictions on the fundamental rights on the prescribed grounds.

Against State and/or Private

Certain rights are guaranteed against the state, that is, when the state violates or infringes such rights the remedy will be available under Article 32. However, in case of any violation of such rights by private individuals then the ordinary legal remedies are available. The rights guaranteed by Articles 19 and 21 are examples.

Certain rights are available both against the state private individuals. Such rights are:

- Articles 15 (2): Equality in regard to access to and use of places of public resort.
- Articles 17: Prohibition of untouchability.
- Articles 18 (3) and (4): Prohibition of acceptance of foreign title.
- Articles 23: Prohibition of traffic in human beings and forced labour.
- Articles 24: Prohibition of employment of children in hazardous employment.

Public and Private Rights

The constituent assembly classified the fundamental rights into two broad categories, namely, public and private rights. Public rights also known as political rights are the right to choose the government, make it accountable, citizen's right to play a role in policy-making, etc. Private rights are those such as the right to personal freedom, religion, freedom of thought and expression, etc.

FUNDAMENTAL RIGHTS

The original constitution provides for a set of seven fundamental rights namely:

1. Right to equality
2. Right to particular freedoms
3. Right against exploitation
3. Right to freedom of religion
4. Cultural and educational rights
5. Right to property
6. Right to constitutional remedies

Of the seven fundamental rights, the right to property has been repealed as a fundamental right by the Constitution (44th Amendment) Act 1978.

Points to Remember

- The right to own and administer property is not an absolute right. It is subject to reasonable regulation by the state.
- Property of a religious institution can be acquired under Article 31 A (1) (a) for effecting agrarian reform.
- Right to property was omitted because validity of agrarian reform measures passed by the state legislatures led to many litigations.
- Article 31 C was inserted because of litigations relating to adequacy of compensation for the property acquisitioned by government.

Right to Property

Original constitution provided the right to property as a fundamental right under Article 19 (1) (f) as a particular freedom and Article 31. However, the right had to be repealed as a fundamental right as it was preventing the implementation of the land reforms.

Initially, the Constitution (First Amendment) Act, 1951, inserted Article 31 A to provide for exemption, from being invalidated on the ground of conflicting with Articles 14, 19 and 31, to the laws seeking:

- Acquisitioning and requisitioning of properties.
- Taking over of the management of any property by the state for a limited period either in the public interest or in order to secure the proper management of the property.
- The amalgamation of two or more corporations either in the public interest or in order to secure the proper management of any of the corporations.

However, this exemption did not serve the purpose as it resulted in litigations relating to compensation. Subsequently, Article 31 C was inserted by the Constitution (25th Amendment) Act 1971. Article 31 C provides for exempting any law which gives effect to provisions of Article 39 (b) and (c) from being invalidated even if it violated any of the fundamental rights. Despite this the disputes relating to the compensation kept rising. This finally resulted in the omission of right to property as a fundamental right.

Right to Property Omitted

The Constitution (44th Amendment Act) 1978, renumbered Article 38 as Article 38 (1) and inserted clause 2 to Article 38. Article 38 (2) reads as follows:

'The state shall, in particular, strive to minimize the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations.'

This amendment paved the way for the omission of the right to property as a fundamental right.

Right to Property Still a Fundamental Right

However, the right is still a fundamental right to certain category of people. Such categories are as follows:

- According to Article 31 A, the state cannot acquisition or requisition the property of any person if:
- The property is agricultural land within the limits of ceiling imposed by the law.
- It is under his personal cultivation. It is his only means of livelihood.

In such case, the property becomes a fundamental right as Article 31 A is within part III (fundamental rights) of the constitution and hence, the remedy under Article 32 is available to any violation of the right.

According to Article 26, any religious denomination or group is entitled to own, acquire and maintain property, both immovable and movable, in accordance with law. This is part of the fundamental right to freedom of religion.

According to Article 30 (1A), inserted by the Constitution (44th Amendment Act) 1978, confers the property rights of the educational institutions established by minorities. In case the property owned by such institutions is to be acquisitioned then 'the state shall ensure that the amount fixed by or determined under such law for the acquisition of such property is such as would not restrict or abrogate the right guaranteed under that clause'. In case of any dispute in this regard, the remedy lies under Article 32.

Hence, right to property is still a fundamental right to the above three categories of people. For the rest, the right to property has been made a constitutional right. The 44th Amendment inserted Article 300A, which makes right to property a constitutional right.

Application to Jammu and Kashmir

Since the state of Jammu and Kashmir has been accorded a special status, the fundamental rights are applicable to the state subject to the Constitution (Application to Jammu and Kashmir) Order, 1954. Accordingly:

- In Article 13, the references 'the commencement of the constitution' shall be read as the commencement of the Constitution (Application to Jammu and Kashmir) Order, 1954.
- Article 16 (3) is not applicable to the state of Jammu and Kashmir. The Parliament is empowered to enact law for the prescribing 'residence' as a qualification for public employment in any state.
- Article 19 (1) (f): Though the provision is omitted by the Constitution (44th Amendment) Act, for the purpose of Jammu and Kashmir, it shall read as 'to acquire, hold and dispose of property'. So, the permanent resident of Jammu and Kashmir will have the right to acquire, hold and dispose of property.
- Article 30 (1 A): Is not applicable to Jammu and Kashmir.
- Article 31 (Right to Property): This is inserted after Article 30.
- Article 31 C is not applicable to the state of Jammu and Kashmir.
- Article 32 (3) is not applicable to Jammu and Kashmir.
- Article 35 A shall be inserted after Article 35.

Right to Property in Jammu and Kashmir: Article 31

Article 31 was inserted under the Constitution (Application to Jammu and Kashmir) Order, 1954. It deals with the compulsory acquisitioning of property. The provisions of Article 31 are as follows:

- No person shall be deprived of his property save by authority of law.
- No property shall be compulsorily acquired or requisitioned save for a public purpose and save by authority of a law which provides for acquisition or requisitioning of the property for an amount which may be fixed by such law or which may be determined in accordance with such principles and given in such manner as may be specified in such law; and no such law shall be called in question in any court on the ground that the amount so fixed or determined is not adequate or that the whole or any part of such amount is to be given otherwise than in cash:

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

- Where a law does not provide for the transfer of the ownership or right to possession of any property to the state or to a corporation owned or controlled by the state, it shall not be deemed to provide for the compulsory acquisition or requisitioning of property, notwithstanding that it deprives any person of his property.
- Nothing in sub-clause (f) of clause (1) of Article 19 shall affect any such law as is referred to in clause (2).

Practice Questions

1. According to the National Human Rights Commission Act, 1993, who amongst the following can be its Chairman?
 - (a) Any serving judge of the Supreme Court
 - (b) Any serving judge of the High Court
 - (c) Only a retired Chief Justice of India
 - (d) Only a retired Chief Justice of a High Court
2. Consider the following statements.

A constitutional government is one which:

 1. Places effective restrictions on individual liberty in the interest of state authority.
 2. Places effective restrictions on the authority of the state in the interest of individual liberty.

Which of the statements given above is/are correct?

 - (a) 1 only
 - (b) 2 only
 - (c) Both 1 and 2
 - (d) Neither 1 nor 2
3. For the application of fundamental rights by state includes:
 - (a) The government and Parliament of India
 - (b) The government and legislatures of the states
 - (c) All local authorities
 - (d) All of the above
4. If any provision of an act which is contrary to a fundamental right or unconstitutional, only the offending provision would be declared void and not the whole act. This is known as:
 - (a) Doctrine of eclipse
 - (b) Doctrine of severability
 - (c) Doctrine of harmonious construction
 - (d) Doctrine of liberal interpretation
5. Which among the following is NOT a feature of the fundamental rights?
 - (a) A fundamental right is a right which an individual possesses against the state.
 - (b) Fundamental rights are protected against infringement by the executive, legislature and the judiciary.
 - (c) Fundamental rights are limitations on legislative power.
 - (d) All constitutional rights are fundamental rights.
6. The fundamental rights as envisaged under Articles 12-35 are:
 - (a) Absolutely flexible
 - (b) Can be amended
 - (c) Not justiciable
 - (d) Cannot be amended at all
7. Which among the following statements is NOT correct?
 - (a) Legal right is protected and enforced by the ordinary law of the land.
 - (b) A fundamental right is protected and enforced by the constitution.
 - (c) Ordinary rights can be changed by the common legislative process.
 - (d) A fundamental right cannot be altered even by a constitutional amendment.
8. Consider the following:
 1. A fundamental right can be altered only on a constitutional amendment.
 2. The fundamental rights are binding upon the state.
 3. The fundamental rights are enforceable only against the state.
 4. All fundamental rights are limitations on the legislative power.

Which of these is correct regarding the fundamental rights?

 - (a) 1, 3, 4
 - (b) 1, 2, 3
 - (c) 1 and 2
 - (d) 1, 2, 3, 4
9. Consider the following:
 1. The fundamental rights protect citizens against the growth of unhindered government power whereas the Directive Principles of State Policy (DPSP) safeguard the citizen from the concentration of private power.
 2. The DPSPs are on one hand assurances to the people as to what they can expect of the government and on the other, are certain principles that the citizens have to uphold in their social life.

Correct statements

- (a) 1 only
- (b) 2 only
- (c) Both 1 and 2
- (d) Neither 1 nor 2

10. Which among the following statements is NOT implied in the Constitution of India?

- (a) The fundamental rights are provided against all encroachments by the state.
- (b) The powers are divided and entrusted in different agencies with checks and balances in order to secure the fundamental rights to the citizens.
- (c) The constitution delimits the respective spheres of activity of the state and the individual and erects a wall between the government and the people.
- (d) The legitimacy of the majority rule is derived from the existence of the rights of the citizen.

11. Which among the following are the reasons for including the fundamental rights in the Constitution of India?

- 1. Fundamental rights provide the conditions favourable for the maximum development.
 - 2. The suppression suffered in the hands of foreign rule.
 - 3. The need for setting the conditions under which the will of the majority is to be formed and exercised in a democracy.
- | | |
|---------------|---------------|
| (a) 1, 2, 3 | (c) 1 only |
| (b) 1, 2 only | (d) 2, 3 only |

12. Assertion (A): Written fundamental rights are not of much practical value as the abstract declarations are useless unless there exists the will and means to make them effective.

Reason (R): The real guarantee of liberty lies in an effective public opinion and the existence of a government that is amenable to such public opinion.

- (a) Both A and R are true and R is the correct explanation of A.
- (b) Both A and R are true but R is NOT the correct explanation of A.
- (c) A is true but R is false.
- (d) A is false but R is true.

13. Which among the following is/are the purpose of guaranteed fundamental rights?

- 1. To withdraw certain subjects from the changing pattern of political controversy and to place them beyond the reach of a majority in the legislature.
- 2. To keep certain subjects within the changing pattern of political controversy and

to place them beyond the reach of the officials in the government and establish them as legal principles applied by the courts.

3. The liberties of the citizens must not depend on the outcome of elections
- | | |
|-------------|---------------|
| (a) 1, 2, 3 | (c) 1, 3 only |
| (b) 3 only | (d) 2 only |

14. Which one of the following reflects the utility of the fundamental rights in a democracy?

- (a) The necessity of fundamental rights arises only when autocracy rules.
- (b) The fundamental rights are implied in the sovereignty of the Parliament.
- (d) Fundamental rights provide an opportunity to the citizens to create a public opinion against autocratic measures of the state. Equality before law is so general and has no specific application that it cannot be by itself a matter of litigation.

15. Consider the following: The guaranteed Bill of Rights offsets the problem of communal, religious or caste problems.

- 1. Communalism is irrelevant to politics where irrespective of religious differences citizens can join together for the management of affairs of state.
- 2. Communalism is a cultural problem and it will solve itself if the individual is guaranteed his freedoms.

Correct statements

- | | |
|-------------|---------------|
| (a) 1, 2, 3 | (c) 1, 3 only |
| (b) 3 only | (d) 2 only |

16. Which of the following is NOT an implication of fundamental rights for the administration?

- (a) They act as a parameter within which the administrative system is expected to function.
- (b) It makes it an obligation to protect the rights of the personnel and refrain from making any policy that infringe such rights.
- (c) It demands the inculcation of the positive values of empathy, sympathy, secularism, equity and justice in the administration.
- (d) It demands the administrative system to play a reactive role in effecting good governance.

- 17.** The Fundamental rights guaranteed by the constitution under Part III are available against
- Both the state and private individuals
 - State only
 - State, public and private administration
 - State and private bodies and private enterprises
- 18.** Which of the following fundamental rights are available only to the citizens of India?
- Right to equality of opportunity in matter of public employment
 - Equality before law
 - Right to freedom of religion
 - Right to freedom under article 19
- | | |
|----------------|-------------|
| (a) 1, 2, 3, 4 | (b) 1 and 4 |
| (c) 1, 2, 3 | (d) 2 and 4 |
- 19.** Which among the following provisions is NOT found in the original Constitution?
- (a)** Right to Equality
(b) Right to Particular Freedom
(c) Right to Property
(d) Right to Education
- 20.** Consider the following:
- Article 15
 - Article 17
 - Article 18
 - Article 25
- Which of the above is NOT guaranteed against both State and private individuals?
- 1 and 2 only
 - 2 and 3 only
 - 1, 2 and 3 only
 - 1, 2, 3 and 4

Answer Key

- 1.** (c), **2.** (b), **3.** (d), **4.** (b), **5.** (d), **6.** (c), **7.** (d), **8.** (c), **9.** (a), **10.** (b),
11. (a), **12.** (a), **13.** (c), **14.** (c), **15.** (a), **16.** (a), **17.** (b), **18.** (b), **19.** (d), **20.** (c)

Hints and Explanations

1. (c)

- National Human Rights Commission consists of a Chairman and four other members.

Qualifications:

- Chairman: retired CJI
- Members:

1 – retired SC judge

1 – retired Chief Justice of High Court

2 – knowledge and practical experience in matters relating to human rights

Refer National Human Rights Commission Act, 1993 Section 3

2. (b)

- Fundamental rights are classified on the basis of the limitation they impose on the executive and legislature
- Certain rights are guaranteed against the state, that is, when the state violates or infringes such rights the remedy will be available under Article 32.
- Certain reasonable restrictions are placed on individual liberty in the interest of larger community and not state authority.

Refer Page 6.6 and 6.7

3. (d)

Article 12 provides for the definition of State which includes:

- Government and Parliament of India
- Government and the Legislature of each of the States
- All local or other authorities within the territory of India or under the control of the Government of India

4. (b)

Self-explanatory

Refer Chapter 17

5. (d)

- Fundamental Rights are only those provided under Part III of the Constitution.

Refer Pages 6.4-6

6. (b)

- Part-III of Constitution consists of Fundamental Rights from Articles 12 to 35.
- These are justiciable i.e., can be enforced by a court of law.

Refer Page 6.4 – Table

7. (d)

Fundamental Rights are protected and guaranteed by the constitution whereas, legal rights are protected and enforced by ordinary law. FRs can only be changed by amending the Constitution itself while, legal rights can be changed by the legislature by ordinary process of law making

8. Consider the following

(c)

- Fundamental Rights can be enforced against both State and private individuals.

Refer Page 6.6

9. Consider the following

(a)

- The state personifies the collective liberties of the society and in that process may assume absolute power resulting in tyranny.
- This can be prevented only by guaranteeing the fundamental rights.
- DPSPs are certain principles for the legislature and executive to uphold during policy making and implementation.

Refer Page 6.2 - Page 10.15

10. (B)

- Indian Constitution is based on a delicate principle of limited separation of powers and checks and balances.
- This means that each organ of the government has a clear area of functioning.
- The limited sphere of activity of State does not erect a wall between people and government.

Refer Page 6.2 and 6.3

11. (c)

Reasons for fundamental rights:

- Creating conditions for pursuit of happiness
- Correcting historical errors of the society
- Preserving democracy
- Resolving conflict between collective liberties of society and the individual liberties
- Preventing state tyranny
- Modernizing the society

Refer Pages 6.2 and 6.3

12. (a)

Self-explanatory

Refer Page 6.3

13. (c)

- Fundamental rights have to be kept out of political uncertainties and controversies.
- Otherwise, the rights will be subjected to the free interpretation of political conditions.
- To protect the individual citizens from the excesses of the state actions

Refer Page 6.3

14. (c)

Utility of Fundamental Rights:

- Creating conditions for pursuit of happiness.
- Resolving conflict between collective liberties of society and the individual liberties.
- Preventing state tyranny.
- Correcting historical errors of the society.
- Modernizing the society.
- Preserving democracy

Refer Page 6.2

15. (a)

- Guaranteed fundamental rights are the antidote to communalism and casteism.
- When the individual is guaranteed with the rights such problems might get resolved on their own.

Refer Page 6.2

16. (d)

- Fundamental Rights in administration demands the system to play a pro-active role in effecting good governance.

17. (b)

- All fundamental rights are guaranteed by the Constitution against State actions.
- Few rights are also available against private individuals like Articles 15, 17, etc.

Refer Pages 6.6

18. (b)

- Rights available ONLY to citizens are Articles 15, 16, 19, 29 and 30

Refer Page 6.4

19. (d)

- Article 21A: Right to Education was inserted by Constitution (Eighty-Sixth) Amendment Act, 2002.

Refer Page 6.6

20. (c)

- Article 25: Freedom of conscience and free profession, practice and propagation of religion – is available only against the State.

Refer Page 6.6

Fundamental Rights: Right to Equality

Learning Objectives

After reading this chapter, you will be able to:

- Learn the fundamental 'Right to Equality'
- Understand the concept of equality, discrimination, reservation, consequential seniority, etc.
- Know the difference between titles and awards
- State the difference between caste and racial discrimination

INTRODUCTION RIGHT TO EQUALITY

Right to equality is guaranteed by Articles 14, 15, 16, 17 and 18. The peculiar problems and characteristic features of India demanded dealing with equality in detail and elaborately.

Article 14: Right to Equality

'The source of Article 14 lies in the American and the Irish constitutions. It may be mentioned that the Preamble to the Indian constitution speaks of equality of status and of opportunity and this article gives effect to that principle in the text of the constitution. In a sense, the demand for equality is linked-up with the history of the freedom movement in India. Indians wanted the same rights and privileges that their British masters enjoyed in India and the desire for civil rights was implicit in the formation of the Indian National Congress in 1885.'⁽¹⁾ Hence, Article 14 is considered the principle that forms the basis for all the other fundamental rights. Article 14 contains two parts namely, equality before law and equal protection of law. Plainly looked both look identical but are distinct from each other. According to Supreme Court, in the Indra Sawhney versus Union of India case, Right to Equality forms one of the basic features of the constitution and cannot be taken away.

Important questions from Previous years' on this topics are mentioned below:

Discuss how Constitution of India provides equal rights?

IAS Mains (2004) GS

1 Supreme Court: As given in Constitution of India, Bare Act – P. M. Bakshi 13th edition page 31.

Do You Know?

The essence of Rule of Law is: Absence of arbitrary power or supremacy of the law.

- Equality before law.
- The constitution is the result of the ordinary law of the land.

Equality Before Law

It conforms to Dicey's concept of Rule of Law. It implies that no person shall be granted any privilege on the ground of birth, creed or the life. It also prevents any preferential treatment favouring anyone. It implies a complete absence of discrimination. It is negative in its effect. Equality before law is a corollary of the Rule of Law. Thus, it declares that:

- All persons are equal.
- The law is supreme and above any person irrespective of his social, financial, political or any other status.
- Every person is amenable to the jurisdiction of the ordinary tribunals, irrespective of his rank or status.

However, the concept does not propound absolute equality. What is guaranteed is not identical treatment but similarity of treatment. The concept permits discrimination based on proper rationality. Parliament needs to apply its experience and judgement in classification for conferring benefits to a particular group. Such reasons which form the basis of the special treatment must withstand the test under Article 14.

Exceptions to Article 14

The constitution, by Article 361, grants exception to President of India and the Governors of states from Article 14. According to Article 361:

1. The President, or the Governor of a state, shall not be answerable to any court for the exercise and performance of the powers and duties of his office or for any act done or purporting to be done by him in the exercise and performance of those powers and duties.
2. No criminal proceedings whatsoever shall be instituted or continued against the President, or the Governor of a state, in any court during his term of office.
3. President, or the Governor of a state cannot be imprisoned on any ground and the courts must not issue any warrant to arrest the President or the Governor of a state.
4. Any civil proceedings may be instituted against the President, or the Governor of a state, during his term of office in any court in respect of any act done or purporting to be done by him in his personal capacity only if:
 - A notice in writing has been delivered to the President or the Governor two months in advance.
 - The notice must contain the nature of the proceedings, the cause of action therefore, the name, description and place of residence of the party by whom such proceedings are to be instituted.

Apart for the President and the Governor of the state, the following persons are also granted immunity from Article 14:

- No criminal or civil proceedings can be instituted against the rulers of foreign countries and their ambassadors in India.
- The United Nations and its agencies are entitled to diplomatic immunity.
- Members of Parliament and of state legislatures are not liable in respect of anything done or said within the House⁽²⁾ (Articles 105 and 194).

2 For details of the Legislative Privileges refer Chapter 14.

Equal Protection of Law

It is a positively worded concept. Ivor Jennings, an expert in the constitutional law, puts forth the view that 'Equal protection of law', implies that among equals, the law should be equal and equally administered, that is likes should be treated alike. It means every person being subjected to 'equality of treatment in equal circumstances'.

Right to Equality	
Equality before law	Equal protection of law
<ul style="list-style-type: none"> • Negative in application. • Manifests as rule of law and promotes equality. 	<ul style="list-style-type: none"> • Positive in application. • Manifests as justice and upholds equity.

In other words, it means the right of being treated equally in similar circumstances both in conferring the privileges and in imposing the liabilities by the laws. The basic premise of equality of treatment is that persons who are equally circumstanced shall be treated equally. Persons who are unequally circumstanced should not be treated equally. It means 'the like shall be treated alike and the unalike shall not be treated alike'. Therefore, no one must be extended any favour or preferentially treated nor anyone must be subjected to any disadvantage without any reasonable justification.

Thus, it permits policies like differential taxation and reservation. Not every person shall be taxed equally but only such persons under 'same character shall be taxed by the same standard'. Hence, the Article 14 permits classification of people for the purpose of law or implementation of a policy. The principle does not take away from the state the power of classifying persons for legitimate purposes.⁽³⁾ However, such classification must be 'reasonable' and must be directly related to the purpose of law/policy.

Thus, 'equal protection' guarantees equal treatment of persons in 'equal circumstances', and permits differentiation, not discrimination in different circumstances. 'The principle of equality does not mean that every law must have universal application for all persons who are not by nature, attainment or circumstance, in the same position as the varying needs of different classes of persons often requires separate treatment.'⁽⁴⁾

According to the Supreme Court the basis of classification may be:

- Geographical
- Difference in time
- Difference in the nature trade or occupation to regulated

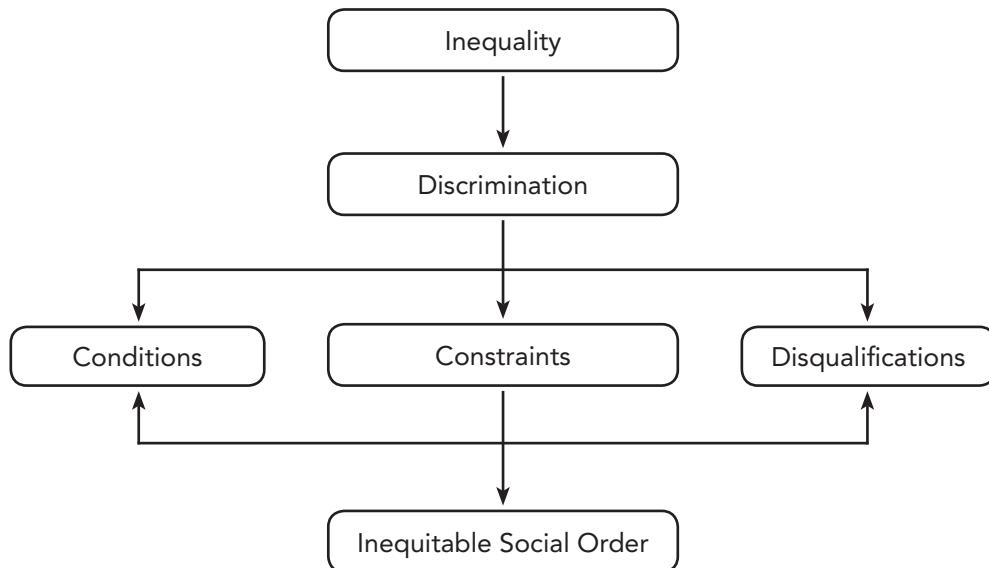
In effect, equal protection of law emphasizes on equity. The access to resources and benefits must be granted to all in a just, fair and equitable manner and transparently. In a modern civil society, rule of law is the cardinal principle of governance. This applies to the distribution of the benefits of the state schemes also. The distribution of such benefits must be protected against nepotism and vested interest. To quote the Supreme Court, 'The act of governance has to withstand the test of judiciousness and impartiality and avoid arbitrary or capricious actions.'

Article 15: Right Against Discrimination

Article 15 provides for the right against discrimination. Any traditional society is organized on the basis of a hierarchy and Indian society is no exception. Hence, a mere declaration of equality in general is not enough. Such hierarchy results in a sort of discrimination. The discrimination manifests as certain

3 Chiranjitlal vs Union of India: AIR 41, 1950 SCR 869, 1951.

4 Supreme Court: Dhirendhra vs Legal Remembrancer case (1954 AIR 424, 1955 SCR 224) and Sarbananda Sonowal vs Union of India Case (AIR 2005 SC 2920).



conditions or constraints or disqualifications imposed on a section of the society upon exercising their right. Article 15 seeks to address this.

Article 15 (1) prohibits the state from discriminating any citizen 'on the grounds only of religion, race, caste, sex, place of birth or any of them'. Article 15 (2) reads 'No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subjected to any disability, liability, restriction or condition with regard to:

- Access to shops, public restaurants, hotels and places of public entertainment.
- The utilization of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of state funds or dedicated to the use of the general public.'

While Article 15 (1) is a prohibition imposed on the state, Article 15 (2) is imposed on both the state and the private individuals. That is, in case of any infringement of the right by the state then constitutional remedy, against the state, under Article 32 is available. Similarly, by Article 15 (2), in case of any discrimination by a private individual also the constitutional remedy under Article 32 is available.

Connect

- Discrimination refers to the unequal treatment or unfair treatment based on certain extraneous characteristics.
- Preferential treatment refers to giving priority to one person over others based on certain extraneous characteristics.

Significance of the Term 'Grounds Only of' and 'or Any of Them'

The constitutional remedy is guaranteed available when the discrimination is on anyone of the grounds given in Article 15. In case the discrimination was on any ground other than those given Article 15, no constitutional remedy is available. For instance, if the state prohibits recruiting women in the frontline combat force or reserve job of nurse to women, it is not discrimination. Here the differential treatment is not on the ground of gender alone but more due to the physical and intellectual fitness.

The phrase 'or any of them' is also significant. It means that any act is discriminatory if it is based on anyone of the grounds mentioned in Article 15. The presence of anyone ground is enough for the court to grant relief and it is not necessary for all the grounds to be present.

Is the Caste Discrimination in India, Racial Discrimination?

In the World Conference against Racism held in Durban in September 2001, some of the *Dalit* activists raised the issue of discrimination against *Dalit* in India as racial discrimination. However, the government of India opposed this move on the ground that the discrimination in India is more a caste-based discrimination and it must not be considered as racial discrimination. While racial discrimination is based on the morphological features such as the stature, skin complexion, etc., discrimination in India is more on the basis of caste, which is an ascriptive value. Caste is inherited from the father and the discrimination in India is based on the birth not on the appearance.

Further, the discrimination in India is practised in a hierarchy as the conditions, constraints and the disqualifications are imposed on every caste in the hierarchy. But the *Dalits* being at the lower most rung of the hierarchy are the most affected. The conditions, and constraints imposed on they exercising the rights and the disqualifications to which they are subject is unacceptable. Hence, the caste-based discrimination in India is not similar to the racial discrimination practised in any other country in the world.

Exception to Article 15

According to Article 15 (3), the state is empowered to make any special provision for the development of women and children. In case such measures provide for a differential treatment to women and children, they shall not be unconstitutional.

Similarly, Article 15 (4), provides the 'special protection' to 'socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes'. This clause (4) was inserted by the Constitution (First Amendment) Act 1951. The amendment was made to enable the implementation of reservation in public employment guaranteed by Article 16 (4). It enables the state to discriminate positively (Positive Discrimination) in order to formulate and achieve the welfare of the people. Such discrimination is not considered unconstitutional.

The Constitution (93 Amendment) Act, 2005 inserted Article 15 (5). This clause empowers the state to enact law to extend the reservation relating to admission to educational institutions, in favour of backward classes, Scheduled Castes and Scheduled Tribes. However, this is not applicable to any educational institution established by a linguistic or religious minority.⁽⁵⁾

Article 16: Right to Equal Opportunity in Matters of Public Employment

Article 16 provides for the right to equality of opportunity to all citizens of India in public employment. To guarantee the fundamental right to equality of opportunity and employment in public offices is the central objective of Article 16. This right is guaranteed only to citizens and not available to any other person. Further, it is applicable only to employment or appointment to an office 'under the state'.

According to Article 16 (2), 'Citizens of India must not be disqualified or declared ineligible to any public employment on the grounds only of religion, race, caste, descent, place of birth, residence or any of them'. The phrases 'on the grounds only of' and 'or any of them' have the significance as they had for Article 15.

The constitution specifies these grounds because in Indian society the occupation was largely determined by the caste to which a person belongs. As a matter of tradition, women were declared ineligible to several employment activities outside the accepted practices. Religion had been a ground on which people were subjected to discrimination. However, Article 16 (5) provides that 'the incumbent of an

5 Refer Article 30 for details

office in connection with the affairs of any religious or denominational institution or any member of the governing body thereof shall be a person professing a particular religion or belonging to a particular denomination'.

'Descent' has been included in the ground in order to prevent caste as a basis of recruitment must not be indirectly included. Place of birth and residence is also included in the grounds. Since constitution provides for single citizenship and the right to practice any profession throughout the territory of India, place of birth and residence must not be a qualification requirement.

However, residence may be a necessary qualification in case of certain posts. In such cases, the power to prescribe the residence as qualification is vested in the Parliament and the states do not have the power to make rules in this regard (Article 16 (3)). This is intended to avoid the recruitment being influenced by any parochial tendency. The selection test must uniform throughout India. This implies that the state can prescribe qualifications necessary for employment which is not unconstitutional. The qualifications may relate to physical fitness, loyalty to state, integrity, etc. The state is also empowered to conduct selection tests on the basis of which the candidate may be graded and selected. Here, the only condition is that the test must not arbitrary and uniform to all qualified candidates.

The Public Employment (Requirement as to Residence) Act, 1957 was enacted under Article 16 (3). In the state of Andhra Pradesh and in the Union Territories of Himachal Pradesh, Manipur and Tripura, for employment to certain posts and services, residence as condition for employment in certain posts and services was prescribed by the law. When the act expired in 1974, Article 371 (D) was inserted by 32 amendment. Article 371 (D) is the special provision for Andhra Pradesh and Telangana 'having regard to the requirement of each state for equitable opportunities and facilities for the people belonging to different parts of such state, in the matter of public employment and in the matter of education, and different provisions may be made for various parts of the states'.⁽⁶⁾

Theory of Justice

- Reservation given in Article 16 (4) is the operational concept of the equal protection of law guaranteed by Article 14.
- It reflects the theory of justice propounded by John Rawls
- According to the theory:
 1. Every person in a society is entitled to the same liberties as every other person is entitled.
 2. When there is a conflict between achieving equity and maintaining equality, the latter (equality) shall be compromised to guarantee equity. Once equity is achieved, social justice is ensured and equality will be automatically restored.

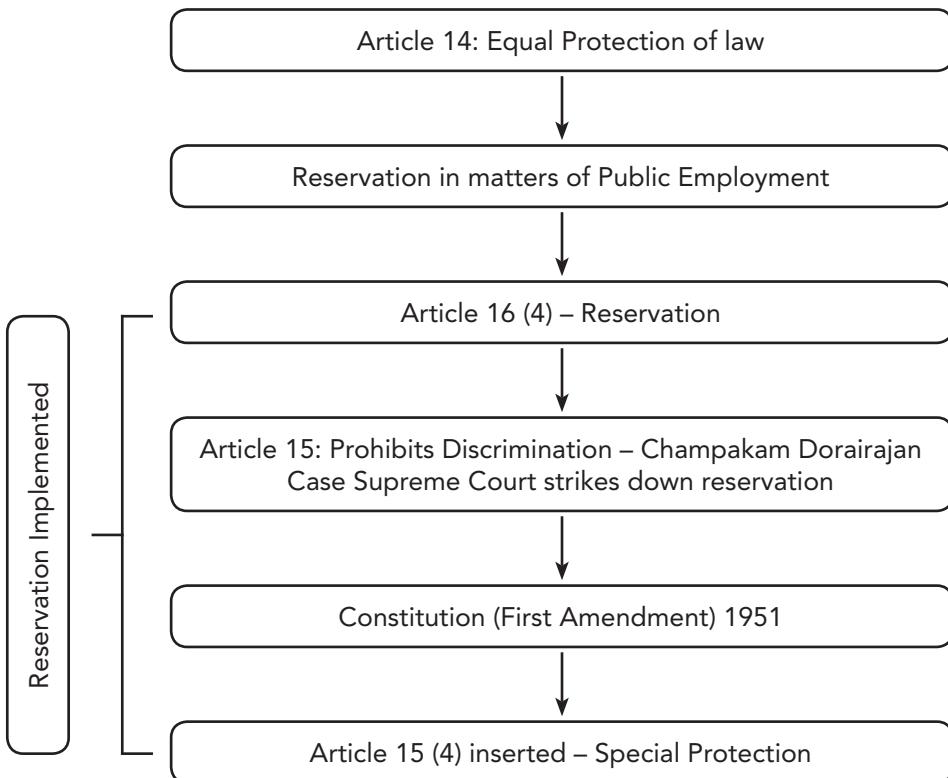
Article 16 (4): Reservation

Reservation in matters of employment is guaranteed by Article 16 (4). It reads that 'Nothing in this article shall prevent the state from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the state, is not adequately represented in the services under the state.'

Reservation is important 'in a country where there are different strata of society ranging from highly sophisticated to lowly backward the concept of equality will drive the latter to the wall. Their condition would become worse than what it is. So, in order to give a real opportunity to them to compete with the better placed people'⁽⁷⁾ reservation is guaranteed by Article 16 (4). Article 14, provides for 'equal protection of law' which forms the basis of reservation.

6 Article 371 D

7 Supreme Court: Trilok Nath vs State of Jammu and Kashmir AIR, 1, SCR (1) 103, 1969.



However, reservation policy could not be implemented as Article 15 prohibits any discrimination on the ground of caste. In 1951, the then Madras government passed an order to reserve seats in educational institutions in favour of various communities. The order was invalidated by the Supreme Court in the Champakam Dorairajan versus state of Madras. Overriding this judgement, Constitution (First Amendment) was enacted in 1951.

The amendment inserted Article 15 (4), which provided for the concept of 'Special Protection'. By this, the state is empowered to positively discriminate citizens in order to promote and implement the welfare policies such as reservation policy. As a consequence, reservation policy was implemented by which 15% of the seats in the public employment were reserved in favour of Scheduled Castes (SCs) and 7.5% for Scheduled Tribes (STs). This in turn, triggered the demand for reservation by the backward classes other than SCs and STs. However, the demand was not conceded immediately.

Subsequently, in 1953, Kaka Kalelkar Commission was appointed to inquire into the demand. The commission submitted its report in 1955. According to the commission, the causes of educational backwardness amongst the educationally and backward communities were:

- Traditional apathy for education on account of social and environmental conditions or occupational handicaps.
 - Poverty and lack of educational institutions in rural areas.
 - Living in inaccessible areas.

The report listed 2399 castes as backward castes and 837 among the 2399 as 'most backward'. However, the report was not implemented.

Later in 1979, the Moraji Desai government appointed the 'Backward Classes Commission' under the chairmanship of B. P. Mandal. The Mandal Commission submitted its report in 1980 recommending reservation in favour of the backward classes other than the SCs and the STs. The report was not implemented immediately and was kept in freeze.

In 1990, the then Prime Minister, V. P. Singh announced that the government accepted the Mandal Report and implemented the 27% reservation for the OBCs at all levels of the central government jobs and services. This resulted in the anti-reservation protest and a case was filed against reservation in the Supreme Court – Indra Sawhney vs Union of India case.

Mandal Commission Case^[8]

The Supreme Court in the Indra Sawhney's case (popularly known as the Mandal Commission case) ruled that:

1. Reservation in the matter of employment guaranteed in Article 16 (4) is constitutional and covers the backward classes also.
2. Article 16 (4) confers a discretionary power on the state to make reservation. But reservation is not constitutional right of the backward classes.
3. 'Backward Class' is not identified by the constitution. But a lower caste can be considered as backward class as caste, occupation, poverty and social backwardness are integrated to each other. 'A caste may by itself constitute a class.' Identification of backward classes is subjected to judicial review.
4. The term 'backwardness' for the purpose of Article 16 (4) is mainly social and need not both social and educational as contemplated in Article 15 (4).
5. Those who have income above that limit to be fixed by the state are referred to as the 'cream layer'. Income or the extent of property can be taken as a measure of social advancement and on that basis the 'creamy layer' of a given caste can be excluded.
6. Backward classes who are not adequately represented in the services under the state are eligible for reservation.
7. The reservations in any given year must not exceed 50 % of the total vacancies for the year and should not be related to the total strength of the class, service or cadre, etc.
8. Reservation under Article 16 (4) is confined to initial appointment only and cannot extend to providing reservation in the matters of promotion.

Reservation and Article 335

Although, Article 16(4) does not expressly impose any limitation on upon the power of reservation, it needs to be read along with Article 335. Article 335 reads 'the claims of the members of the Scheduled Castes and Scheduled Tribes shall be taken into consideration consistently with the maintenance of efficiency of the administration.' Hence the constitution requires the state to ensure that reservation does not compromise quality.

However, this does not take away the power of the state to prescribe any standard of evaluation that is lower than those applied to others in favour of the members of the SC and ST.

Reservation in Matters of Promotion

After the Mandal Commission case judgement, the demand for providing reservation in matters of promotion in favour of the SCs and STs was made. The employment under the state at any level will not in any way alter the social status of a person belonging to SC or ST community or increase his ability to compete with other belonging to upper caste. Therefore, reservation in matters of promotion favouring SCs and STs must be granted.

Since the Supreme Court has ruled that reservation must be confined to first level of recruitment only, it required a constitutional amendment. Subsequently, the Constitution (77 Amendment) Act, 1995 was enacted. The amendment inserted Article 16 (4A), which provided for reservation in matters of promotion in favour of SC and ST. The Constitution (85 Amendment) Act, 2001 provided for the 'reservation in promotion with the consequential seniority'.

⁸ Supreme Court: (Mandal Commission case) Indra Sawhney vs Union of India case AIR 1993 SC 477, 1992 Supp 2 SCR 454.

Consequential Seniority

'Consequential seniority' is judicially evolved concepts to control the extent of reservation. The source of these concepts is in service jurisprudence. In case a person gets promoted to the next higher level from the level in which he is at present due to the reservation policy under Article 16 (4A), then he may be occupying a senior position in the department which could be possible for a person without reservation to attain only after few more years of service. Thus, such a person gains seniority in service due to the reservation in promotion. However, this was challenged in the Nagraj case on the grounds that:

- It is destructive of the efficiency of administration inasmuch as by this means the higher echelons of administration would be occupied entirely by members of reserved categories.
- Giving consequential seniority in addition to accelerated promotion constituted conferment of double benefit upon the members of the reserved category.
- It would result in reverse discrimination in the percentage of representation of the reserved category officers in the higher cadre.

However, the court ruled that it cannot be said that by insertion of the concept of 'consequential seniority' the structure of Article 16 (1) stands destroyed or abrogated.

Constitution (Eighty-first Amendment) Act, 2000

The amendment inserted Article 16 (4B). This clause provides that the seats reserved for the SC and ST must remain vacant in case adequate number of eligible candidates was not found. Such unfilled vacancies must be treated as separate class of vacancies to be filled in any succeeding year. If needed a special recruitment drive must be conducted to fill those vacancies.

Rights of Persons with Disabilities Bill, 2014^[9]

The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 is replaced by the bill. The bill covers 19 conditions of disabilities whereas the existing law covers only seven disabilities specified.

- The bill guarantees the persons with disabilities, the right to equality, life with dignity and respect for his or her integrity equally with others. The bill makes it an obligation to the governments to ensure that the right to live in community of disabled persons. The disabled persons must not be obliged to live in any particular living arrangement.
- The bill provides for certain benefits such as reservations in education and employment, preference in government schemes, etc. to persons with at least 40% of a disability.
- The rights and entitlements conferred on the disabled persons by the bill include friendly access to all public buildings, hospitals, modes of transport, polling stations, etc.
- The bill provides for two types of guardians for a mentally ill person namely, a limited guardian and a plenary guardian. The District Courts is empowered to award a mentally ill person who is incapable of taking care of him. A limited guardian takes decisions jointly with the mentally ill person. A plenary guardian takes decisions on behalf of the mentally ill person, without consulting him.
- The bill prescribes a punishment of imprisonment up to six months, and/or fine of ₹10,000 for the violation of any provision of the act.
- The bill prescribes that the Election Commission of India and the State Election Commissions shall ensure that all polling stations are accessible to persons with disabilities and all materials related to the electoral process are easily understandable by and accessible to them.
- The bill makes it an obligation of the state to take specific measures to promote and facilitate inclusive education.

9 Refer the Rights of Persons with Disabilities Bill, 2014 text.

Article 17: Abolition of Untouchability

Article 17 reads that 'Untouchability' is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of untouchability shall be an offence punishable in accordance with law.' However, the constitution does not define the term untouchability. Several members in the constituent assembly debates highlighted this and demanded that it be defined. According to Srijut Rohini Kumar Chaudhury, 'Untouchability' means any act committed in exercise of discrimination on, grounds of religion, caste or lawful vocation of life mentioned in clause 4 of Article 15.⁽¹⁰⁾

In Indian society untouchability refers to the practice of imposing social restrictions to a section of people with respect to 'sharing food, access to public places, offering prayers and performing religious services, entry in temple and other public places and denial of access to drinking water, sources, etc.'⁽¹¹⁾

'The principal object of Article 17 is to ban the practice of untouchability in any form. This expression refers to the social disabilities imposed on certain classes of persons by reason of their birth in certain caste and does not cover social boycott based on conduct.'⁽¹²⁾ Abolition of untouchability is essential for achieving equality. Establishing 'equality to status and of opportunity' as declared by the constitution requires the abolition of untouchability.

Connect

- Untouchability refers to the social practice of enforcing religious disabilities, social disabilities or refusing to sell goods or render services.
- Exclusion, humiliation-subordination and exploitation are the three dimensions of untouchability.

Article 18: Abolition of Titles

Article 18 prohibits the state from conferring any title on any person. However, this prohibition is only upon the conferring any title in general and not on conferring military or academic titles. It also prohibits the citizens of India accepting any title from any foreign state. In case, a citizen of India is conferred with a title by any foreign state, then he shall accept the title only with the previous consent of the President of India.

The prohibition is imposed on any person who is a foreign national who holds an office of profit or trust under the state, Government of India or any state or any public sector. Even such a person can accept the title from a foreign state only with the previous consent of the President of India.

Conferring title is inherently undemocratic. Further, conferring title on any person might be influenced by political interest or motive of the party in power. This will result in unduly recognizing a person who may deserve such recognition. Thus, it could be ridden by favouritism and corruption. According to Sardar Patel, 'The title is often being abused for corrupting the public life of the country, and, therefore, it is better that it should be provided in the Fundamental Rights.'⁽¹³⁾ Dr. Ambedkar opined that every citizen of India is duty-bound by the constitution in not accepting any title or using such titles conferred on him to claim any special entitlement or distinguished social status.

Titles and Awards (Honour)

By this the constitution does not the state from bestowing an award or an honour on citizens recognizing his excellence in any field. Title and honours are different. 'A title is something that hangs to one's

10 Constituent Assembly of India Debates (Proceedings) Volume III.

11 Untouchability Offences Act, 1955.

12 Supreme Court: Devarajah vs Padmanna case: AIR 1958 Kant 84, AIR 1958 Mys 84, (1958).

13 Constituent Assembly Debates: Volume III-the 30th April 1947.

name.⁽¹⁴⁾ In this respect the state confers awards such as Padma Awards and Bharat Ratna. The awardees enjoy a superior status and this is even recognized by the warrant of precedence.

These awards were instituted by the notification of the President in 1954. According to the notification, 'any person without distinction of race, occupation, position, or sex shall be eligible for the medal'.⁽¹⁵⁾ There had been objections to the conferment of these awards on the ground that it is violating Article 18. Further, this amounts to make a comparative evaluation of merits of person who excelled in two altogether different fields. Such comparative evaluation is not practicable and may not be objective. Hence conferring such awards was opposed. Subsequently, the Janata government discontinued the awards. Later, in 1980 the awards were revived.

Later in the Balaji Raghavan versus Union of India case (1997), the conferring of the awards was challenged on the ground that it is an infringement of equality as they are being conferred on undeserving persons. The Supreme Court ruled that the National Awards do not violate the principle of equality as they do not amount to 'titles' for the purpose of Article 18. Recognizing merit does not conflict with the principle of equality. Since then the awards are conferred on the meritorious persons.

14 Constituent Assembly Debates: Volume III-the 30th April 1947.

15 President's notification: Government Gazette, January 3 1954.

Practice Questions

- 1.** Which one of the following statements are correct?
- Article 15 (3) prevents the state from making provision for women and children.
 - Nothing in Article 15 shall prevent the state from making provision for women and children.
 - Prevents the state to make separate laws for disabled only under Article 15(3).
 - Special provisions are made for foreign diplomats under Article 15.
- 2.** According to the Supreme Court, the backwardness contemplated by Article 16 (4) is:
- Social and educational
 - Social, educational and economical
 - Economical and educational
 - Only social
- 3.** Article 15 of the constitution provides for the state power to make provisions for the advancement of:
- SCs
 - STs
 - Women
 - Socially and educationally backward classes

(a) 1, 2, 3	(c) 2, 3, 4
(b) 1, 3, 4	(d) 1, 2, 3, 4
- 4.** Which one of the following is NOT correct with respect to the abolition of titles as mentioned in Article 18?
- Except military or academic titles, no title shall be conferred by the state.
 - Indian citizens shall not accept any title from any foreign state.
 - Foreign nationals, holding any office of profit under the Government of India cannot accept any title from foreign state without the consent of the President.
 - The consent of the President is not required for foreign nationals, holding office under the Government of India to accept any present from any foreign state.
- 5.** Which of the following statements regarding the exemption from the application of Article 14 is correct?
- The ambassadors and envoys of foreign countries enjoy immunity from civil and criminal proceedings.
 - No person shall be liable to any civil or criminal proceeding in respect of the publication of substantially true report of any proceedings of the Parliament.
 - Members of Parliament or state legislature for anything done or said within the House
 - Any law giving effect to certain directives as per Article 31 C.

(a) 1, 2, 3, 4	(c) 1, 3, 4
(b) 2 only	(d) 1 and 4
- 6.** Consider the following:
- Article 15 strikes at the root of provincialism by prohibiting discrimination based upon one's place of birth.
 - Residence as qualification for certain purposes such as employment may not be classed with discrimination based on caste and place of birth.
- Correct statements
- 1 only
 - 2 only
 - Both 1 and 2
 - Neither 1 nor 2
- 7.** Consider the following:
- Article 18 not only prevents the state from conferring titles on any person but also forbids the Indian citizen to accept any title from any foreign state.
 - Article 18 not only prohibits the acceptance of titles but also that of any present, emoluments or office of any kind from any foreign state.
- Correct statements
- 1 only
 - 2 only
 - Both 1 and 2
 - Neither 1 nor 2
- 8.** The rights are generally classified into two categories namely political and private. Among them those which fall under the political rights does not include:
- Right to choose the rulers
 - Right to hold the rulers accountable

- (c) Right to possess arms
 (d) Right to equality
- 9.** Which one of the following reflects the utility of the fundamental rights in a democracy?
- The necessity of fundamental rights arises only when autocracy rules.
 - The fundamental rights are implied in the sovereignty of the Parliament.
 - Fundamental rights provide an opportunity to the citizens to create a public opinion against autocratic measures of the state.
 - Equality before law is so general and has no specific application that it cannot be by itself a matter of litigation.
- 10.** Which among the following is NOT implied by the Constitution of India?
- Equality means that all human beings are equal mentally and physically.
 - Equality of opportunity implies the availability of opportunity to everyone to develop his potential capacities.
 - Equality envisaged in the Preamble to the constitution is widest in scope.
 - All are incorrect.
- 11.** Which of the following types of equalities have been attempted at by the Constitution-makers through Articles 17 and 18?
- Economic equality
 - Social equality
 - Political equality
 - Religious equality
- 12.** Which of the following pairs is NOT correctly matched?
- Equality before law: Guaranteed to both citizens and non-citizens.
 - Altering the name of a state: Power of a state legislature.
 - Creating a new state: Power of Parliament.
 - Equality of opportunity in public employment: Guaranteed only to Indian citizens.
- 13.** Under the Constitution of India, Article 14, equality before law is with reference to:
- Laws enacted by legislature
 - Orders passed by the executive
 - Notifications issued by the government
 - All of the above
- 14.** Which among the following statements is NOT correct?
- The source of Article 14 lies in the English Constitution.
 - The right to equality finds place in the report drawn up by Motilal Nehru as Chairman of the Committee appointed to determine principles of the Constitution for India (1928).
 - The Karachi Resolution (March 1931) reiterated this right in the resolution on fundamental rights and economic and social change.
 - The Sapru report (1945) incorporating the proposals of the Sapru Committee, while laying emphasis on 'minorities' did enunciate the fundamental rights.
- 15.** Consider the following:
- Non-inclusion of a regional language in the 8th Schedule to the constitution is a violation of right to equality, Article 14.
 - An important consequence of the right to equality is the element of reasonableness.
- Correct statements
- | | |
|------------|---------------------|
| (a) 1 only | (c) Both 1 and 2 |
| (b) 2 only | (d) Neither 1 nor 2 |
- 16.** Match:
- List I (Articles of the Constitution of India)
- Article 14
 - Article 15
 - Article 16
 - Article 17
- List II (Provision)
- The state shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.
 - The state shall not deny to any person equality before the law or the equal protection of laws within the territory of India.
 - 'Untouchability' is abolished and its practice in any form is forbidden.
 - There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the state.

A	B	C	D
(a) 2	4	1	3
(b) 3	1	4	2
(c) 2	1	4	3
(d) 3	4	1	2

Figures are not clear. Kindly check.

- 17.** Regarding equality before law, the Indian Constitution makes exceptions in the case of
 (a) The president or a governor
 (b) Foreign sovereigns only
 (c) The president only
 (d) None

- 18.** Which of the following fundamental rights are available only to the citizens of India?

1. Right to equality of opportunity in matter of public employment
 2. Equality before law
 3. Right to freedom of religion
 4. Right to freedom under article 19
- | | |
|----------------|-------------|
| (a) 1, 2, 3, 4 | (b) 1 and 4 |
| (c) 1, 2, 3 | (d) 2 and 4 |

- 19.** Which among the following the correct expression as found in the preamble to the constitution of India?

- (a) Liberty of thought expression & opportunity
- (b) Equality of opportunity & of status & the dignity of the individual
- (c) Liberty of thought, expression, belief, faith & worship

Equality of status & opportunity assuring the dignity of individuals

- 20.** Which of the following Fundamental rights are available only to citizens of India?

- (a) Equality of opportunity in matters of public employment (article 16)
- (b) Protection life & personal liberty against action without authority of law (article 21)
- (c) Protection in respect of conviction against an ex-post facto laws (article 20)
- (d) Freedom to profess, practice & propagate a religion of one's faith (article 25)

Answer Key

-
- 1.** (b), **2.** (d), **3.** (d), **4.** (d), **5.** (a), **6.** (c), **7.** (c), **8.** (d), **9.** (c), **10.** (a),
11. (b), **12.** (b), **13.** (d), **14.** (a), **15.** (b), **16.** (c), **17.** (a), **18.** (b), **19.** (c), **20.** (a)

Hints and Explanations

1. (b)

- Article 15 (3), the state is empowered to make any special provision for the development of women and children.

Refer Page 7.5

2. (d)

- Supreme Court in the Mandal Commission case opined that the term 'backwardness' for the purpose of Article 16 (4) is mainly social and need not both social and educational as contemplated in Article 15 (4).

Refer Page 7.8

3. (d)

State has power to

- Make special provisions for women and children. (Art. 15(3))
- Make provisions for the advancement of SC, ST and any socially and educationally backward classes (Art.15(4))

Refer Page 7.5

4. (d)

- Article 18: Abolition of titles except military and academic.
- Prohibits any foreign national accepting any title from any foreign state except on the previous consent of President.

Refer Page 7.10

5. (a)

- Article 361A: No person shall be liable to any civil or criminal proceeding in respect of the publication of substantially true report of any proceedings of the Parliament
- Article 361 provides exemption from Article 14 to the President and Governor

Refer Page 7.2

6. (c)

- Article 15 (1) prohibits the state from discriminating any citizen 'on the grounds only of religion, race, caste, sex, place of birth or any of them'
- Residence as a qualification in case of certain posts can be made only by Parliament

Refer Page 7.4 and 7.6

7. (c)

- Article 18 prevents a foreign national employed under the State from accepting titles from any foreign state without consent of the President.

Refer Page 7.10

8. (d)

- Public rights are also called political rights provide people the right to choose their rulers, hold them accountable and right to possess arms.
- Private rights are those associated with individual's personal freedom like right to equality, freedom of thought and expression.

9. (c)

Utility of Fundamental Rights:

- Creating conditions for pursuit of happiness.
- Resolving conflict between collective liberties of society and the individual liberties.
- Preventing state tyranny.
- Correcting historical errors of the society.
- Modernizing the society.
- Preserving democracy

Refer Page 6.2 and 6.3

10. (a)

- Equality means that all people are entitled to same rights and opportunities.
- Mental and physical capacities are not equal among people.

Refer Page 7.2 and 7.3

11. (b)

- Untouchability refers to the practice of imposing social restrictions to a section of people.
- Titles confer a special entitlement or distinguished social status.
- Through Articles 17 and 18, Constitution attempts to ensure social equality.

Refer Page 7.10

12. (b)

- Altering name of a State is the power of Parliament under Article 3.

Refer Page 7.2 and Page 4.5

13. (d)

- Article 13 defines 'law' which includes any Ordinance, order, bye-law, rule, regulation, notification, custom or usage having in the territory of India the force of law

14. (a)

- The source of Article 14 lies in the American and the Irish constitutions.

Refer Page 7.1

15. (b)

- Non-inclusion of language is based on similarity of treatment and rationality.
- There is no absolute equality guaranteed by the Constitution.
- Article 14 allows classification of persons for legitimate purposes.
- The classification must be reasonable that is, be directly related to purpose of the law.

Refer Page 7.3

16. (c)

Self-explanatory

17. (a)

- By Article 361, President and Governor are considered exceptions to equality before law under Article 14.

Refer Page 7.2

18. (b)

Fundamental Rights available to ONLY to citizens are

- Article 16: Right to equality of opportunity in matter of public employment
- Article 19: Right to freedom

Refer Chapter 7.6

19. (c)

- Preamble declares to secure all its citizens LIBERTY of thought, expression, belief, faith and worship

Refer Chapter 7.3

20. (a)

- Article 16 provides right to equality of opportunity to all citizens of India in matters of public employment.
- Articles 20, 21 and 25 are available to all persons.

Refer Page 7.5

Fundamental Rights: Right to Freedoms

Learning Objectives

After reading this chapter, you will be able to:

- Learn the fundamental right to freedom and the reasonable restrictions
- Understand the significance of various rights to freedoms
- Know the concepts such as freedom of expression, double jeopardy, etc.
- Learn about various judgements relating to the right to freedoms and their implications

INTRODUCTION RIGHT TO FREEDOMS (ARTICLES 19–22)

The most important of all fundamental rights is personal liberty. The provisions of Articles 19 to 22 deal with personal liberty. These provisions form the backbone of fundamental rights.

Article 19: Right to Particular Freedoms

In the original constitution, Article 19 guaranteed seven freedoms namely:

1. Freedom of speech and expression (Article 19 (1) (a)).
2. Freedom to assemble peaceably and without arms (Article 19 (1) (b)).
3. Freedom to form unions, associations or cooperatives (Article 19 (1) (c)).
4. Freedom to movement throughout the territory of India (Article 19 (1) (d)).
5. Freedom to reside or settle anywhere within India (Article 19 (1) (e)).
6. Freedom of owning and acquiring property (Article 19 (1) (f)).
7. Freedom to practise any profession, or to carry on any occupation, trade or business (Article 19 (1) (g)).

Of the seven freedoms, the right to property was omitted by the Constitution (44th Amendment) Act, 1978. This has been already explained. Hence, in effect at present there are only six freedoms guaranteed by the constitution. Such rights are available only to citizens of India.

Right to Freedoms Is Not Absolute

In any civilized society the fundamental right cannot be guaranteed absolutely and without restrictions. Rights guaranteed without any restrictions will result in chaos and anarchy. To guarantee absolute fundamental rights

is detrimental to the society. 'If people were given complete and absolute liberty without any social control the result would be ruin'.⁽¹⁾ The Supreme Court in A. K. Gopalan case expressed that 'man as a rational being desires to do many things, but in a civil society his desires have to be controlled, regulated and reconciled with the exercise of similar desires of other individuals'. Therefore, in order to uphold the collective liberty of the society and enable smooth exercise of fundamental rights by every member of society, the individual rights are to be restricted. The power to impose such restrictions by law is conferred on the state by the constitution. However, such restrictions have to be only the grounds given in Articles 19 (2) to (6) corresponding to the rights guaranteed by Article 19 (1) and must be a 'reasonable restriction'.

Reasonable Restrictions—Supreme Court Guidelines

The word 'reasonable' implies intelligent care and deliberation which reason dictates. Hence, such restrictions must not be arbitrary and excessive so that it completely prevents a person from exercising his rights. The Supreme Court laid down the following guidelines to determine the reasonableness of the restrictions:⁽²⁾

- The courts have the final authority to judge the reasonableness of any restriction.
- The restrictions must have a reasonable relation with the legislation and must not exceed the objective.
- There is no standard or general pattern of reasonableness and each case shall be treated in its own merit.
- Restrictions must be reasonable from the procedural and substantive standpoints, i.e., the duration and circumstances calling for restriction should also be considered.
- The restrictions imposed for securing the objective of Directive Principles of State Policy (DPSP) can also be regarded as reasonable restrictions.
- At times, the restriction may be in the form of prohibiting or depriving the citizens of certain fundamental rights.
- While judging the reasonableness of any restriction, the courts shall confine to that question only, i.e., the law imposing such restriction should not be reviewed.

The question of reasonableness has been considered by the Supreme Court in many cases and the court has laid down several tests and guidelines. The major criterion must be to ensure that the law balances the social control and the individual rights properly. In this regard, 'the court must consider the following aspects:

- Nature of the right infringed.
- Underlying purpose of the restriction imposed.
- Evils sought to be remedied by the law, its extent and urgency.
- How far the restriction is or is not proportionate to the evil.
- Prevailing conditions at the time'.⁽³⁾

Further, the Supreme Court⁽⁴⁾ had held that 'the considerations which generally prevail and must be satisfied in judging the validity of a law in the context of reasonable restrictions are whether the:

- Law imposes a restriction on the freedom in question.
- Restrictions have been imposed by law.
- Restrictions are reasonable.
- Restrictions besides being reasonable, is imposed for one of the specified purposes relevant to the freedom in question as enumerated in the applicable clause out of clauses (2) to (6) of the article'.

1 Wills: Constitutional law and the United States.

2 Chintaman Rao vs. State of MP: AIR 118, 1950 SCR 759, 1951 and State of Madras vs. V. G. Row and other cases, 1952 AIR 196, 1952 SCR 597.

3 *Ibid.*

4 As given in Constitution of India: P. M. Bakshi 9th edition, page 37.

Article 19 (1) (a): Freedom of Speech and Expression

This is an indispensable right in a democracy. 'Freedom of speech ... lay the foundation of all democratic organizations, for without free political discussions no public education, so essential for the proper functioning of the process of popular government is possible'.⁽⁵⁾ It means right to express one's own convictions and opinion freely by words of mouth, writing, printing, pictures, gestures or any other modes.

Significance of Freedom of Speech and Expression

Every member of a society needs to be guaranteed the liberty to form his opinion and belief and express it to others freely. Preamble declares that the citizens of India shall have the 'liberty of thought, expression, belief, faith and worship'. The four broad purposes which the freedom of speech and expression serves are namely:

1. Enabling an individual to attain self-fulfilment.
2. Assisting an individual to discover the truth.
3. Building the capacity of an individual so that he effectively takes part in the decision-making process.
4. It helps in balancing the social change without affecting the social stability.

Self-fulfilment—What the Constitution Seeks to Achieve?

- It refers to making one feel complete and unfold the best in him.
- It represents the achievement of aspirations to the highest level.
- It is an indication that one leads a meaningful life worth living.

Scope of the Freedom

Freedom of speech refers to expressing one's views by word of mouth. The term 'expression' in Article 19 (1) (a) means the freedom of expressing the views/ideas by other modes such as writing, printing, gestures, symbols, any art forms, etc., through any medium of communication.

The Supreme Court in the Union of India versus Association for Democratic Reforms case ruled that the right to vote guaranteed by Article 326 is also implied in the term 'expression'. As a logical corollary, the citizen's right to know the antecedents of the candidate contesting the election is also a right included in the freedom. So, the court directed the Election Commission to take appropriate measures to keep the voter informed about the criminal antecedents⁽⁶⁾ of the candidates. Since then, it has been made mandatory.

(a) Freedom of Expression of Dissent: The freedom includes the freedom of expressing one's dissent. 'Strike' is considered to be a form of expressing dissent. However, the Supreme Court⁽⁷⁾ ruled that *Bandh* do not fall within the fundamental right of speech. A *Bandh* is a warning to a citizen that if he goes for work or opens his shop he would be prevented. The distinction drawn between *Bandh* and a call to general strike or *Hartal* is well made out with reference to the effect of a *Bandh* on the fundamental rights of citizens. There cannot be any doubt that the fundamental rights of people as a whole cannot be sub-servant to the claim of fundamental right of an individual or only a section of the people. There can-

5 Supreme Court: Romesh Thappar vs. State of Madras case, 1950 AIR 124 1950 SCR 594.

6 Information relating to any criminal case filed against the candidate or any punishment imposed previously.

7 Communist Party of India (M) vs. Bharat Kumar, AIR 1998 SC 18.

not be any right to call or enforce a *Bandh* which conflicts, with the exercise of the fundamental rights of other citizens, in addition to causing national loss in many ways.

Strike—How it is Viewed?

- In many countries including the UK and Germany protest from workers is viewed as industrial action.
- Industrial action may be in the form of strike or refusing to work overtime.
- In Germany, strike is permitted by law if organized by a trade union based on the voting of the members supporting the strike.
- In the USA, the Taft-Hartley Act, 1947, bans strike by public and government servants.
- In UK, there is no legal ban on strike but the unions enjoy legal immunity and protection for calling for an industrial action.
- The Canadian Supreme Court, in 2015, declared that strike is a right.

Further, in the Tamil Nadu government employee's case the court ruled that the right of 'collective bargaining' of the trade unions does not include the right to strike. The government employees calling for strike was held unconstitutional. The court ruled that strike is 'neither a fundamental right nor a constitutional right nor a democratic right'.

(b) Criticism Hate Speech and Sedition: The Cambridge dictionary defines criticism as 'an act of giving opinion or judgement about the good or bad qualities of something or someone'. It is an act of appreciation or assessment. The state must not prohibit criticism against the actions of the state. It is implied in the freedom of speech and expression and falls well within the scope of the right.

However, the freedom does not permit abusing or slandering or hate speech. 'Hate speech is speech perceived to disparage a person or group of people based on their social or ethnic group such as race, gender, age, ethnicity, nationality, religion, sexual orientation, gender identity, disability, language ability, ideology, social class, occupation, appearance (height, weight, skin colour, etc.), mental capacity, and any other distinction that might be considered by some as a liability. The term covers written as well as oral communication and some forms of behaviour in a public setting'.⁽⁸⁾

In the competitive politics of the present-day, hate speech has become fashion and adopted to strike immediate attention and popularity. But it is destructive and obstructs the purposes which the freedom of speech serves. It creates rift among the united society, divide people and endangers harmonious coexistence. It can also sow seeds of sedition, parochialism and ultimately tear the social fabric apart.

Similarly, the right does not permit any sedition against the state. It is not included in the freedom of speech and expression. According to Indian Penal Code (IPC), 'When the words have the pernicious or intention of creating public disorder or disturbance of law and order', it is known as sedition. That is any expression intended to create hatred or contempt against the government of India is considered an act of sedition under Section 124A of IPC.

Important questions from Previous years' on this topics are mentioned below:

What do you understand by the concept 'freedom of speech and expression'? Does it cover hate speech also?
IAS Mains (2014 GS Paper 2)

Council of Europe's Manual on Hate Speech

The manual regards the following types of hate speech:

- Racial and religious hate
- Homophobia
- Negationism
- Threat to democratic order
- Hate speech and internet

(c) Right to Know: Right to speech and expression implies the right of the citizen to know what the government does in his welfare and with the tax money collected from the citizen. Thus, the freedom comes to confer the right to information on the citizen. In the L. K. Koolwal versus State of Rajasthan case 1986, the Supreme Court ruled that, 'A citizen has a right to know about the activities of the state. The privilege of secrecy which existed in old times, (namely) that the state is not bound to disclose the facts to the citizens or the state cannot be compelled by the citizens to disclose the facts, does not survive now. Under Article 19 there exists the right of freedom of speech. Freedom of speech is based on the foundation of freedom of right to know'. However, the state has the power to impose reasonable restrictions in case the right to know affected national security or nation's integrity.

(d) Freedom of Press: The freedom of expression also includes the freedom to elicit opinions from others. It is based on the principle of peoples' the 'right to know'. It includes not only the right to express one's opinion and elicit opinion of the others but also to propagate such opinions through printing and publishing through print electronic, cyber and mass media. Thus, it leads to the freedom of press, i.e., freedom of press is implied in Article 19 (1) (a). 'Freedom of the press is not expressly mentioned in Article 19 but has been held to flow from the general freedom of speech and expression guaranteed to all citizens'.⁽⁹⁾ Freedom of press is thus, implied in the freedom of expression. The freedom of press has not been given expressively in the constitution in order to:

- Prevent the divisive forces abusing or misusing the freedom.
- Prevent any hurting of the sentiments of the minorities.
- Prevent any form of expression that may affect the social fabric adversely.
- Prevent the political parties, caste and communal associations using the right to serve their vested interest.

Freedom of press flows from the citizen's right to know. The mandate of the constitution is that the press must report only such information what the citizen wants to know and what is constructive and progressive. In the Sushil Chowdhary versus State of Tripura case (1997), the court ruled that freedom of speech and press, are not so much for the benefit of the press, as for the benefit of the general community. Government's duty to ensure circulation of newspapers arises, because the community has a right to be supplied with information, and government owes a duty to educate the people within the limits of its resources.

Further, the court had advised the press must be careful and responsible in exercising this right. The Supreme Court in the Hari Jai Singh case held that the press 'Could not escape responsibility for careless publication'. It was case of a newspaper falsely publishing a news that the Petroleum Minister unduly using his discretion to extend favour to the sons of a senior judge of Supreme Court and the son of the Chief Justice in allocating petrol outlets.

Such freedom is therefore, subjected to the reasonable restrictions on the grounds given in Article 19 (2). Thus, the Constitution of India provides for the pre-censorship of press even during the normal times. It is unknown in other democracies like the USA and Britain. They have censorship only during the emergency times.

⁹ Supreme Court: Printers Mysore vs. Assistant Commercial Law Officer: 1994 SCR (1) 682, 1994 SCC (2) 434.

The censorship of press in India is done through the imposition of reasonable restrictions. This becomes all the more absolute during the time of emergency as Article 19 remains suspended subjected to Article 358. The pre-censorship of motion pictures also fall under this category.

(e) Freedom of Press and Trial by Media: The freedom of press implied in Article 19 (1) (a) at times results in the overenthusiastic media reporting which results in 'trial by media'. Human beings naturally have a thirst for sensational news. This creates competition among the media to publish their 'version of facts'. But this sort of investigatory journalism is ridden with high risk. Although this is also a part of the freedom of press, this requires to be exercised with utmost care and subjected to limits imposed by the right to reputation and right to privacy of people. Moreover, such reporting must not also be a contempt of court.

Trial by Media—Important Cases

- Sheena Bohra murder case
- Priyadarshini Mattoo case
- Jessica Lal case
- Nitish Katara murder case
- Bijal Joshi rape case

The press while reporting must not cause any damage to the reputation of or cause defamation to any individual or hamper the legal process of trial of a case in the court. 'Dignity of the court and fairness of trial', would be paramount in the trial of any case and that must not be infringed on any account. This is fully consistent with the right of freedom of speech and expression, as Article 19 (2) empowers the state to reasonably restrict the right.

Grounds of Reasonable Restrictions

Article 19 (2) prescribes the grounds on which the right to freedom of speech and expression can be restricted. Accordingly, the right can be restricted on the grounds of the 'interests of the sovereignty and integrity of India, the security of the state, friendly relations with foreign states, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence'.^[10] Of these the 'interests of the sovereignty and integrity of India', was added by the 16th Amendment Act 1963, in the wake of the DMK movement in Tamil Nadu.

Article 19 (1) (b): Freedom of Assembly

The constitution guarantees to all citizens the right to assemble in any place within the territory of India. But the assembly must be 'peaceable and without arms'. Democracy implies the right to assembly. The right to hold meetings and taking out processions is also implied in the right. Any disorderly or riotous assembly does not enjoy the protection of Article 19 (1) (b).

Indian Penal Code (IPC) Section 141 defines the 'unlawful assembly'. According to IPC, unlawful assembly means an assembly of five or more persons if the common object of the persons composing that assembly is:

1. To overawe by criminal force, or show of criminal force, the central or any state government or Parliament or the legislature of any state, or any public servant in the exercise of the lawful power of such public servant.

10 Constitution of India: Article 19 (2).

2. To resist the execution of any law, or of any legal process.
3. To commit any mischief or criminal trespass, or other offence.
4. By means of criminal force, or show of criminal force, to any person, to take or obtain possession of any property, or to deprive any person of the enjoyment of a right of way, or of the use of water or other incorporeal right of which he is in possession or enjoyment, or to enforce any right or supposed right.
5. By means of criminal force, or show of criminal force, to compel any person to do what he is not legally bound to do, or to omit to do what he is legally entitled to do.

Grounds of Reasonable Restrictions

Article 19 (3) empowers the state to restrict freedom of assembly on the grounds of public order and to maintain the sovereignty and integrity of India. The Supreme Court has ruled that the right can be exercised only on the public land. Further, imposing any restriction to maintain traffic in any area is also a reasonable restriction under Article 19 (3). However, the restrictions cannot ‘absolute prohibition at least in normal times’.

Article 19 (1) (c): Freedom to form Association

Every citizen of India is guaranteed the right ‘To form associations or unions or cooperative societies’. The right implies the formation of an organization or a permanent relationship between persons who share a common concern or interest. ‘The right to freedom of association covers a variety of right, so long as the association is for lawful purpose’. The right includes the right to start or continue an association, to join or not to join an association.

Meaning

According to Indian Trade Union Act, 1926, a ‘Trade union is a voluntary organization of workers pertaining to a particular trade, industry or a company and formed to promote and protect their interests and welfare by collective action. They are formed not only to cater to the workers’ demand, but also for inculcating in them the sense of discipline and responsibility’. According to the Societies Registration Act, 1860, any seven or more persons associated for any literary, scientific, or charitable purpose, or for any such purpose.

According to legal dictionary, ‘Cooperative is an association or corporation established for the purpose of providing services on a non-profit basis to its shareholders or members who own and control it’.

Grounds of Reasonable Restrictions

The right is subjected to reasonable restriction by a law on the ground of the interests of the sovereignty and integrity of India or public order or morality. However, the right can only be restricted by legislative action and cannot be restricted by executive orders.⁽¹¹⁾ Apart from the above the right is subjected to following restrictions:

- Article 33, imposes restriction upon the fundamental rights in general and bans the forming of an association or trade union for the members of armed forces.
- Any union or association formed for a lawful purpose must be registered with the government in accordance with law, within six months from the date of formation.
- The governments servants are restricted by the Civil Services Conduct rules from joining any or continue to be a member of any union or association that has not been recognized by the government.
- Only a member of the union or association can become the chairperson/president of the union. A government servant must not be a member of such union or association of which a non-member is chairperson.

11 The Supreme Court: Suresh Swami vs. State of Rajasthan, 2007 (2) WLN 389.

Article 19 (1) (c) and Article 19 (1) (a)

The right to form association and the right to strike are to be dealt with together. The Supreme Court in the Tamil Nadu government employees' strike case ruled that the right to 'collective bargaining' of the trade union does not confer them the right to strike. Although strike is a form of expressing dissent, it is neither a fundamental right, nor a constitutional right nor a legal right.

Right to Form Cooperatives, Constitution (97th Amendment) Act, 2011^[12]

The Constitution (97th Amendment) Act, 2011 enacted with the objective to enhance public faith in cooperatives and insulate them from avoidable political and bureaucratic interference. The Act inserted the term 'Cooperatives' in Article 19 (1) (c) after the association and unions.

It also inserted the Article 43 B in the Part IV, DPSP. It inserted the Part IXB 'The Cooperative Societies' after the Part IXA municipalities. This part contains 13 Articles from Article ZH to Article ZT.

These provisions are only enabling provisions, to empower the state legislatures to regulate the cooperative societies. This amendment also seeks to strike uniformity in respect of the cooperative societies through the nation.

Salient Features of the Constitution (97th Amendment) Act, 2011

The Act provides for the formation of state and multi-state cooperative societies subjected to the regulation of the law made by the legislatures.

Article 243ZI provides for the incorporation, regulation and winding up of cooperative societies based on the principles of voluntary formation, democratic member control, member economic participation and autonomous functioning.

Article 243ZJ specifies the maximum number of directors of a cooperative society to be not exceeding twenty-one members. However, the number of members of the board can be regulated by the state legislatures.

Article 243ZJ also makes it an obligation that the state law to provide for reservation on the board of every cooperative society:

1. One seat for the Scheduled Castes or the Scheduled Tribes.
2. Two seats for women, which have individuals as members from such categories.

Term of Office: The elected board and its office-bearers shall have a fixed term of five years from the date of election. That is, the term of office of the office-bearers is coterminous with the term of the board. (Article ZJ)

Casual Vacancy: In case of occurrence of a casual vacancy (vacancy in the board before the expiry of the term of office) the board can fill it by nomination of members. Such members must be nominated from the same class of members in respect of which the vacancy has occurred. The nomination can be done only in case where the term of office of the board is less than half of its original term of five years.

Cooperatives in India—A historical view

- First Cooperatives Act was enacted in 1904.
- 'Urban Cooperative Credit Society' registered in Kanjivaram, Madras Presidency in October, 1904 was India's first cooperative organization.
- In 1914 Maclagan was appointed to study progress of cooperatives in India.
- Government of India Act, 1919 brought cooperatives to the provincial list.
- R. G. Saraiya Committee on cooperative planning was set-up in 1945.
- Committee recommended that cooperative societies to be the most suitable medium for democratization of economic planning.

12 This is the highlight and important provisions of the law.



Co-opted Members: Persons having experience in the field of banking, management, finance or specialization in any other field relating to the objectives of the cooperative society can be co-opted members of the society. The state legislature is empowered to make provisions in this regard by law:

1. The number of co-opted members shall not exceed two in addition to the 21 directors.
2. The co-opted members do not have the right to vote or be eligible to be elected as office-bearers of the society.

Election: The election to the board has to be conducted before the expiry of the term of the board. The newly elected members must assume office before the expiry of the term of office of the outgoing board.

The power of superintendence, direction and control of the preparation of electoral rolls is to be vested in the authority as prescribed by the law of the state legislature.

The concerned authority shall be empowered to conduct the election in accordance with the procedures and guidelines made by the state legislature by law.

Suspension of the Board: Any board cannot be suspended or superseded for a period of six months. It also defines the causes on which the board can be suspended or superseded as:

1. Persistent default.
2. Negligence in the performance of its duties.
3. The committing any act prejudicial to the interest of the cooperative society.
4. Stalemate in the constitution of the board.
5. Failure of the conduct of the election to the board in accordance with the provisions of law.

Administrator: In case the board is suspended or superseded an administrator shall be appointed to manage the affairs of the board. It is the responsibility of the administrator to arrange for the conduct of the election and the handing over of the management of the board to the newly elected board.

Limits to the Power of Suspension of the Board: The board in which the government has no shareholding cannot be suspended or superseded.

Accounts and Audit (Article 243ZM): It provides for independent professional audit. The following are mandatory requirements of the audit:

- Maintenance of accounts of cooperative societies.
- Auditing of accounts once in each financial year within six months of the close of the financial year to which such accounts relate.
- Lay down the minimum qualification and experience of auditors auditing firms which shall be eligible for auditing accounts.
- Auditor shall be appointed by the general body of the cooperative society from a panel approved by the state government or an authority authorized by state government.
- The audit report of an apex cooperative society defined by the state act, which shall be laid before the state legislature in the prescribed manner which may be provided by the state act.

Filing of Return (Article 243ZP)

1. Every cooperative society shall have to file return within six months of close of financial year to the designated authority.
2. The return should include the following matters relating to:
 - Annual report of its activities.
 - Audited statement of accounts.
 - Plan for surplus disposal as approved by the general body of the cooperative society.
 - List of amendments to the bye-laws of the cooperative society.
 - Declaration regarding holding of general body meeting and conduct of elections when due.
 - Any other information required by the registrar in pursuance of any of the provisions of the state act.

Right to Information: Every member of the cooperative society shall have the right to access to the books, information, and accounts of the society kept in regular transaction of its business with such member (Article 243ZO). This is subjected to the provisions of the law of the state legislature.

The state law must provide for the cooperative education and training for its members.

Offences and Penalties: The following are regarded as offence under the law:

- Wilfully making false returns
- Furnishing false information
- Wilfully defaulting on supplying of information
- Wilfully disobeying summons without reasonable excuse
- Wilfully failing to handover books in custody
- Corrupt practices

Article 19 (1) (d): Freedom of Movement

The constitution guarantees every citizen of India is the right to freedom of movement within the territory of India. The right is in consonance with the single citizenship. The right enables the movement of the citizen throughout the country and intermingling of people belonging to different particle. Thus, enables cultural interaction and exchange. This is part of 'nation-building' process. Free movement and cultural interaction would also prevent the rise of parochial tendencies and divisive forces.

Going Abroad

The right to free movement also includes the right to travel/go to a foreign country and returning back to India. Although the constitution does not provide this expressly, the Supreme Court, in the Maneka Gandhi case ruled that the right includes the right to travel abroad. The National Commission to review the working of the constitution recommended that the right to going abroad should be included in Article 19 (1) (d) by an amendment. However, it is yet to be included.

Grounds of Reasonable Restrictions

The right may be reasonably restricted on the grounds of Article 19 (5) on the grounds of public interest and the protection of interest of the Scheduled Tribes.

Other Restrictions on Free Movement

Important questions from Previous years' on this topics are mentioned below:

What are the constitutional limitations on the free movements of Indians throughout the country?

IAS MAINS (2006)

The free movement within territory of India can be restricted on certain other grounds than given in Article 19 (5) are:

- The special status conferred to Jammu and Kashmir. Although the right to free movement is guaranteed to every citizen throughout India it is subjected to the provisions of the constitution of Jammu and Kashmir within the state.
- Freedom of movement is curtailed in respect of the restricted areas such as military areas, etc.
- In case of preventive detention under Article 22.
- The freedom of movement is curtailed the privileges of the legislatures, Parliament and state legislatures (Articles 105 and 194).
- The restrictions imposed by a law of Parliament on the free trade under Article 302 will in effect restrict the free movement of persons also. Similarly, the restrictions imposed by a law of state legislature on

- the free trade under Article 304 will in effect restrict the free movement of persons also.
- The freedom of movement is restricted by the power of the Supreme Court and high courts within their premises.
- The freedom of movement is restricted in respect of the private properties and institutions such as educational institutions, industrial set-up, etc., in accordance with the rules of such institutions.

Article 19 (1) (e): Right to Freedom of Residence and Settlement

Every citizen of India has the right to reside and settle anywhere within the territory of India. This is a corollary and complementary to the right to movement and serves the same purpose as the right to movement. The objective of the right is to remove the barriers within different parts of India.

The right is, therefore, subjected to reasonable restrictions on the same grounds as the right to free movement, namely public interest and the protection of interest of the Scheduled Tribes. The freedom is restricted in the interest of the Scheduled Tribes to enable them to preserve their unique culture, traditional knowledge and remain away from the influence of other sections of the society.

Article 19 (1) (g): Right to Freedom of Profession and Occupation

It provides for the right to freedom to practise any profession, or to carry on any occupation, trade or business to every citizen of India. According to the Supreme Court, the right is guaranteed in order to ensure that the citizens' right to business does not depend on the grant of the state. The state cannot prevent anyone from undertaking a business except by a law and only imposing the 'reasonable restrictions'. According to Article 19 (6), the state can impose reasonable restrictions on the right on the ground of 'public interest'.

Conditions

The right is subjected to certain conditions and Article 19 (6), prescribes two conditions namely:

1. The state may prescribe 'professional or technical qualifications necessary for practicing any profession or carrying on any occupation, trade or business'. For instance, to be practice the doctor's profession one needs to have graduated in medicine and must have registered with the Medical Council of India.
2. The state or a corporation owned or controlled by the state, may monopolize or partially exclude the citizens and carry on any trade, business, industry or service. For instance, the railways in India are operated only by the union government.

Such conditions are not to be considered as restriction and challenged on the ground of being unreasonable. The conditions are imposed in the public interest. Apart from the above there are few other conditions interpreted by the Supreme Court in various cases. Such conditions are:

- The right is only to carry on a legal business which is not immoral and not causing danger to the public. It does not apply to immoral business or occupation.
- The state may prescribe a license and a fee for acquiring the license.
- The business, occupation or profession may be subjected to certain laws regulating the same. For example, the Minimum Wages Act.
- The state may impose certain taxes, for example, the state may impose professional tax or income tax, service tax, etc.
- The state may regulate certain aspects of a profession, for example, the law firms are prevented from advertising themselves and marketing.
- 'There is no fundamental right to do trade or business in intoxicants the state possesses the right of complete control over all aspects of intoxicants viz., manufacture, collection, sale and consumption, and the nature of trade is such that the state confers the right to vend liquor by

farming out either in action or on private treaty, and the rental collected is neither a tax nor an excise duty, but a consideration for the agreement for grant of privilege by the government'.⁽¹³⁾

Article 19 (1) (g) and Free Trade

The provisions of Articles 301 to 307, deal with trade, commerce and intercourse within the territory of India. Article 19 and the provisions of free trade are to be read together. These provisions are complimentary. Articles 301 to 307 provide the conditions required for the fullest enjoyment of the freedom guaranteed by Article 19 (1) (g).

Free Trade

Trade: Buying or selling of goods.

Commerce: All forms of transportation such as by land, air and water.

Intercourse: Movement of goods from one place to another place.

Free Trade, Commerce and Intercourse

Articles 301 to 307, knit India into a single economic unit. This is possible only when the free movement and exchange of goods throughout the territory of India. Before independence, India was divided into many sovereign regions which was not conducive for free trade. Article 301 aims at removing these barriers and promote the free movement goods.

Article 301, makes the trade, commerce and intercourse throughout the territory of India free. The Supreme Court ruled that freedom is not from all laws but from such laws which restrict the activities of trade and commerce. It grants freedom from laws which go beyond regulations which burdens, restricts or prevents the free trade movements between states and within states.⁽¹⁴⁾

Restrictions on Free Trade, Commerce and Intercourse

The free trade between one state and another can be restricted by the law of the Parliament on the ground of public interest (Article 302). The ground of restriction is same as for the right to profession guaranteed by Article 19 (1) (g). This power is vested in the Parliament in order to avoid any restriction being imposed parochial grounds and political reasons by the states.

According to Article 303, neither the Parliament nor the state legislature can make any law which may discriminate between states with respect to the free trade. It prohibits any discrimination or preferential treatment to any state. However, the Parliament has the powers to give preference for any state or any region when the state or the region is facing scarcity of the goods (Article 303 (2)).

Article 304, empowers the state to impose reasonable restrictions on the free trade if it is required in the general public interest. But the bill has to be introduced in the state legislature only with the previous recommendation of the President.

The states enact law to impose any tax on goods imported from other states or the Union Territories (UTs) to which similar goods manufactured or produced in that state are subjected. The tax is imposed to avoid discrimination between goods imported in to and goods manufactured or produced in the state.

Exemption

Any law providing for state monopoly on any trade, commerce or profession is immunized from Articles 301and 303.

13 Supreme Court: Nashirwar vs. State of M.P., Sat Pal and Co. vs. Lt. Governor of Delhi, Khoday Brewing and Distilling Industries Limited vs. State of Tamil Nadu, AIR 1990.

14 Supreme Court: Jindal Stainless Steel Limited vs. State of Haryana, civil appeal number 3453/2002.



Interstate Commerce Commission

Article 307 authorizes the Parliament to appoint an Interstate Commerce Commission.

Article 20: Protection in Respect of Conviction for Offences

Article 20 extends protection in matters relating to conviction for an offence. It provides for three kinds of protection namely protection against:

1. Retrospective law: Article 20 (1)
2. Double Jeopardy: Article 20 (2)
3. Self-incriminating evidence: Article 20 (3)

Article 20 (1)

It primarily provides for the protection against the retrospective laws. According to Article 20 (1), any person can be punished only for the violation of law. The law which is violated must be in force when the offence was committed. The punishment must not exceed the one prescribed by the law which is said to have been violated. To sum up, Article 20 (1) implies that:

- Any act committed violating a law is an offence.
- To be counted as an offence, the law said to be violated must be in force at the time when the act was committed.
- A law must not be given retrospective effect. That is, any act must not be declared as an offence by a law passed after the act was committed. However, the condition applies only for a criminal law. A civil law can be given a retrospective effect.
- The punishment for the offence must not exceed beyond what is prescribed in the law.

Meaning

Offence: An act of violating a law in force.

Double jeopardy: Prosecuting and punishing a person for the same offence more than once.

Ex post facto law: A law which is given a retrospective force.

Double Jeopardy

Article 20 (2) reads that 'no person shall be prosecuted and punished for the same offence more than once'. Prosecuting and punishing a person for the same offence more than once is known as 'double jeopardy'. According to Supreme Court, for the protection of Article 20 (2) is available:

- There must have been committed an offence.
- There must have been a prosecution initiated against the person in a court of law.
- The court convicting the person for the offence and punished by the court.
- A prosecution is initiated against the person again in the court.

Disciplinary Proceedings Not Double Jeopardy

In case a person, who had committed an offence, is prosecuted and punished by a court of law, is dismissed from service on the ground of conviction, then should it be considered as double jeopardy? Will the protection of Article 20 (2) be available in this case?

The disciplinary proceeding will not be double jeopardy. Only when there occurs 'prosecution and punishment', twice for the same offence, it will be double jeopardy and protection of Article 20 (2) will be

available. In case of the disciplinary proceeding, no prosecution takes place. It is only the consequence of the conviction; breach of contract and the person loses the moral ground of continuing in service.

Self-Incriminating Evidence

Article 20 (3) protects any person from being compelled to give self-incriminating evidence. No person shall be compelled to be a witness in his own case. According to the Supreme Court the protection is available if:

- There was an offence committed.
- The person accused of the offence is compelled to be witness.
- The witness must be against himself.
- The element of compulsion must be present.

However, the protection is available only in case in which a person is compelled to be a witness against himself. In case the witness is not against oneself, then the person can be compelled to give witness before a court. The court has ruled that when a person summoned by the court as a witness he must appear before the court. Failing which the court has the powers to order that he be arrested and produced before the court.

Important questions from Previous years' on this topics are mentioned below:

- | | |
|--|--|
| <p>(a) State the amplitude of Article 21 of the constitution.</p> <p>(b) What are the rights within the ambit of Article 21 of the Indian constitution? <i>IAS MAINS (2012)</i></p> <p>(c) What is right to life and personal liberty? How have the courts expanded its meaning in recent years?</p> | <i>IAS MAINS (1998)</i>
<i>IAS MAINS (2006)</i> |
|--|--|

It is to be noted that any object or document recovered from the offender in a search and seizure operation is not to be considered as self-incriminating.

Article 21: Protection of Life and Personal Liberty

According to Article 21, 'No person shall be deprived of his life or personal liberty except according to procedure established by law'. Thus, it provides for right to life and personal liberty.

'If read literally, Article 21 is a colourless article and appears to be negative in its grammatical form. But it has been given a positive effect by judicial interpretation. The right is a fundamental right, enforceable against the state; and judicial decisions have imposed, on the state, several positive obligations. It has been included in the constitution as a fundamental right in order to place it beyond the reach of ordinary legislation inspired by political motives'.⁽¹⁵⁾

Right to Life

This is one of the most widely interpreted provisions and has the maximum amplitude. The Supreme Court has ruled that 'Life', in Article, 21 is not merely the physical act of breathing. According to Indian philosophy, life is lived at many levels. Thus, the right to life is on a right to mere animal existence but a right to live with human dignity. The right includes the life which includes the 'finer graces of human civilization'. The Article 21 is a canopy under which various other rights 'have found shelter, growth and nourishment'. Thus, it has come to include a variety of other rights as 'implied rights'.

15 Observations of the Supreme Court in various cases.



Implied Rights

Implied rights are those rights which are not guaranteed by any provision of the constitution but have been propounded by the court. Any condition or right that takes part in the exercise and enjoyment of any of the fundamental rights guaranteed by the constitution shall also be a fundamental right. It is irrespective of whether it has been given in the Part III of the constitution or elsewhere in the constitution or even if it is not given in the constitution. Such rights flow as a consequence of the given right and hence are known as implied rights.

Supreme Court virtually rendered this fundamental right a repository of various human rights. Thus, it includes:

- Right to healthy environment which in turn includes the right to pollution-free water and air and protection against hazardous industries
- Free education up to 14 years of age
- Emergency medical aid
- Right to health
- Privacy
- Right to shelter
- Right to livelihood, which includes right of succession
- Timely medical treatment in government hospital
- Right, not to be driven out of a state
- Right to fair trial
- Right to speedy trial
- Right to free legal aid, where conviction for an offence may involve loss of life or personal liberty

Thus, the scope of Article 21 has been expanded. It has resulted in the emergence of various doctrines like doctrine of natural justice, doctrine of public trust,⁽¹⁶⁾ etc. It has given scope for the emergence of rights such as the rights of the prisoners and right against torture and inhuman treatment. It has expanded the application of writ of habeas corpus to prisoners serving a sentence if they are subjected to torture by the prison authorities. According to the Supreme Court, an undertrial or convicted prisoner cannot be subjected to a physical or mental restraint which:

- Is not warranted by the punishment awarded by the court.
- Is in excess of the requirements of prisoner's discipline.
- Constitutes human degradation.

The court has also ruled that the right to free legal aid and speedy trial under Article 39A as an integral part of right to life. The court in the Narendra Kumar versus State of Haryana case ruled that 'right to livelihood is an integral facet of the right to life'.

Right to Life Versus Right to Die

The constitution guarantees the right to live by Article 21. It is the right to live until the natural death. It does not include the right not to live and therefore, is not a right to die. Therefore, the right does not include euthanasia and committing suicide.

Attempt to Commit Suicide—Not a Crime

An attempt to commit suicide is regarded as a crime. But this has been challenged in several cases. In the Maruti Shripati Dubal versus State of Maharashtra (1986) case the Bombay High Court held that punishing a person for attempting to commit suicide is unconstitutional. This was later upheld by the Supreme Court also. In 2008, the Law Commission recommended decriminalization of Section 309 of the India Penal Code, saying: 'It is unreasonable to inflict punishment upon a person who, on account of

16 For details refer judiciary chapter.

family discord, destitution, loss of a dear relation or other cause of a like nature, overcomes the interest of self-preservation and decides to take his own life. In such a case, the unfortunate person deserves sympathy, counselling and appropriate treatment, and certainly not prison'. As a result the section 309 of IPC has been deleted and no one an attempt to commit suicide is an offence.

Right to Die with Dignity

An NGO, Common Cause in 2005 filed a PIL in the Supreme Court pleading for the right to die with dignity especially for the terminally ill patients. The five judge constitutional bench upheld the plea and declared that the right to live with human dignity guaranteed by Article 21 includes the right to die with dignity. The court ruled that 'living will' is constitutional. An individual can make an advance 'living will' authorizing withdrawal of life support systems in case he falls terminally ill and reaches an irreversible stage of illness. Thus, it is said that the Supreme Court has legalized 'passive euthanasia'. All though euthanasia involves several ethical, legal and emotional issues, the Supreme Court has made it legal and an implied fundamental right.

Right to Privacy

Black's law dictionary defines privacy as 'the right to be let alone; the right of a person to be free from any unwarranted publicity; the right to live without any unwarranted interference by the public in matters with which the public is not necessarily concerned'. The Constitution of India does not expressly guarantee the right to privacy as a fundamental right. But the Supreme Court, interpreted Article 21 in conformity with the Universal Declaration on Human Rights and the International Covenant on Civil and Political Rights and declared that right to privacy is implied in right to life.⁽¹⁷⁾

The court in the Govind versus State of Madhya Pradesh, case further ruled that the privacy as right flows out of Articles 19 (1) (a), 19 (1) (d) and 21. However, it is not an absolute right but subjected to reasonable restrictions. The same view was reiterated by the courts in several other cases.

Right to Privacy: Importance

Important questions from Previous years' on this topics are mentioned below:

Examine the scope of fundamental rights in the light of the latest judgement of the Supreme Court on right to privacy. IAS MAINS (GS PAPER 2) (2017)

- Right to privacy is an essential component of right to life and personal liberty.
- Without the right to privacy, other rights, especially the freedom of expression and right to liberty cannot survive.
- It is widely viewed that the right to privacy as an aspect of the pursuit of happiness.
- Privacy is important as it upholds certain most fundamental values of human life such as one's personal decisions-making ability, his individuality and dignity.
- Privacy at times is a dimension of safety. For instance, the location of a woman when exposed could endanger her safety. Similarly, the information about one's financial strength could cause safety issues if exposed.
- The individual choices made, especially on the internet could be used by organizations for psychological manipulation. This is noteworthy in the context of targeted marketing practices of the e-commerce websites.

17 Supreme Court: Kharak Singh vs. State of UP case, 1963 AIR 1295, 1964 SCR (1) 332.

Right to Privacy: Need

- Each individual needs a private space for undertaking any legal activity within the limits of law.
- Privacy is a special kind of independence which can be understood as an attempt to secure autonomy in at least a few personal and spiritual concerns. This autonomy is the most special thing that the person can enjoy as a truly free man (Clinton Rossiter, American political scientist).
- In a competitive situation privacy helps a person to protect his interest. For example, a player needs privacy to think and strategize considering the competition. A businessman requires privacy to strategize his business moves in a competitive business atmosphere.
- Individuals need privacy to maintain their individuality and utilize the information with them in their own way.
- Privacy is needed for controlling the quality of information which one shares with others.
- Privacy is needed to help an individual to make a self-evaluation, learn and develop.
- Privacy is also needed to develop interpersonal relationships, especially to establish intimate relationships.

Right to Privacy Versus Right to Information

Former Prime Minister Dr. Manmohan Singh said, 'There is a fine balance required to be maintained between right to information and the right to privacy, which stems out of the fundamental right of life and liberty. The citizen's right to know should definitely be circumscribed if disclosure of information encroaches upon someone's personal privacy. But where to draw a line is a complicated question'.

In the Niira Radia tape case the court ruled that any information would be available to every citizen under the RTI Act except those subjected to Section 8 (J) of RTI Act. Section 8 (J) relates to personal information, the disclosure of which has no relationship to any public activity or interest. However, in case the public authority or the Information Officer is satisfied that the disclosure of such information is required in the larger interest of the public then such information may also be disclosed.

Right to Privacy: Supreme Court Judgement^[18]

The Supreme Court in the Justice Puttaswamy case, (2017) ruled that 'privacy' is a fundamental right included in the right to personal liberty. The court ruled, 'Privacy, in its simplest sense, allows each human being to be left alone in a core which is inviolable. Yet the autonomy of the individual is conditioned by her relationships with the rest of society. Those relationships may and do often pose questions to autonomy and free choice. The overarching presence of state and non-state entities regulates aspects of social existence which bear upon the freedom of the individual'. The important aspects of the judgement are as follows,

To guarantee a dignified life the constitution makes it essential to guarantee the right to life and personal liberty. Right to live with human dignity and these rights are inseparable. According to the court, 'Privacy, in its simplest sense, allows each human being to be left alone in a core which is inviolable'. At the core privacy includes the preservation of personal intimacies, the sanctity of family life, marriage, procreation, the home and sexual orientation. Privacy also connotes a right to be left alone.

The right to privacy remains intact even when an individual is in a public place. Being in a public place does not require the individual to surrender his privacy on any ground. However, the right is not an absolute right. Like every other fundamental right, it is subjected to reasonable restrictions. In case any law encroaches upon the right the law will be subjected to the test of reasonableness.

The right is very important in a society like India given its diversity. Therefore, it has to be protected against encroachment by state and non-state actors. That requires recognizing the right as a fundamental right. The right must be guaranteed to every section of the society irrespective of whether it is majority or

¹⁸ Justice K S Puttaswamy (Ret.) vs. Union of India and Others, August, 2017.

minuscule minority. This is all the more essential due to the significant technological changes that have taken place since independence.

Right to Pollution-free Environment: Supreme Court Ruling on Burning Crackers

The Supreme Court in Subash versus State of Bihar case held that the right to pollution free air falls within Article 21. Also, the court ruled that "any disturbance of the basic environment elements, namely air, water and soil, which are necessary for 'life', would be hazardous to 'life' within the meaning of Article 21 of the constitution".

In this issue the Supreme Court way back in 1998 ruled that no citizen had the right to manufacturing and burning fireworks/crackers that produce noise beyond permissible limits and cause noise pollution.^[19] However, manufacturing and burning crackers within the permissible levels of pollution was upheld as a fundamental right under Article 21. In 2005, the court imposed restrictions on burning crackers at night-time. This was imposed as a reasonable restriction because it would affect the rights of other citizens as well.

In 2015, the issue was again brought before the court as the burning crackers during Diwali in Delhi caused severe pollution. Diwali festival falls during winter which aggravates the pollution further due to the fall in wind speed. It was prayed before the court for imposing a ban on burning crackers throughout Delhi. Instead a specific time limit may be prescribed and designate a place for people to burst crackers. The court refused to impose a ban on bursting crackers on the ground that it would be an infringement into the fundamental right to celebrate a festival. This resulted in unprecedented air pollution in Delhi. The haze and smoke caused by the burning of crackers remained suspended for more than a week disrupting the normal life in Delhi.

As a consequence, the matter again came to the court. In November 2016, the court had passed an order imposing a ban on the sale of fireworks—both wholesale and retail, in the NCR region. Further, in July 2017, the court imposed a ban on the use of five chemicals namely, antimony, lithium, mercury, arsenic and lead in any form whatsoever in manufacturing the fireworks. These five chemicals are among the most important pollutants.

Subsequently in October 2017, the court has imposed a ban on the sale of firecrackers in the NCR region until November 2017. This is an order upholding the previous order that was passed in September following the order passed in November 2016.

However, the implementation of the said order of the Supreme Court is fraught with many challenges. The following criticisms are placed against this order:

- The ban on sale of fireworks is only for a temporary period. The temporary ban is not logical when the burning of fireworks causing pollution is a permanent problem. So, this temporary ban is not a solution to the problem.
- The court considers this as an experiment but according to Bishwajit Bhattacharyya former Additional Solicitor General such experiments are to be left to the executive because the courts do not have the mechanism to monitor the implementation of the order.
- He also opines that the ban is only on sale and not on burning them. So, when the crackers are burned in the eve of Diwali by those who had already bought it, the order has no effect.
- Similarly, the ban order has not considered the status of the firecrackers that have already been imported and stored. In case those firecrackers are distributed as gift then there is no solace in this order.

The issue of pollution, noise and air pollution caused by burning firecrackers has been alive ever since 1985 when M. C. Mehta filed a writ petition. He pleaded for the intervention of the Supreme Court to regulate the burning of the firecrackers to control pollution. But still the issue remains alive but the solution to the problem evades.

¹⁹ Burra bazar fireworks dealers association vs. the Commissioner of Police, Calcutta, AIR 1998.

Right to Clean Environment—Does it Entail Legal Regulations on Burning Crackers?

From the foregoing it is clear that there is a requirement for certain legal regulations in respect of burning crackers during Diwali. Burning crackers is a practice that is prevalent across the globe to mark the celebrations. For instance, firecrackers are part of even the major events like the inauguration ceremony of Olympics.

In India, it is a traditional practice of burning crackers in the eve of Diwali. It is thus, part of citizens' fundamental right to life and also the freedom of religion (right to practice religion). However, the constitution provides these rights subjected to reasonable restrictions. Freedom of religion is subjected to restrictions on the ground of 'public order, morality and health and to the other fundamental rights'. Moreover, the DPSP (Article 48A) entrusts the responsibility of protecting and improving the environment on the state. The Supreme Court also has ruled that the legal measures taken for the implementation of DPSP shall impose reasonable restrictions on the fundamental rights.⁽²⁰⁾ Similarly, Article 51A (g) declares the protection of environment as a fundamental duty of every citizen.

So, it may be clearly understood that legal regulations must be enacted by the Parliament and state legislatures. Though the courts have passed orders in this regard, those are found to insufficient and have not been able to resolve the problem permanently. The resolution of the problem requires legal regulations implemented with concrete measures that will educate the people about the importance of protecting the environment and imbibing the values towards achievement of the objective.

Right to Personal Liberty

Article 21 also guarantees the right to personal liberty. According to the dictionary, personal liberty refers to the state of being free, the power to do as one pleases,⁽²¹⁾ etc. It is a 'state' of being and is not a single right.

A. K. Gopalan Case View

A. K. Gopalan case	Maneka Gandhi case
Articles 19 and 21 are completely separated.	Articles 19 and 21 are inter-related.
Depriving the right to personal liberty by the procedure established by a law does not infringe on Article 21.	To deprive the right to personal liberty by the procedure established by a law the procedure must be a 'due process'.
Interpreted 'procedure established by law based on English constitutional philosophy'.	Interpreted 'procedure established by law based on American constitutional philosophy'.

When the communist leader A. K. Gopalan was detained under the Preventive Detention Act, he moved the Supreme Court seeking remedy. He pleaded that he being detained under the Preventive Detention Act was violating his right to personal liberty as guaranteed by Article 21. The personal liberty infringed upon was the right to free movement and therefore, it must be subjected to the test of reasonableness. The right to free movement is guaranteed by Article 19 (1) (d), which may be restricted reasonably on the grounds given in Article 19 (5). Hence, he pleaded that Articles 19 and 21 are related and hence he be granted relief.

20 Refer in the same chapter the topic under Article 19.

21 Merriam Webster English dictionary.

However, the Supreme Court refused to accept this view and rejected his plea. The court held that there was no interlink between Articles 19 and 21. The court refused to grant relief on the ground that:

- There was a valid law under which he was detained namely, Preventive Detention Act.
- The law has established a procedure.
- The procedure was followed.

The court had taken the English view of interpreting Article 21. This judgment was subjected to criticism as it effectively protects the citizen from 'executive tyranny,' but does not protect him from the legislative tyranny.

Maneka Gandhi Case View

This anomaly was set right in the Maneka Gandhi case. In 1977, the Government of India decided to impound Maneka Gandhi's passport in the interest of general public, under the India Passport Act. Maneka Gandhi challenged this in the Supreme Court on the ground that the impounding her passport without providing proper reason was infringing upon her fundamental rights guaranteed by Articles 14, 19 and 21.

The court applied the doctrine of liberal interpretation to construct the meaning of the term 'personal liberty'. The court ruled that the term must be given the widest possible meaning. The rights guaranteed by Article 19 are integral part of personal liberty guaranteed by Article 21. Those are given separately as they are most fundamental and hence need a separate mention.

The Supreme Court in this case reversed its judgment of Gopalan case. The court ruled that Articles 19 and 21 are not watertight compartments and they are to read together. The court ruled that the state may deprive a person of his personal liberty if:

- There is a valid law.
- The law has established a procedure.
- The procedure must be a reasonable procedure.

Thus, the court ruled that there must not only 'a procedure established by law', but the procedure must be a 'due process'. That is, the procedure must withstand the test of reasonableness. The court took the American view of interpreting the phrase 'procedure established by law in Article 21'.

Article 21A: Right to Education

This right was part of the original constitution. It was inserted by the Constitution (86th Amendment) Act, 2002. In the original constitution it was part of Article 45 which obliged the state to endeavour to provide free and compulsory education to all children until they completed fourteen years of age.

In spite of this the objective was not achieved even after 50 years of the constitution coming into force. The demand for concrete steps to implement this gained momentum after the National Policy of Education (NPE) was announced in 1986. Although several steps have been taken by the union and the state governments the goal was still at large. To fulfil the objective Article 21A was inserted. The main provisions are:

- (a) Article 21A provides free and compulsory education as a fundamental right to children between the age of 6 and 14 years.
- (b) It needs to read along with Article 51A (k)⁽²²⁾ which makes it a fundamental duty of every parent to provide opportunity for education to every child.
- (c) It states that the right will be guaranteed, 'in such manner as the state may, by law, determine'. Subsequently the Right to Education Act has been enacted to implement this.

22 Article 51A (k): It shall be the duty of every citizen of India who is a parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years: Inserted by the Constitution (86th Amendment) Act, 2002.

Criticism

Though the amendment and the Right to Education Act can be viewed as positive measures towards providing education to all children they are not free of criticism. The critical views are:

While the constitution guarantees the fundamental rights either directly to citizens or as a restriction on the state, this right empowers the state to determine the manner in which the right will be guaranteed. This result is the question of how any child could get the relief in case of violation of this right.

Adding article 51A (k), which makes educating children a fundamental duty of the parent is state shifting its responsibility to the parents. Further, the Right to Education Act 2009 is not free of its own weaknesses.

Article 22: Protection Against Arrest and Detention in Certain Cases

Articles 22 provides for the protection in case of arrest and detection. It provides for the protection in respect of punitive detention and preventive detention.

Punitive Detention

Punitive detention refers to the detention of any person after being sentenced by a court on a trial for committing an offence. It is to make him serve the punishment. Clauses 1 to 3 of Article 22 provide for the safeguards in respect of punitive detention. According to Article 22:

1. Any person arrested must be informed of the cause of arrest.
2. He must be allowed to consult a legal practitioner and defend himself against the arrest.
3. Once arrested the person must be produced before a judicial magistrate within 24 hours of arrest.
This will exclude the time of travel.

Enemy Alien

Any person who shows allegiance to or in communication with any country which is at war with India.

Only a competent court of law has the power to declare any person as enemy alien. It is not an executive power.

However, these safeguards are not available in case of a person who is an enemy alien at the time of arrest. Similarly, the protection is by Articles 22 (1) and (2) is not available to any person who is detained under a law providing for preventive detention. This is because the safeguards for preventive detention are separately provided.

Preventive Detention

It means to arrest a person without trial but to prevent him from committing an offence. When the authorities do not have sufficient evidence to prove that a person has committed an offence but have sufficient evidence to prove that he may commit an offence if let free, then the person may be detained. This is known as preventive detention.

Usually, in other democracies preventive detention is not known during normal times. The English constitution provides for preventive detention only at times of emergency. However, the Indian constitution provides for preventive detention even during normal times. This is subjected to severe criticism. The critics are of the view that the constitution pays lip sympathy to fundamental rights. However, these criticisms are far-fetched as Indian conditions are different.

The constitution has provided for the safeguards against preventive detention not in the fashion of recognizing it, but only to limit the power of the state to arrest any person under preventive detention.

Safeguards

- Any person can be detained under preventive detention only for a period of three months.
- In case the detention is to be more than three months then it has to be approved by an advisory board.
- The advisory board is comprised of judges of high court or retired judges of high court or persons qualified to be appointed as a judge of high court.
- The board may grant the extension of the detention in case there was sufficient cause and the law under which the person is detained must provide for such extension.
- When a person is subjected to preventive arrest, he must be informed of the cause of arrest. However, if the authority detaining a person has sufficient reasons that the disclosure of the cause of arrest would adversely affect the interest of the nation then the cause need not be disclosed. The reasons for non-disclosure must be recorded in writing and submitted to the magistrate before who the person is produced.
- The person must be provided the earliest opportunity to make representation against the order of preventive detention.

Supreme Court Direction on Arrest: D. K. Basu Case

1. Police arresting and interrogating suspects should wear ‘accurate, visible and clear’ identification and name-tags, and details of interrogating police officers should be recorded in a register.
2. A memo of arrest must be prepared at the time of arrest. The memo must:
 - Have the time and date of arrest.
 - Be attested by at least one witness who may either be a family member of the person arrested or a respectable person of the locality where the arrest was made.
 - Be countersigned by the person arrested.
3. The person must be presented before a magistrate within 24 hours of the arrest.
4. He must not be ill-treated or tortured during arrest or in custody. The person arrested, detained or being interrogated has a right to have a relative, friend or well-wisher informed as soon as practicable, of the arrest and the place of detention or custody. If the person to be informed has signed the arrest memo as a witness this is not required.
5. The person arrested should be told of the right to have someone informed of the arrest, as soon as the arrest or detention is made.
6. An entry must be made in the diary at the place of detention about the arrest, the name of the person informed and the name and particulars of the police officers in whose custody the person arrested is.
7. The person arrested must have a medical examination by a qualified doctor every 48 hours during detention. This should be done by a doctor who is on the panel, which must be constituted by the Director of Health Services of every state.

The person arrested has a right to meet a lawyer during the interrogation, although not for the whole time.

Right Against Exploitation (Articles 23 and 24)

Exploitation and Discrimination

Exploitation: To takes unfair advantage of any person.

Discrimination: Treatment or consideration of, or making a distinction in favour of or against, a person.

The right against exploitation is related to the right against discrimination, right to equality and right to personal liberty. Article 23 prohibits trafficking in human beings and forced labour. It also prohibits the practice of 'begar'. Begar is an indigenous practice in which the landlords compel the tenants to provide certain services free of cost. Thus, the article prohibits trafficking in human beings, beggar and other similar forms of forced labour.

A forced is one in which an individual is compelled to render a service free of cost though he has either the right not to render the service or he is entitled to a remuneration for the services. However, even if remuneration is paid for the labour still, if it is 'forced', then it is unconstitutional.⁽²³⁾ The Bonded Labour (Abolition) Act was enacted towards implementing Article 23.

However, the prohibition is not absolute. According to Article 23 (2), the state can impose any compulsory service on the citizens for a public purpose. For example, when the public servants engaged in public services like election or census, etc., it will not be regarded as violation of Article 23. According to the Supreme Court, what is prohibited is compelling a person to render a gratuitous service.

Article 24 prohibits the employment of children below the age of 14 in factories, mines and other hazardous employment. Unlike Article 23, the prohibition under Article 24 is absolute. However, the family business and traditional employment are exempted from being counted as hazardous employment.

Measures Taken for Prohibiting Child Labour

Important questions from Previous years' on this topics are mentioned below:

Discuss the steps taken by the government to check child labour and promote child welfare.

IAS MAINS (2003)

1. Abiding by the Supreme Court judgment, the child labour relief fund is established with following considerations:
 - Every employer who employed a child needs to contribute ₹20000/per child employed for the fund.
 - In lieu of the child labour, he is to employ an adult for the family of the child. In case there is no adult member is found in the family, then he shall contribute ₹5000/- additionally to the fund.
 - The fund is to be utilized for the rehabilitation of the child labour.
2. The Child Labour (Abolition) Act, 1986 has been enacted.
3. The National Education Policy provides for the non-formal education system to rehabilitate and education of child labour.
4. The Government of India has been collaborating with International Labour Organization the International Programme for Elimination of Child Labour.
5. States like Tamil Nadu has declared engaging child labour as a disciplinary offence under civil services conduct rules.

Rights of Children Under the India Constitution

The constitutional provisions dealing with the rights of children are Article 15, Article 21A, Article 23, Article 24, Articles 39 (e) and (f), Article 45, Article 51A, Article 350A.

Article 15 (3) empowers the state to make special provision towards the welfare of the children. It provides for special protection under the positive discrimination scheme.

Article 21A provides for the right to education of children between the age of 6 to 14 years. However, this provision has to be read along with Article 51A (k). Article 51A (k) makes it a fundamental duty on the parents to educate their children.

23 Supreme Court: People's Union vs. Union of India, AIR 1982 SC 1473 and Sanjit vs. State of Rajasthan, AIR 1983 SC 328.

Articles 39 (e) and (f) provide for the protection of the childhood from exploitation. Also, they provide for 'facilities to develop in a healthy manner' and the protection of children against 'moral and material abandonment'.

Article 45, makes it an obligation on the state to provide for the education of children up to the age of 6 years.

According to Article 350A the children belonging to linguistic minority should have the facility for instruction in their mother tongue.

Apart from the above, the Citizenship Act provides for the right of citizenship through descent and right to reclaim the citizenship in case where the child had lost his citizenship due to his father renouncing his citizenship.

Practice Questions

1. Consider the following:

1. Free and compulsory education to the children of 6–14 years age group by the state was made a fundamental right by the 76th Amendment to the Constitution of India.
2. *Sarva Shiksha Abhiyan* seeks to provide computer education even in rural areas.
3. Education was included in the concurrent list by the 42nd Amendment, 1976 to the Constitution of India.

Correct statements

- | | |
|-------------|-------------|
| (a) 1, 2, 3 | (c) 2 and 3 |
| (b) 1 and 2 | (d) 1 and 3 |

2. With reference to the United Nations convention on the rights of the child, consider the following:

1. The right to development.
2. The right to expression.
3. The right to recreation.

Which of the above is/are the rights of the child?

- | | |
|-------------|-------------|
| (a) 1 only | (c) 2 and 3 |
| (b) 1 and 3 | (d) 1, 2, 3 |

3. Consider the following:

1. Right to education.
2. Right to equal access to public service.
3. Right to food.

Which of the above is/are human right/human rights under 'Universal Declaration of Human Rights'?

- | | |
|------------------|------------------|
| (a) 1 only | (c) 3 only |
| (b) 1 and 2 only | (d) 1, 2, 3 only |

4. Which among the following is regarded as 'forced labour' by the Constitution of India?

- | | |
|------------------|-----------------------|
| (a) Beggar | (c) Bonded labour |
| (b) Child labour | (d) None of the above |

5. The right to education under Article 21A was inserted in the Constitution of India by:

- | |
|--|
| (a) Constitution (84th Amendment) Act, 2001 |
| (b) Constitution (85th Amendment) Act, 2001 |
| (c) Constitution (86th Amendment) Act, 2002 |
| (d) It was original article in the Constitution of India |

6. Reasonable restrictions on freedom to assemble can be imposed in the interest of:

- (a) Sovereignty and integrity of India or public order
- (b) Sovereignty and integrity of India
- (c) General public and public order
- (d) General public, unity, integrity and sovereignty of India

7. Doctrine of self-incrimination enacted in Article 20 (3) means:

- (a) No person accused of an offence can be compelled to be witness against himself.
- (b) No person accused of an offence can be compelled to be witness against others.
- (c) No advocate accused of an offence can be compelled to give evidence against himself.
- (d) No person accused of an offence can be judge against himself.

8. The words 'procedure established by law' in Article 21 means:

- (a) That due process of law must be followed.
- (b) A procedure laid down or enacted by a competent authority.
- (c) The same things as 'due process of law'.
- (d) A law which is reasonable, fair and just.

9. Consider the following statements regarding right against exploitation enshrined in Article 23 of the constitution.

1. 'Slavery' has been defined in this article.
2. This right is available against the private individuals also.
3. It imposes a positive obligation upon the state.
4. This right is available to the citizens only.

Correct answers

- | | |
|-------------|----------------|
| (a) 1 and 2 | (c) 1, 3, 4 |
| (b) 1, 2, 3 | (d) 1, 2, 3, 4 |

10. Freedom of speech under the Indian Constitution is subjected to reasonable restrictions on the ground of protection of:

- (a) Sovereignty and integrity of the country
- (b) The dignity of the office of the Prime Minister

- (c) The dignity of Council of Ministers
- (d) The dignity of constitutional functionaries

11. Preventive detention according to Article 22 can be enforced:

- (a) Only during the time of communal violence
- (b) During the period of emergency
- (c) In normal times
- (d) Can be enforced in the democracy with the permission of the President of India

12. Right to education is a fundamental right emanating from right to:

- (a) Freedom of speech and expression under Article 19 (1) (a).
- (b) Culture and education under Articles 29 and 30.
- (c) Life and personal liberty under Article 21.
- (d) Equality before law and equal protection of law under Article 14.

13. The doctrine of 'double jeopardy' in Article 20 (2) means:

- (a) No one can be tried and punished more than once for the same offence.
- (b) One can be tried several times for the same offence.
- (c) Punishment once awarded cannot be enhanced in appeal or revision.
- (d) One can be tried more than once but punished only once.

14. Which one of the following fundamental rights is guaranteed only to the citizens and not to the foreigners?

- (a) Equality before law and equal protection of law
- (b) Freedom of speech and expression
- (c) Right to life and personal liberty
- (d) Right to freedom of religion

15. Consider the following statements regarding the constitutional provisions relating to trade, commerce and intercourse in India.

1. Parliament may by law impose restrictions on freedom of trade, commerce or intercourse between one state and another in the public interest.
2. Bills imposing restrictions on the freedom of trade, commerce or intercourse within

the state cannot be moved in the state legislature without the sanction of the central government.

3. Parliament may enact any law giving or authorizing any discrimination to deal with a situation arising from the scarcity of goods in any part of Indian territory.
4. Trade and commerce within the state is a subject in the concurrent list.

Correct statements

- | | |
|----------------|-------------|
| (a) 1, 2, 3, 4 | (c) 1 and 3 |
| (b) 3 and 4 | (d) 2 only |

16. Consider the following:

1. Article 301 pertains to the right to property.
2. Right to property is a legal right but not a fundamental right.
3. Article 300 A was inserted in the Constitution of India by the Congress government at the centre by the 44th Constitutional Amendment.

Correct statements

- | | |
|-------------|-------------|
| (a) 2 only | (c) 1 and 3 |
| (b) 2 and 3 | (d) 1, 2, 3 |

17. With reference to consumers' rights/privileges under the provisions of law in India, which of the following statements is/are correct?

1. Consumers are empowered to take samples for food testing.
2. When a consumer files a complaint in any consumer forum, no fee is required to be paid.
3. In case of death of a consumer, his/her legal heir can file a complaint in the consumer forum on his/her behalf.

Select the correct answer using the codes given below:

- | | |
|------------------|------------------|
| (a) 1 only | (c) 1 and 3 only |
| (b) 2 and 3 only | (d) 1, 2 and 3 |

18. Which article of the Constitution of India says, 'No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment'?

- | | |
|----------------|-----------------|
| (a) Article 24 | (c) Article 330 |
| (b) Article 45 | (d) Article 368 |

- 19.** With the reference to the consumer disputes redressal at district level in India, which one of the following statements is NOT correct?
- A state government can establish more than one district forum in a district if it deems fit.
 - One of the members of the district forum shall be a woman.
 - The district forum entertains the complaints where the value of goods or services does not exceed rupees fifty lakhs.
 - A complaint in relation to any goods sold or any service provided may be filed with a district forum by the state government as a representative of the interests of the consumers in general.
- 20.** With reference to the Constitution of India, consider the following:
- Fundamental rights
 - Fundamental duties
 - Directive Principles of State Policy
- Which of the above provisions of the Constitution of India is/are fulfilled by the National Social Assistance Programme launched by the Government of India?
- | | |
|------------|-------------|
| (a) 1 only | (c) 1 and 3 |
| (b) 3 only | (d) 1, 2, 3 |

Answer Key

- 1.** (a), **2.** (d), **3.** (d), **4.** (a), **5.** (c), **6.** (a), **7.** (a), **8.** (a), **9.** (b), **10.** (a),
11. (c), **12.** (c), **13.** (a), **14.** (b), **15.** (c), **16.** (a), **17.** (d), **18.** (a), **19.** (c), **20.** (c)

Hints and Explanations

1. (c)

- Free & compulsory education to the children of 6 – 14 years age group by the State was made a Fundamental Right by the 86th Amendment to the Constitution of India.

Refer Page 8.20

2. (d)

UN Convention on Rights of Child

- Right to Development
- Right to Expression
- Right to Recreation
- Right to Survival

Also Refer Page 8.23

3. (d)

These are declared as the rights by the 'Universal Declaration of Human Rights'

4. (a)

Hint:

- Article 23 prohibits trafficking in human beings and forced labour.

Refer Page 8.23

5. (c)

- 86th Constitutional Amendment Act 2002 inserted Article 21A and 51A (k) and amended Article 45.

Refer Page 8.20

6. (a)

- Freedom to assemble under Article 19(1) (b) can be reasonably restricted on the grounds provided under Article 19(3).
- Article 19 (3) empowers the state to restrict freedom of assembly on the grounds of public order and to maintain the sovereignty and integrity of India.

Refer Page 8.7

7. (a)

- Article 20 (3) protects any person from being compelled to give self-incriminating evidence.
- No person shall be compelled to be a witness in his own case

Refer Page 8.14

8. (a)

- Supreme Court in Maneka Gandhi case, ruled that procedure established by law should also follow due process.

Refer Page 8.20

9. (b)

- Article 23 is available to both citizens and aliens.

Refer Page 8.23 and Chapter 6

10. (a)

- Grounds of reasonable restriction for Art. 19(1)(a) – Freedom of Speech is provided under Art. 19(2).
- The right can be restricted on the grounds of the 'interests of the sovereignty and integrity of India, the security of the state, friendly relations with foreign states, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence'

Refer Page 8.6

11. (c)

- Articles 22 provides for the protection in case of arrest and detention. The constitution does not prescribe any special condition or circumstances for that.
- It provides for the protection in respect of punitive detention and preventive detention.

Refer Page 8.21

12. (c)

- Right to education was an implied right until the 86th Amendment Act 2002.
- This made Right to education as a fundamental right under Art. 21A.

Refer Page 8.15 and 8.20

13. (a)

- Prosecuting and punishing a person for the same offence more than once is known as 'double jeopardy'.

Refer Page 8.14

14. (b)

- Articles 15, 16 and 19 are available to citizens only.

- Articles 14, 21 and 25-28 are available to all persons.

Refer Page 8.3 and Chapter 6

15. (c)

- Article 302: Free trade between one state and another can be restricted by the law of the Parliament on the ground of public interest.
- Bills imposing restrictions on the freedom of trade, commerce or intercourse within the State cannot be moved in the State Legislature without the sanction of the President. (Article 304)
- State List: Item 26 – trade and commerce within a State

Refer Page 8.12

16. (a)

- Article 300A pertains to Right to Property.
- Article 301 relates to free trade and commerce in the country.
- Art. 300A was inserted by the Janata Government at Centre by 44th Amendment Act, 1978.

Refer Chapter 8.6

17. (c)

- When a consumer files a complaint in any consumer forum, he/she is required to pay a nominal fee and not any court fee.

18. (a)

- Article 24 prohibits the employment of children below the age of 14 in factories, mines and other hazardous employment.
- The prohibition is absolute.

Refer Page 8.23

19. (c)

- The district forum entertains the complaints where the value of goods or services does not exceed rupees twenty lakhs.

Composition:

- District Forum will be headed by a President who is or has been or is qualified to be a District Judge.
- Two other members, one of which shall be a woman.

Refer Consumer Protection Act 1986.

20. (c)

- Fundamental Duties are responsibilities of the citizens towards the nation.
- National Social Assistance Programme of the government fulfills the provisions under Fundamental Rights and DPSP.

Rights: Religion, Culture, Constitutional Remedies & Exemption and Suspension

Learning Objectives

After reading this chapter, you will be able to:

- Learn the fundamental right to freedom of religion, the reasonable restrictions and the concept of secularism
- Understand the significance of freedom of religion and how it makes the Indian constitution a secular one
- Know the cultural rights and the rights of minorities
- Explain the constitutional remedies and importance of article 32
- Explain the concepts of Writs, various writs such as Habeas Corpus, Mandamus, Prohibition, Certiorari and Quo Warranto
- Learn the concept of Locus Standi and Public Interest Litigation
- Understand the situations when the fundamental rights are suspended and the exemptions to fundamental rights

RIGHT TO FREEDOM OF RELIGION (ARTICLES 25–28)

The right to freedom of religion is an important aspect of a modern democracy. The right to freedom of speech and the forming associations or unions include the freedom of religious speech and form religious associations. In order to instil confidence in the religious minorities, the founding fathers of the constitution have provided for the freedom of religion in Articles 25 to 28. The freedom of religion is guaranteed by the declaration of the Preamble. The Preamble declares that the citizen of India is entitled to, 'Liberty of thought, expression, belief, faith and worship'.

Article 25: Freedom of Conscience, Profess, Practice and Propagate Religion

Article 25 (1) guarantees every person has the right to freedom of conscience, profess, practise and propagate a religion of his choice. This freedom is guaranteed to all persons, both citizens and aliens equally within the territory of India. However, the freedom is not absolute. It is subjected to public order, morality, health and other fundamental rights guaranteed by Part III.

Supreme Court on Religion

- Religion is a matter of faith but belief in God is not essential to constitute religion.
- Doctrines of each religion constitute its essential part, but the court is competent to examine them.
- Philosophy is different from religion.

Must I have a Religion in India?

No. Not needed. The Preamble guarantees the liberty of thought, expression, belief, faith and worship. This read along with the right to conscience means, man-God relation is absolutely individual choice. So, Indian constitution recognizes being a theist an atheist and an agnostic under the right to freedom of religion.

The right to conscience is, however, an absolute right. Conscience refers to the inner freedom of a person to mould his relation with God, human beings and other creatures in the manner he prefers. When read along with the Preamble, it is clear that the constitution leaves the man-God relationship to oneself. The state will not be bothered about whether any person is a believer in God or otherwise. At the same time, the state will not also reject the presence of the, 'unseen spirit or the relevance of a religion to life'. The state needs to be more concerned with the man-man relationship.

The right to conscience also includes the right not to believe and not to have a religious faith. Thus, it guarantees the right to be an atheist. It also guarantees the right to be agnostic.

Profess is to declare one's faith and belief freely and openly. Practice means to perform the religious rites and observe the duties associated with one's religion and to exhibit one's religious belief.

Propagate means the right to communicate a person's beliefs to another person or to expose the tenets of that faith. But it does not include the right to convert another person to the former's faith. But the freedom to propagate does not include the right to convert any person from one religion to another.

Why the term 'Secular' Not Included in the Original Constitution?

'There was no need to include the term 'secular' as the entire constitution embodied the concept of secular state, which meant non-discrimination on grounds of religion and equal rights and status to all citizens.'

Dr. B. R. Ambedkar

The Supreme Court ruled that, 'Propagation is concerned with right to communicate beliefs to another person or to expound the tenets of one's religion, but does not include a right to forcible conver-

1 Stanislaus versus State of Madhya Pradesh, AIR 1977 SC 908.

sions'.⁽¹⁾ When Madhya Pradesh enacted the law prohibiting conversion by 'force or allurement' Reverend Father Stanislaus challenged the law in the Supreme Court that the law was infringing upon the right to freedom of religion guaranteed by Article 25. The court refused to accept this argument and grant remedy to Reverend Father Stanislaus. The court ruled that the law prohibited the:

- Conversion from one religion to another and not from majority to minority religion.
- Conversion by force or allurement. The law does not prohibit voluntary conversion.

The right to profess, practice and propagate are subject to restrictions on the ground of public order, morality, health and other fundamental rights. Such restrictions are imposed only to ensure 'Man-man relationship' which is the basis for social harmony.

Regulation and Restriction

Article 25 (2) confers power upon the state to regulate and restrict the freedom of religion. According to Article 25 (2) (a), the state has the powers to regulate or restrict 'any economic, financial, political or other secular activity which may be associated with religious practice'.

Those activities which are directly related to the practice of the religion or those that form the core activity of the religion are known as religious activities. Any other activity that is not related to the core of the religion is known as 'secular' activities. Of the many secular activities, Article 25 mentions three namely, economic, financial and political. These are activities not directly related to the core religion and hence, are secular activities. The state has the powers to regulate or restrict such activities by a law.

Article 25 (2) (b) empowers the state to regulate the religious activities to promote social reforms and 'throwing open the Hindu religious institutions for all classes of Hindus'. The Hindu religious institutions include the Buddhist, Jain and Sikh religious institutions also. This power is conferred on the state only to ensure that no social evil practice be justified and perpetuated in the garb of religion. In India there had been several social evil practices and superstitions that were associated with religion. For instance, even the practice of untouchability was justified on the religious values.

Article 26: Freedom to Manage Religious Affairs

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

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

Restrictions on Article 25 and 26

- They are subjected to public order morality and health.
- Human sacrifice, not included in the right.
- Offer prayers on a busy road, not included.
- State can regulate secular activities.
- State can regulate the administrative and other aspects of a temple/church/mosque.
- Use of loudspeakers can be regulated and if needed prohibited in the public interest.
- Hereditary rights of priests abolished.
- Practising polygamy is prohibited by law. It is not part of the Hindu religion.

This right is also subject to the restrictions on the same grounds as Article 25, because the right guaranteed by Article 26 flows out of the right guaranteed by Article 25. Without the freedom of religion, the freedom to manage religious affairs is meaningless.

The right is guaranteed to all religious groups. Even after 44th amendment, the right to property is a fundamental right to the religious groups and denominations. Further this right is available to all religious groups irrespective of majority or minority religion.

However, this is not an absolute right. The property of a religious institution can be acquired:⁽²⁾

- (a) Under article 31A (1) (a), for effecting agrarian reform.
- (b) If it exceeds the ceiling allowed by the relevant legislation.

Further, the property owned by the religious groups is also subjected to any tax that is imposed commonly on all properties. Such a measure must not be regarded as an unreasonable restriction.⁽³⁾ The rights given by Articles 25 and 26 are not absolute:

Firstly, they are subjected to public order morality and health. No person can claim the right to conduct human sacrifice, or to offer prayers on a busy highway.

Secondly, the constitution divides affairs of religious institutions into religious, secular and other activities. State can regulate or restrict any economic, financial, political or other secular activities which may be associated with a religious practice.

Thus, right to observe and practice rituals is protected from state intervention. But the administrative and other aspects of a temple/church/mosque etc., can be regulated. For example, Waqf Board, *Tirumala Tirupati Devasthanams*, etc.

Thirdly, the state may intervene to bring social reform and for throwing open of Hindu temples etc., of a public character to all sections of Hindus.

Places of religious worship like mosques, churches, temples, etc., can be acquired by the state. Such acquisition does not violate Articles 25 or 26. The right to worship does not extend to the right of worship at any or every place.

The following are some of the restrictions which have been held to be permissible:

- The state can impose restrictions on the use of loudspeakers for Azan or for singing *kirtans*, etc. Use of loudspeakers is not an essential and integral part of a religion.
- Abolition of hereditary rights of *archakas* (priests) is not interference with essential religious practice.
- Polygamy is not an essential part of the Hindu religion so it can be prohibited by law. This is for reform of the Hindus.
- The Jagannath Temple Act by which the government vested the secular activities in a committee is valid because it did not interfere with religious practices.

Article 27: Freedom as to Payment of Taxes for Promotion of Any Particular Religion

If the state imposes a tax, the proceeds of which is to spent for the promotion of any particular religion, then every person has the right not to pay the tax. The state cannot compel any person to pay such a tax. The state being an irreligious state must not patronize any particular religion. It is against the principle of secularism.

Article 28: Freedom Against Religious Instruction

It prohibits imparting any religious instructions in any of the educational institution established by the state or funded by the state wholly or partially. In case of other education institutions, the religious instructions may be imparted but no one can be compelled to receive those instructions.

Attendance at religious instruction or religious worship in certain educational institutions must be on voluntary and no one should be compelled. In case of minors the attendance shall be only on the consent of the guardian or parents.

2 Narendra versus State of Gujarat, AIR 1974 SC 2098.

3 Government of Tamil Nadu versus Ahobila, AIR 1987.

Freedom of Religion and Secular State

Important questions from Previous years' on this topics are mentioned below:

Give your views on the right to freedom of religion as enshrined in the Indian constitution. Do they make India a secular state?

IAS MAINS (2005)

The basic principle of secular state is that the religion and state must be separated. 'The religious impartiality of the Indian state is not to be confused with atheism. Secularism is defined in accordance with the ancient religious traditions. It tries to build-up a fellowship of believers, not by subordinating individual qualities to the group mind but by bringing them to a harmony with each other'.⁽⁴⁾

The main features of the secular state envisaged by the constitution of India are:

- The state is an irreligious state and the state will not be controlled by any religion.
- The right includes the right to have a religious faith or be an atheist or agnostic.
- The state must not discriminate any person for embracing any religion or having any faith or not having one.
- The state must not declare any citizen disqualified for any public employment on the ground of religion. All citizens are equally entitled to the right.
- The state must separate religion and politics and establish conditions for securing fraternity of the citizens to assure dignity of individuals.

What State Must do to Make Secularism Work?

- Preventing any religious group from dominating other groups.
- Preventing any group within a particular religious group dominating others in the same religion.
- Must not give preference to or restrict a religion.

CULTURAL AND EDUCATIONAL RIGHTS

Articles 29 and 30 guarantees certain cultural rights on the minorities. Article 29 seeks to protect the interest of minorities. The term 'minority' is not defined by the constitution or by any law. However, any section of the people who are a non-dominant group in any given locality is known as a minority.

A citizen of India who has a distinct language, script or culture of its own will have the right to conserve them (Article 29 (1)). Although, commonly Article 29 (1) is assumed to relate to minorities, its scope is not necessarily so confined, as it is available to 'any section of citizens resident in the territory of India'.⁽⁵⁾

The Supreme Court also ruled that the right to agitate for the protection of their language is a consequence of the 'right to conserve' one's script. Also, the Court ruled that 'Political' speeches for the conservation of the language of a section of the citizens cannot, therefore, be regarded as a corrupt practice within the meaning of Section 123 (3) of the Representation of the People Act, 1951.

In case of any educational institution maintained by the state or receiving aid out of state funds on grounds of religion, race, caste, language or any of them. Article 29 (2) and Article 15 (4) are to be read together. Accordingly, the state is empowered to take measures for the development of the backward classes.

4 President Radhakrishnan, Recovery of Faith. Originally published in 1956.

5 Supreme Court: St. Xavier's College Society versus State of Gujarat, AIR 1974 SC 1389.

Similarly, Article 15 confers a right against discrimination on everyone who denies the right. It is available to all in general. But the right guaranteed by Article 29 is specific with respect to minorities and only in case of admission to educational institutions. The grounds religion, race, caste is common to both Articles 15 and 29, whereas language is the ground given in Article 29.

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

Article 30 recognizes two types of minorities namely, linguistic and religious. The linguistic and religious minorities are conferred with the right to establish and administer the educational institutions. It also provides that the state should not discriminate the educational institutions while providing aid or assistance between one and the other minority.

Unlike Article 29, the right guaranteed by Article 30 (1) can be availed only by the minorities. The right of administering the institutions means to administer them without the external control. However, such autonomy is subjected to the state regulations for reasons such as the maintenance of standards for excellence, etc. However, such regulations are subjected to the following conditions:

- The regulations must be reasonable.
- It should regulate the educational character of the institution.
- It must be conducive in making the institution effective for those use it.
- It should not inhibit the rights under Article 30 (1).

Minority

The term 'minority' is not defined by the constitution or by any law. Any non-dominant group in a given locality is known as minority.

Constitution of India by Article 30 (1) recognizes two types of minorities, religious and linguistic minorities.

Article 30 and Right to Property

The 44th amendment inserted clause 1a to Article 30. By that clause, the educational institutions established and administered by the minority have come to possess the right to property as a fundamental right.

Article 30 (1A) deals with the compensation for the acquisitioning of the property owned by the minority educational institutions. In case any such property is to be acquisitioned, then the compensation paid must be:

- Adequate
- Such as would not restrict or abrogate the right guaranteed under Article 30 (1)

It implies that even if the compensation is more than the value of the property it needs to be paid by the state. In case of any violation in this regard remedies under Article 32 is available to the institution. Hence, the minority educational institutions enjoy right to property as a fundamental right even after 1978.

Constitution (93rd Amendment) Act, 2005

The amendment inserted Article 15 (5). It empowers the state to make provisions in favour of the educational institutions including those run privately. This implies that reservation in favour of backward classes, SCs and STs can be applied to the private educational institutions by enacting a law. Such policy is not to be considered as violating the right guaranteed by Article 19 (1) (g). However, such a law is not applicable to the minority educational institutions.

Minorities: Constitutional Rights and Safeguards

The rights and safeguards of minorities in constitution provides can be grouped as those which are commonly available to all citizens applicable to minorities and other set of rights which are applicable only to minorities.

There are certain rights and safeguards available to all citizens commonly are also available to the minorities. Such rights and safeguards are:

1. **Article 38 (2):** Obligation of the state, 'To endeavour to eliminate inequalities in status, facilities and opportunities', amongst individuals and groups of people residing in different areas or engaged in different vocations.
2. **Article 46:** Obligation of state, 'To promote with special care' the educational and economic interests of 'the weaker sections of the people' (besides Scheduled Castes and Scheduled Tribes).
3. **Article 51 A (e):** Citizens' duty to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities.
4. **Article 51 A (f):** Citizens' duty to value and preserve the rich heritage of our composite culture.
5. **Article 14:** Right to 'equality before the law' and 'equal protection of the laws'
6. **Articles 15 (1) and (2):** Prohibition of discrimination against citizens on grounds of religion, race, caste, sex or place of birth.
7. **Article 15 (4):** Authority of state to make, 'Any special provision for the advancement of any socially and educationally backward classes of citizens' (besides the Scheduled Castes and Scheduled Tribes).
8. **Article 16 (1) and (2):** Citizens' right to 'Equality of opportunity' in matters relating to employment or appointment to any office under the state and prohibition in this regard of discrimination on grounds of religion, race, caste, sex or place of birth.
9. **Article 16 (4):** Authority of state to make, 'Any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the state, is not adequately represented in the services under the state'.
10. **Article 25 (1):** People's freedom of conscience and right to freely profess, practice and propagate religion, subjected to public order, morality and other fundamental rights.
11. **Article 26:** Right of, 'Every religious denomination or any section thereof, subjected to public order, morality and health, to establish and maintain institutions for religious and charitable purposes, 'manage its own affairs in matters of religion', and own and acquire movable, immovable property and administer it 'in accordance with law'.
12. **Article 27:** Prohibition against compelling any person to pay taxes for promotion of any particular religion.
13. **Article 28:** People's, 'Freedom as to attendance at religious instruction or religious worship in educational institutions' wholly maintained, recognized, or aided by the state.

The rights that are provided exclusively for the minorities are:

- **Article 29 (1):** Right of 'any section of the citizens' to 'conserve' its 'distinct language, script or culture'.
- **Article 29 (2):** Restriction on denial of admission to any citizen, to any educational institution maintained or aided by the state, 'on grounds only of religion, race, caste, language or any of them'.
- **Article 30 (1):** Right of all religious and linguistic minorities to establish and administer educational institutions of their choices.
- **Article 30 (2):** Freedom of minority-managed educational institutions from discrimination in the matter of receiving aid from the state.
- **Article 347:** Special provision relating to the language spoken by a section of the population of any state.
- **Article 350 A:** Provision for facilities for instruction in mother-tongue at primary stage.
- **Article 350 B:** Provision for a Special Officer for Linguistic Minorities and his duties.
- **Explanation 1 below Article 25:** Sikh community's right of 'wearing and carrying of *kirpans*'.

RIGHT TO CONSTITUTIONAL REMEDIES

Article 32 of the constitution provides for the right to constitutional remedies and enforcement of the fundamental rights. Article 32 (1) expressly guarantees the right to move the Supreme Court in case of infringement of any fundamental right. The Supreme Court has the power to grant relief in case of any infringement of the fundamental right. The court has the power to issue any direction or order or writs to enforce the fundamental rights. Article 32 mentions five writs namely the writ of habeas corpus, mandamus, prohibition, certiorari and quo warranto.⁽⁶⁾

The Parliament may confer the power to issue writs upon any other court by law. In case the Parliament conferred the power to issue writs to any other court, then such court has to exercise the power without conflicting with the power of the Supreme Court (Article 32 (3)).

Significance of Article 32

Important questions from Previous years' on this topics are mentioned below:

What is the importance of right to constitutional remedies?

IAS MAINS 2007

Dr. Ambedkar called Article 32 as the 'heart and soul' of the fundamental rights. This clearly reveals the importance of the provision. The importance of Article 32 can be understood from the following:

- The enforcement of the fundamental rights and the remedies for any infringement is also guaranteed as a fundamental right. Thus, Article 32 validates the concept of 'guaranteed fundamental rights.' Without Article 32 other fundamental rights become meaningless.
- The suspension of fundamental rights is affected by the suspension of the enforcement of the right by Article 32.
- In case of violation of any fundamental rights one has the right to move the Supreme Court. In any other case the apex court cannot admit petition directly from the private individual. The court cannot refuse to admit a petition under Article 32 in case of violation of any fundamental right on any ground. Thus, the provision upholds the Supreme Court's position as 'Guarantor of Fundamental Rights'.
- It has enabled the Supreme Court to liberally interpret the concept of *locus standi* that has given rise to the 'Public Interest Litigation', which is regarded as the innovation of twentieth century.
- The Supreme Court derives its power to issue writs conferred by Article 32 (2), only from the right of the citizen guaranteed by Article 32 (1). The constitution places the obligation on the court to grant 'appropriate remedy', even if the citizen is ignorant of the legal procedure.⁽⁷⁾
- Judicial review flows out of Article 32 when it read along with Article 13 (2). According to Article 13, the state must not make any law that may infringe upon the fundamental rights. In case of any such law the Supreme Court has powers to declare the law *ultra vires* the constitution and therefore void.
- Articles 32 (3) empowers the Parliament to confer the power to issue writs to any other court than the Supreme Court. It in effect the Parliament may, if needed set up special courts dealing with the case involving infringement of fundamental rights.

6 Refer chapter on judiciary for the details of the writs.

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

Concept of Locus Standi and Public Interest Litigation

Important questions from Previous years' on this topics are mentioned below:

Explain Public Interest Litigation. Who can file it and on what basis can it be rejected by the court of law?
IAS MAINS (2000)

The concept of *locus standi* demands that any person whose right is violated shall alone have the right to move the Supreme Court seeking remedy. However, the Supreme Court by the judgments in various cases has expanded the concept.^[8] This has given rise to the concept of Public Interest Litigation (PIL).

Public Interest Litigation is a proceeding in which an individual or group seeks relief in the interest of the general public and not for its own purpose. The person moves the court not for enforcing his personal right but to espouse the cause of large number of people who are suffering under some legal wrong or injury.

Public Interest Litigation is moved on behalf of such person or class of persons who are unable to approach the court for relief by reason of poverty, helplessness or disability or socially or economically disadvantaged position.

Reasons for Liberal Interpretation of *Locus Standi*

Justice Krishna Iyer in the Fertilizer Corporation Kamgar Union versus Union of India, (1981) case ruled that:

1. State must exercise its power to eradicate corruption but it must not infringe upon individuals' rights.
2. Liberal interpretation is essential for the judiciary to promote social justice for judicially reviewing administrative actions.
3. A healthy administrative system requires a liberal system for effective administration.
4. Participative public justice also requires active judiciary.

Characteristics of Public Interest Litigation

The Public Interest Litigation (PIL) has the Following Characteristics:

- (i) It is not for the enforcement of any private individual right.
- (ii) In PIL party structure of the litigation is bipolar. That is in the PIL, there is no need for two parties instead one party may file the litigation and the other party may be the state or even there may not be a party.
- (iii) To file a PIL, there need not be a right violated. In case of a likelihood of the infringement of a right also a PIL may be filed.
- (iv) For a PIL to be filed there is no need for a past action and the remedy is not limited by the logic of the array of the parties.

Thus, 'Both the party structure and the matters in controversy are sprawling and amorphous, to be defined and adjusted or readjusted as the case may be, *ad hoc*, according as the exigencies of the emerging situations'. According to Justice Bhagwati, the essentials of public interest litigation are:

1. There must be a legal wrong caused to a person or to a determinate class of person, on whom burden is imposed in violation of law or without legal authority.
2. The wrong must arise from violation of any constitutional or legal right.

8 D. C. Wadhwa versus State of Bihar, AIR 1987 SC 579, Fertilizer Corporation versus Union of India, AIR1981 SC 344.

3. The wronged person (or determinate groups of persons) must be unable to approach the court for relief, by reason of:
 - Poverty
 - Helplessness
 - Social or economic disability or socially or economically disadvantageous position
4. If the above conditions are satisfactory, then any member of the public can seek judicial redress for the above wrong.
5. But the court should be anxious to ensure that the person initiating the proceedings is acting *bona fide* to get redress for a public grievance and not to pursue any personal gain or from malicious motives.
6. If the case is otherwise appropriate for PIL then the court can act even on letters address to it.

Exemption to Fundamental Rights

Certain laws are exempted from being declared void even if they conflict with the fundamental rights. Articles 31 A, 31 B and 31 C provide for the exemption of the laws conflicting with the fundamental rights from being declared void.

Article 31 A: Saving of Laws for Acquisition of Estates

Article 31 A was inserted by the constitution (First amendment) Act. It was inserted to provide for:

- Compulsory acquisitioning of properties or estates for implementing land reforms.
- Taking over the management of any private corporation in order to protect the interest of the workers.
- Nationalizing any sector of the economy or any industry in the interest of the public.

Any such law shall not be declared void even if the law is conflict with the rights guaranteed by Articles 14, 19 and 31. Land reforms were to be implemented in order to achieve the socialistic objectives of the constitution. But the fundamental right to property was an impediment. Thus, to override the litigations when the private properties were to be acquisitioned for any public purpose or to implement land reforms Article 31 A was inserted.

After the 44th amendment repealed right to property as a fundamental right Article 31A is still relevant in case of taking over the management of any organization or nationalizing any sector even the law conflicts with Article 19 (1) (g).

Article 31B: Exempting Laws Included in Schedule IX

Article 31B was inserted by the first amendment in 1951. Corresponding to Article 31B, Schedule IX was also included in the constitution. According to the provision, any law that is included in the Schedule IX shall not be 'questioned in a court of law' on the ground that it violates the fundamental rights and declared void.

However, the Supreme Court in the Kesavananda Bharti case ruled that judicial review being one of the 'basic features' of the constitution cannot be taken away by any amendment. Thus, in effect after Kesavananda Bharti case any law included in Schedule IX shall not be declared void but is subjected to judicial review. On reviewing if the court is satisfied that the law needs to be immunized by the Schedule IX, then the court may permit the continuance of the law in Schedule IX. Further, in 2007 in the Coelho case the Supreme Court ruled that the laws included in the Schedule IX are not immunized from judicial review.

Including a Law in Schedule IX

Any law passed by the Parliament or state legislature may be included in the Schedule IX. The law is included in the Schedule IX by a constitutional amendment. If the Parliament is satisfied that the law seeks to achieve a social objective or is in the public interest needs to be protected against being nullified, then the law can be included in Schedule IX by amending the schedule. Thus, the law is subjected to scrutiny in two occasions, one at the time of enactment and the other when being considered for including in Schedule IX.

Coelho Case and Judicial Review

Important questions from Previous years' on this topics are mentioned below:

What was held in the Coelho case? In this context, can you say that judicial review is of key importance amongst the basic features of the constitution?

IAS MAINS: (GS 2016)

The main contention in the Coelho case was whether a law inserted in the Schedule IX of the constitution was immunized from judicial review. The Supreme Court ruled that after Kesavananda Bharti case, the basic features of the constitution cannot be taken away by any amendment. Therefore, any law included in the schedule after 1 April 1973 will be subjected to judicial review and is not immunized from judicial review.

The court ruled that, 'The doctrine of basic structure is the very essence of the Constitution of India and therefore, there cannot be any act, rules or regulations which can overrule the basic structure doctrine. Since, the fundamental rights forms a part of the basic structure, therefore, every act inserted in the Schedule IX has to undergo the fundamental rights test'. Schedule IX being an integral part of the constitution any addition or deletion into the schedule must also comply with the doctrine of basic structure.

This landmark judgement reaffirms the importance of judicial review as a key feature of the constitution. It may be noted that more than 200 legislations were inserted in the Schedule IX after 1973. The need for immunizing this, many legislations under Schedule IX has to be reviewed. Such legislations are immunized from being struck down even if they are inconsistent with the fundamental rights. As long as the legislations are serving the social objectives of the constitution the immunity is justified. However, utmost care needs to be taken to ensure such immunity is not used for securing ulterior 'political' motives. Hence, the case makes judicial review of key importance amongst the basic features of the constitution.

Article 31C: Laws Giving Effect to Certain Directive Principles

Article 31C was inserted by the Constitution (25th Amendment) Act, 1971. It immunizes the law enacted to implement the Directive Principles given in Articles 39 (b) and (c). Articles 39 (b) and (c) represent the doctrine of distributive justice and achievement of socialistic goals of:

- Prevention of concentration of wealth.
- The ownership and control of the material resources of the community are so distributed as best to sub-serve the common good.
- Any law seeking to achieve these goals may be impeded by the fundamental rights. Considering the importance of the constitutional and socialistic objectives, the DPSPs are to be provided supremacy over the fundamental rights. Hence, Article 31 C was inserted.

As inserted by 25th Amendment Act, Article 31 C provided that:

- Any law giving effect to the Directive Principles of State Policy (DPSP) in Articles 39 (b) and (c) must contain a memorandum that it is for giving effect to the said DPSPs.
- Any law containing such a memorandum shall not be questioned in a court of law.

	Article 31 A	Article 31 B	Article 31 C
Added by	1st Amendment 1951	1st Amendment 1951	25th Amendment 1971
Purpose	Land reforms and welfare of workers	Socially important laws included in Schedule 9	Implementing Articles 39 (b) and (c)
Exemption against	Articles 14 and 19	All fundamental rights	All fundamental rights
Important cases	Minerva Mills Case	Kesavananda Bharti Case and Coelho Case	Kesavananda Bharti Case and Minerva Mills Case

However, the Supreme Court in the Kesavananda Bharti case struck down the second part as it was taking away the basic features of the constitution. Judicial review cannot be taken away by any amendment. As a consequence, Article 31 C provides for the supremacy of DPSP given in Articles 39 (b) and (c) over the fundamental rights.

Article 31 C and 42nd Amendment

Forty-second Amendment expanded the scope of Article 31C to immunize any law enacted to give effect to any of the DPSP even if it conflicts with the fundamental rights. It was argued that DPSP represents the collective liberty of the society and fundamental rights represent the individual rights. Further, the DPSPs also represent the conditions required for the full enjoyment of the fundamental rights. Hence, the DPSPs must be given primacy over fundamental rights. Once the DPSPs are fully implemented the conditions for the full enjoyment of fundamental rights is ensured. It was assumed that there is an inherent conflict between the DPSP and fundamental rights. However, the Supreme Court, in the Minerva Mills case struck down the 42nd Amendment expanding the scope of Article 31 C.

Suspension of Fundamental Rights

The fundamental rights can be suspended during when the national emergency is proclaimed. According to Article 358, when the national emergency is proclaimed on the ground of war or external aggression, the fundamental rights guaranteed by Article 19 are automatically suspended.

Similarly, when the national emergency is in operation, the President can suspend the fundamental rights by an order. However, after 44th amendment the rights guaranteed by Articles 20 and 21 cannot be suspended even during the proclamation of national emergency.

Fundamental Rights: Application to Forces

Article 33 empowers the Parliament to modify the application of the fundamental rights with respect to the members of:

- The Armed Forces.
- The members of the forces charged with the maintenance of public order.
- Persons employed in any bureau or other organization established by the state for purposes of intelligence or counter-intelligence.
- Persons employed in, or in connection with, the telecommunication systems set up for the purposes of above-mentioned forces.

The power of the Parliament includes the power to restrict or even repeal any of the fundamental rights with respect to the above in order to maintain discipline of the forces.

Grounds on which Fundamental Rights Can be Suspended

- External aggression
- War
- Internal armed rebellion
- Or the threat of any of the above

Fundamental Rights and Martial Law

According to Article 34, when the martial law is in force in any area, the fundamental rights may be restricted in order to maintain public or restore public order. Any authority taking any action towards the maintenance or restoration of public order in such disturbed areas is protected by the law.

Practice Questions

- 1.** The 9th Schedule to the Indian Constitution was added by:
- 1st Amendment
 - 8th Amendment
 - 9th Amendment
 - 42nd Amendment
- 2.** Which among the following provisions of the constitution are safeguards to minorities?
- Articles 25 to 28
 - Articles 29 and 30
 - Article 14

(a) 1, 2 only	(c) 2 only
(b) 1, 2, 3 only	(d) 1 only
- 3.** Match:
- | List I | List II |
|-----------------|-----------------------------|
| A. Article 31 B | 1. 42nd Amendment Act, 1976 |
| B. Article 31 C | 2. 1st Amendment Act, 1951 |
| C. Article 31 D | 3. 86th Amendment Act, 2001 |
| D. Article 21 A | 4. 25th Amendment Act, 1971 |
- | A | B | C | D |
|----------|----------|----------|----------|
| (a) 1 | 2 | 3 | 4 |
| (b) 2 | 4 | 3 | 1 |
| (c) 2 | 4 | 1 | 3 |
| (d) 4 | 2 | 1 | 3 |
- 4.** The grounds on which the Supreme Court may refuse issue writs under Article 32 are:
- That the aggrieved person may have his remedy from some other court.
 - The petitioner has not asked for the proper writ applicable to his case.
 - The disputed facts have to be investigated or evidence has to be taken before relief may be given to the petitioner.
 - The aggrieved person himself has not moved the court.

(a) 1, 2, 3, 4	(c) 2, 3, 4
(b) 2 and 4	(d) None of the above
- 5.** Under which of the following amendments to the constitution, the word 'compensation' was replaced by the word 'amount' in the Right to Property?
- 26th Amendment
 - 42nd Amendment
 - 25th Amendment
 - 4th Amendment
- 6.** The remedial fundamental right, the backbone of fundamental rights guaranteed under Article 32 is available to:
- Indian citizens only
 - Indian citizens as well as foreigners
 - All persons, natural or artificial, citizens as well as non-citizens
 - All-natural persons, Indian citizens or non-citizens
- 7.** The Supreme Court's power to issue writs under Article 32 for the enforcement of fundamental rights is:
- Restricted to the issuance of five writs.
 - Not restricted to five writs. It has power to issue any order or directions as it may deem appropriate in a case.
 - Restricted to the issuance of writs of mandamus and prohibition.
 - Restricted to a traditional common writ.
- 8.** Under the provisions of fundamental right, the ownership of which of the following kinds of property is treated as a fundamental Right to Property even after 44th amendment?
- The property owned by the educational institutions up to intermediate level.
 - The landed property owned by a farmer within the ceiling limits.
 - The property owned by minority education institutions.
 - The property owned by minority religious institutions.

(a) 2 only	(c) 2 and 3
(b) 1 and 2	(d) 1 and 4

9. Consider the following:

1. Article 25 seeks to ensure equality of all religions, thereby promoting secularism.
2. Article 25 emphasizes on the practice of religious freedom by individuals.

Correct statements

- | | |
|------------|---------------------|
| (a) 1 only | (c) Both 1 and 2 |
| (b) 2 only | (d) Neither 1 nor 2 |

10. Consider the following situation:

It is estimated that there are about three million urban homeless in India. Night shelters are not available for more than five per cent of this population. Hundreds of these old, sick homeless people are killed by cold wave during winter. They cannot have ration and voting cards in the absence of any 'proof of residence'. Without these documents they also cannot avail government help as needy patients. A large number of these homeless people are casual workers, who earn very low wages. They travel to the city in search of work from different parts of the country.

From the above paragraph, which among the following can be inferred?

1. The implementation of the DPSP, particularly the provision of Article 41 is weak.
 2. There is a violation of Right to Life and the weak implementation of Article 41.
 3. The Supreme Court can be moved and the remedy is available under Article 32.
 4. The Supreme Court can be moved but no remedy is available under Article 32.
- | | |
|------------------|------------------|
| (a) 1, 3, 4 only | (c) 1, 2 only |
| (b) 1, 2, 4 only | (d) 2, 3, 4 only |

11. Which among the following is correct regarding the Public Interest Litigation (PIL)?

1. *Locus standi* to file a particular petition under Article 32 depends on the facts as they existed at the time when the petition was filed.
 2. If personal litigation is wrongly fought, in the shape of PIL, cost may be imposed on the person instituting such litigation.
- | | |
|------------|---------------------|
| (a) 1 only | (c) Both 1 and 2 |
| (b) 2 only | (d) Neither 1 nor 2 |

12. The state legislatures do not have the powers to make law relating to:

1. Article 16 (3)
 2. Article 32 (3)
 3. Article 33
 4. Article 34
- | | |
|------------------|----------------|
| (a) 1, 2, 3 only | (c) 1, 2, 3, 4 |
| (b) 2, 3, 4 only | (d) 1, 4 only |

13. Article 25 guarantees to all persons equally:

- (a) Freedom to freely profess, practice and propagate religion
- (b) Freedom of conscience and the right to freely profess and practice religion
- (c) Freedom of conscience and the right to freely practice and propagate religion
- (d) Freedom of conscience and the right to freely profess, practice and propagate religion

14. Match the following:

List I (Situations)

- A. Overweight male cabin crew are allowed to get promotion in the national airlines but their women colleagues who gain weight are penalized.
- B. A director makes a documentary film that criticizes the policies of the government.
- C. People displaced by a big dam take out a rally demanding rehabilitation.
- D. Andhra society runs Telugu medium schools outside Andhra Pradesh.

List II (Rights)

1. Violation of Article 16 (1)
2. Right guaranteed by Article 19 (1) (a)
3. Right guaranteed by Article 19 (1) (b)
4. Right guaranteed by Article 30 (1)

A	B	C	D
(a) 1	2	3	4
(b) 4	3	2	1
(c) 1	3	2	4
(d) 2	4	1	3

15. The Constitution of India contains an express provision for judicial review in:

- | | |
|----------------|-------------------------|
| (a) Article 12 | (c) Article 32 |
| (b) Article 13 | (d) Articles 32 and 226 |

- 16.** Which one of the following reflects the utility of the fundamental rights in a democracy?
- The necessity of fundamental rights arises only when autocracy rules
 - The fundamental rights are implied in the sovereignty of the Parliament
 - Fundamental rights provide an opportunity to the citizens to create a public opinion against autocratic measures of the state
 - Equality before law is so general and has no specific application that it cannot by itself a matter of litigation
- 17.** Consider the following. The freedom guaranteed by Article 25 is to 'profess, practice and propagate' religion.
- The act of 'practice' is concerned primarily with religious worship, ritual and observations.
 - Propagation is concerned with right to communicate beliefs to another person or to expound the tenets of one's religion, but does not include a right to forcible conversion.
- Correct statements
- 1 only
 - 2 only
 - (c) Both 1 and 2
 - (d) Neither 1 nor 2
- 18.** Which among the following rights are guaranteed by the Constitution of India?
- Right to healthy environment
 - Right to protection against hazardous industries
- (c) Right to fair and speedy trial
(d) Right to profess a religion
- 19.** The conditions in which the writ of mandamus is issued are:
- The applicant must show that he has a real and special interest in the subject matter and special interest in the legal right to be enforced.
 - The applicant must show that there resides in him a legal right to the performance sought.
- 1 only
 - 2 only
 - (c) Both 1 and 2
 - (d) Neither 1 nor 2
- 20. Match: List I**
- | | |
|----|---------------|
| A. | Habeas corpus |
| B. | Mandamus |
| C. | Prohibition |
| D. | Quo warranto |
- List II**
- Certification of proceedings
 - Legality of claim to office
 - Usurping jurisdiction
 - Enforcing official duty
 - Produce the body of ****
- | A | B | C | D |
|-------|---|---|---|
| (a) 5 | 4 | 2 | 3 |
| (b) 5 | 4 | 3 | 2 |
| (c) 5 | 4 | 3 | 1 |
| (d) 4 | 3 | 2 | 1 |

Answer Key

- 1.** (a), **2.** (b), **3.** (c), **4.** (d), **5.** (c), **6.** (c), **7.** (b), **8.** (c), **9.** (c), **10.** (b),
11. (c), **12.** (c), **13.** (d), **14.** (a), **15.** (b), **16.** (c), **17.** (c), **18.** (d), **19.** (c), **20.** (b)

Hints and Explanations

1. (a)

- Article 31B was inserted by the first amendment in 1951. Corresponding to Article 31B, Schedule IX was also included in the constitution.
- According to the provision, any law that is included in the Schedule IX shall not be 'questioned in a court of law' on the ground that it violates the fundamental rights and declared void.

Refer Page 9.10

2. (b)

- Constitutional safeguards available to minorities in specific: Articles 29 & 30.
- Constitutional safeguards available to all citizens including minorities: Articles 14, 25-28

Refer Page 9.7

3. (c)

Refer Page 9.11

4. (d)

- The court cannot refuse to admit a petition under Article 32 in case of violation of any fundamental right on any ground.

Refer Page 9.8 – Right to Constitutional remedies

5. (c)

- By the 25th Amendment Act 1971, the word 'compensation' in Article 31(2) was replaced by 'amount'.
- The amount could be given in cash or otherwise.

6. (c)

- Right to Constitutional Remedies is available to anyone whose fundamental rights are violated.
- Even minority institutions can seek remedy under Article 32.

Refer Page 9.6 and 9.8

7. (b)

- The court has the power to issue any direction or order or writs to enforce the fundamental rights.
- Article 32 mentions five writs namely the writ of Habeas Corpus, Mandamus,

Prohibition, Certiorari and Quo Warranto.

Refer Page 9.8

8. (c)

- Article 30 (1A) was inserted by 44th Constitution Amendment Act, 1978 providing minority educational institutions right to property as a fundamental right.
- Under Article 31A, the landed property owned by a farmer within the ceiling limits is considered fundamental right to property.

Refer Page 9.6

9. (c)

- Article 25 (1) guarantees every person has the right to freedom of conscience, profess, practise and propagate a religion of his choice.
- The right to conscience also includes the right not to believe and not to have a religious faith.
- Thus, it guarantees the right to be an atheist. It also guarantees the right to be agnostic.

Refer Page 9.1 and 9.2

10. (b)

- Right to shelter is an implied right under Article 21 and hence, a direct remedy under Article 32 is not available.
- Article 41 provides that it is the duty of the State to ensure right to work and public assistance.

Refer Chapter 9.10

11. (c)

- The concept of locus standi demands that any person whose right is violated shall alone have the right to move the Supreme Court seeking remedy.
- A Public Interest Litigation is moved on behalf of such person who is unable to approach the court for relief by reason of poverty, helplessness or disability or socially or economically disadvantaged position.

Refer Page 9.9

12. (c)

- By Article 35, the Parliament and not the State Legislature has the power to make laws relating to Articles 16(3), 32(3), 33 and 34.

13. (d)

- Article 25 (1) guarantees every person has the right to freedom of conscience, profess, practise and propagate a religion of his choice.

Refer Page 9.2

14. (a)

- Article 16(1) provides for equality of opportunity for all citizens in matters of public employment.
- It prohibits the discrimination on grounds of religion, race, caste, sex, descent, Place of birth, residence or any of them.
- Article 19(1)(a) refers to the freedom of speech and expression which includes film as a mode of expression.
- Article 19(1)(b) gives citizens the freedom to assemble peacefully without arms.
- Article 30(1) provides right to minorities to run educational institutions.

Refer Page 9.6

15. (b)

- Indian constitution confers the power on the Judiciary by the provisions of article 13 and 32.

Refer Page 9.8 and 17.27

16. (c)

Refer Page 6.3

17. (c)

- Practice means to perform the religious rites and observe the duties associated with one's religion and to exhibit one's religious belief.

- Propagate means the right to communicate a person's beliefs to another person or to expose the tenets of that faith.
- But it does not include the right to convert another person to the former's faith.

Refer Page 9.2

18. (d)

- By Article 25, individuals can profess a religion that is, declare one's faith and belief freely and openly.
- Right to healthy environment and right to fair and speedy trial are implied rights under Part III.
- Article 24 provides right against exploitation which includes children below 14 years of age from being employed in hazardous industries.

Refer Page 9.2

19. (c)

- When fundamental rights of any person is infringed upon due to any public authority failing to perform his lawful duties then, the writ of mandamus lies against him.
- By issuing the writ, Court directs the public servant to perform his duties.
- It is also issued to restrain a public servant from performing any act which is unconstitutional.

Refer Page 9.8 and 17.24

20. (b)

Refer Page 9.8 and 17.23

Directive Principles of State Policy and Fundamental Duties

Learning Objectives

After reading this chapter, you will be able to:

- Understand the purpose and significance of the Directive Principles of State Policy and Fundamental Duties (DPSP)
- Analyze the critical view of the DPSP and the need for continuing them as part of constitution
- Learn classification of DPSPs
- Explain the difference between fundamental rights and DPSP, and understand the conflict between the two
- Understand how the DPSPs are implemented
- State the fundamental duties

INTRODUCTION

The concept of directive principles has been borrowed from the Irish Constitution. Part IV of the constitution deals with DPSP. Articles 36 to 51 contain 20 DPSPs. The concept of directive principles is a balance between the Marxian approach to achieve egalitarian society and democracy. These principles are to act as a guiding force of the policy-making in a modern democratic State. According to Dr Ambedkar, the DPSPs are like an instrument of instruction to the State.

DPSP: What They Say?

- DPSPs are 'moral' precepts having an 'educative value' reminding the aim of Indian polity. B. N. Rau
- DPSPs are not mere pious declarations but are 'Instruments of Instructions' to achieve economic democracy. The government has to answer for them before the electorate at election time. Ambedkar
- DPSP and fundamental rights together form the 'Conscience of the Indian Constitution'. Granville Austin
- The directive principles in our constitution are fore-runners of the UN Convention on Right to Development. Supreme Court

SCOPE OF DPSP

Important questions from Previous years' on this topics are mentioned below:

What is the importance of Directive Principles of State Policy? Mention which Directive Principles of State Policy have primacy over the fundamental rights? IAS MAINS 1999

According to the Supreme Court, the directive principles have a positive aspect and they supplement fundamental rights in achieving a welfare state. Whenever it is needed, the fundamental rights can be amended for implementing the DPSPs, without affecting the basic features of the constitution. If needed, the fundamental rights should be adjusted to implement DPSP. So, the Supreme Court held that any law made for implementing DPSPs should be upheld as far as possible.

'The constitutional provisions, excepting the fundamental rights, may be construed in the light of directive principles'.^[1] Even the subject matters, as given in Schedule 7, on which the Parliament and State legislature are empowered to legislate, must be given a wide interpretation in order to give effect to directive principles.

Though the object of directive principles is to embody the concept of a welfare state, the DPSP do not confer any enforceable rights.^[2] Any alleged breach of DPSP by a law does not invalidates the law. The citizen cannot complain of any violation of DPSP and seek mandatory relief against the State for that. Similarly, DPSP will not be a source of power to the legislature for making law. The legislature must enact law to implement the DPSP based on the powers conferred and the subjects entrusted on them by the constitution.

The DPSPs aim to establish a 'social' and 'economic' democracy by striking a balance between the individual interest and the collective interest of the society. DPSPs act as a tool for social control and welfare measures enabling the organization of a 'socialistic pattern' of society.

NEED, RELEVANCE AND IMPORTANCE OF DPSP^[3]

While DPSPs serve the objective of reorganizing the society on socialistic lines, there have been several criticisms placed against them. The critics question the relevance of the directives on various grounds. Even, in the constituent assembly debates, some of the members were against including DPSP in the Indian constitution. The critical views on DPSPs are as follows:

- (a) Prescribing certain ideals for policy-making to the legislature and executive is illogical because the social values change with changing times.
- (b) In any democracy, the governments are run, based on the political ideology of the party voted to power. The political ideology might vary according to the changing socio-political conditions. So, to draw and prescribe certain fixed guidelines will be inappropriate.
- (c) Some of the DPSPs are categorized as 'rights', but it is misnomer. They cannot be called as rights because they are not enforceable by any court. Any right that the citizen cannot get relief for its infringement sounds meaningless.
- (d) Another criticism placed against DPSPs is that they are 'vague in expression' and are 'illogically arranged'. For instance, Article 41 reads that, 'the State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance'. The expression 'within the limits of its economic capacity and development' is vague and gives the State a leverage to justify its non-performance or underperformance.

1 Supreme Court: Chandra Bhavan versus state of Mysore and other cases.

2 Supreme Court: Kesavananda Bharti case

- (e) According to Ivor Jennings, the DPSPs are 'a break on the wheels of the national progresses'. The policy-makers tend to align their thought with the DPSP and will be bothered about policies conforming to the DPSP than their utility. Thus, DPSPs impede the progress of the nation.
- (f) T. T. Krishnamachari one of the constituent assembly members, criticized DPSPs 'a veritable dust-bin of sentiments'. DPSPs sentimentally reflect the ideals and thoughts of Gandhi, Nehru and other values that guided the freedom struggle. It is paramount to respect and follow the teachings of the leaders but to incorporate them in the constitution is not essential. For instance, Article 47 entrusts responsibility for preventing the citizens consuming intoxicating drinks and drugs. Though it may be a requirement of a welfare state, it need not be included in the constitution.
- (g) Yet another criticism is that most of the DPSPs are borrowed from foreign nations or adapted from the political philosophy of Western societies.

Why DPSP?

- Ideals needed to establish a welfare state.
- Representing sentiments and values of the freedom struggle.
- A reminder to the state and the people of the rights to be guaranteed.
- Promoting social and economic democracy.
- A tool of political socialization.

In spite of the above criticisms, the DPSPs still hold relevance and are valid on account of the following reasons:

1. Certain ideals need to be mentioned in the constitution in order to enable an infant democracy like India to define 'welfare' and establish a welfare state.
2. India, at the time of independence suffered partition and inherited a shattered economy from the imperial British rule. In that context, it became essential for the founding fathers to prescribe those ideals.
3. It is an injustice to consider the DPSPs as a mere expression of sentiments of leaders. Even if they are so, it is appropriate to include them in the constitution, as these sentiments and values were the defining features of the freedom struggle. Justice Kania, the first Chief Justice of India, rightly noted that the DPSP assists courts and the policy-makers to interpret the constitution and understand the true spirit of the constitution and its goals.
4. To call DPSPs to be vaguely worded is not correct. Indeed, the DPSP is deliberately loosely worded to enable the policy-makers to have enough room to interpret the constitutional provisions for making policies towards the achievement of the welfare of the people.
5. DPSPs conferring unenforceable rights on the citizens were not an accident, but the founding fathers after considerable length of deliberations chose to provide them as unenforceable. The Sapru Committee⁽⁴⁾ (1946) recommended that the fundamental rights in the free Indian constitution must be of two classes namely justiciable and non-justiciable. Further, at the time of independence, India did not have enough resources to grant all the rights as enforceable.
6. DPSP serve as a reminder to the State of its responsibilities and to the people as a list of what is due to them.
7. Also, there is need for the society to achieve a level of maturity to enjoy certain rights and liberties. The social control on the individual liberties is much required so that an appropriate social climate is created.

⁴ It was the committee that made constitutional proposals in 1946.

8. It is wrong to conclude that DPSPs are adaptations from foreign nations. Most of these directives are native and have been the very foundation of freedom struggle. For example, organizing village *panchayats* has been a traditional value and a system practised in India since ancient times. Similarly, protection of the interest of the SC and ST was an ideal that was at the roots of freedom struggle.
9. Last but not the least, DPSP serve another important purpose of being a tool of political socialization. Article 37 declares that DPSP are not enforceable by a court but they are enforceable politically. They serve as a benchmark to analyse the performance of the party that run the government when they go to the people for their electoral mandate. Similarly, it also enables the voter to compare the electoral manifesto of various political parties and make an informed decision to cast his vote in the election.

Hence, the DPSP are very much valid and relevant. Indeed, DPSP are more relevant in the present, the era of liberalization and rollback of State. As Granville Austin commented they serve as the 'conscience of the constitution'.

DPSP: NON-JUSTICIALE REASON

Article 37 declares that the DPSPs are not enforceable by any court including the Supreme Court. However, it is 'fundamental to governance of the country'. The State is duty bound to apply in making law and policies. As a consequence, for the violation of the DPSP there will not be any judicial remedy. It is a deliberate decision of the constituent assembly to keep DPSP non-justiciable. However, they are not totally unenforceable, but are enforceable by other means.

Do You Know?

Article 37 clearly distinguishes between government, politics and good governance.

The DPSPs are in that nature of a 'basic standard of national conscience' as rightly stated by Prof. M. V. Pylee. The constitution establishes a democratic and responsible government. The government is elected by universal adult franchise and the government is accountable to the people. The DPSPs act as the touchstone for the elector to assess the performance the government that they have voted to power. Similarly, they also help assess the manifesto of the political parties contesting the elections when they approach the voters at the time of election.

Also, the DPSPs are enforceable by the executive. Article 355, provides that the union government is responsible for protecting the States from external aggression, internal disturbance and ensure that the administration of the State in accordance with the constitution. The union government thus, has the power to direct the States to implement the DPSPs. Hence, one cannot jump to the conclusion that the DPSPs are unenforceable and are an unwanted appendix to the constitution.

DPSPS CLASSIFICATION

The DPSPs are grouped as:

- (i) Certain ideals for the State
- (ii) Certain guidelines and directions for policy-making
- (iii) Certain rights which are enforceable

Further, the DPSP can be classified as those representing:

- (i) Socialistic values
- (ii) Gandhian values
- (iii) Liberalistic values

Directives Representing Socialistic Values

The provisions of DPSP that represent socialistic values are Articles 38, 39, 39A, 41, 42, 43, 43A, 43B, 45 and 47. Of these, Article 38 sets the objective of securing a social order based on justice and Article 39 contains the principles to be followed by the State in establishing the social order. The other provisions seek to establish a charter for social security in the social order based on justice.

DPSP			
	Socialistic Values	Gandhian Values	Liberalistic Values
Articles	38, 39, 39 (A), 41, 42, 43, 43A, 43B, 45, 47	40, 43, 43B, 46, 47, 48	44, 45, 48, 48A, 49, 50, 51

Article 38: Social Order

The 44th amendment renumbered Article 38 as Article 38 (1) and inserted the Clause 2 to the article. Article 38 (1) is almost a verbatim reproduction of the preamble. It makes it an obligation to the State to establish a social order based on justice—social, economic and political. Clause 2 sets the objective of minimizing inequalities in income and eliminating the ‘inequalities in status, facilities and opportunities’ between individuals and groups.

The Supreme Court ruled that Article 38, reaffirms the concept of social justice. According to the Supreme Court, ‘social justice’ is an integral part of justice which is a dynamic process of mitigating the sufferings of the poor, weak, dalits, tribes and other deprived sections of the society. It is the ‘process to elevate them to a level of equality to lead a life with dignity of life’.⁽⁵⁾ The law is the catalyst that enables the weak to ‘reach the ladder of social justice’ and lead life of dignity.

Clause 2 of the article, inserted by the 44th amendment, has attempted to define objectively the features of such social order. Eliminating the inequalities in the status, facilities and opportunities is an essential objective of the State. In India, traditionally the social status of a person had been a factor that determined the facilities and opportunity to which any person was entitled. Further, these factors determined the inequality in income. Therefore, eliminating inequalities in status, facility and opportunity becomes essential to guarantee ‘equality’, which is declared by the Preamble as the resolve of the people of India, to all citizens.⁽⁶⁾

In establishing the social order, the State shall adopt the principle prescribed by Article 39. The principles in Article 39 may be grouped as those establishing equality, embodying distributive justice and promoting welfare.

Supreme Court Observations on DPSP

- The object of Directive Principles is to embody the concept of a welfare state.
- Directive principles and fundamental rights are to be harmoniously construed.
- Parliament can amend fundamental rights for implementing the directives, so long as the amendment does not touch the basic features.
- Legislation enacted to implement the directive principles should be upheld, as far as possible.

5 Supreme Court: Air India Statutory Corporation versus United Labour Union, November 1996.

6 Refer Doctrine of Distributive Justice.

Principles Establishing Equality

Articles 39 (a) and (d) seek to establish the equality between men and women. Article 39 (a) prescribes equality of men and women 'to adequate means of livelihood'. Clause (d) prescribes equal pay for equal work both men and women. 'Social justice and equality are complementary to each other so that both should maintain their vitality. Rule of law is a potent instrument of social justice to bring about equality.'⁽⁷⁾

The Supreme Court has held that the article aims at securing a welfare state and helps interpreting and understanding provisions relating to fundamental rights. For instance, when 'equal pay for equal work' is denied to men and women, it becomes irrational classification and is in violation of the principle of equality guaranteed by Article 14. Any difference in pay must be based on the differences in the duties.

Doctrine of Distributive Justice

Articles 39 (b) and (c) embody the Doctrine of Distributive Justice. The doctrine refers to the removal of inequalities rectifying the injustice and resettling them in the dealings and transactions between the unequal.⁽⁸⁾ Article 39 (b) provides that the ownership and control of material resources of the community must be distributed for the community good. Article 39 (c) makes 'prevention of concentration of wealth' an obligation on the State.

The two provisions embody the socialistic objective of the constitution. It therefore becomes an obligation to ensure equitable distribution of resources by 'suitable legislations', taxation, etc. The term 'material resources' in Article 39 (c) includes even the land owned by private parties. Hence, the provision justifies the land ceiling laws. To enable the achievement of this objective, Article 31C was inserted by the 25th amendment. Article 31C provides saves a law, enacted to give effect to Articles 39 (b) and (c), from being declared invalid even if the law is inconsistent with the fundamental rights guaranteed by Article 14, 19 and 31. Read along with the Article 38 (2), Articles 39 (b) and (c) embodying the principle of distributive justice have dealt a blow to the fundamental right to property which was repealed by the 44th amendment.

Furthermore, these provisions also empower the State to nationalize any sector of economy and promote 'collectivism'. Though the constitution does not envisage collectivism in the garb of socialism, whenever it becomes necessary the State can assume the role for serving the public cause. However, this needs to be undertaken with utmost care because the constitution does not envisage establishing a socialist State but only a 'socialistic pattern of society'. Pandit Nehru clearly distinguished the 'socialism' and 'socialistic pattern of society'. While explaining the objective of planning in India he said, 'Socialism to some people means two things: Distribution which means cutting off the pockets of the people who have too much money and nationalization. Both these are desirable objectives, but neither is by itself socialism.'

Any attempt to distribute by affecting the productive machinery is utterly wrong; to do so would be to weaken ourselves. The basis of socialism is greater wealth; there cannot be any socialism of poverty. Therefore, the process of equalization has to be phased.

Secondly, to the question of nationalization Pandit Nehru said 'I think it is dangerous merely to nationalize something without being prepared to work it properly. To nationalize we have to select things. My idea of socialism is that every individual in the State should have equal opportunity for progress.'

Principles Promoting Welfare

Articles 39 (e) and (f), makes it an obligation for the State to endeavour to promote the health and strength of workers, men and women, the tender age of children. Protect them from being subjected to exploitation and to enable them lead a life of dignity. The social order must be so organized that the any citizen must not be forced to take up 'any vocation unsuited to their age or strength' due to economic necessity.

7 Supreme Court: Air India Statutory Corporation versus United Labour Union, November 1996.

8 Supreme Court: VGP Prem Nagar Minvariya Kudi versus the state of Tamil Nadu 2008.



It also mentions that 'children are given opportunities and facilities to develop in a health manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment'. This needs to be read along with the fundamental right against exploitation guaranteed by Articles 23 and 24. Hence, it is a constitutional obligation of the State to ensure that the children are provided with good parental care, education. The State has to make law to eliminate child labour, etc. This is a prerequisite for India and becomes all the more important in the present context to derive the benefits of 'demographic dividend'.

Charter for Social Security

The provisions of the Articles 41, 42, 43, 43A, 45, 46, 47 and 39A provides a list of rights that is fundamental in a socialistic pattern of society.

1. Article 41: Right to work, to education and to public assistance

Article 41 provides that, the State 'within its economic capacity and development', has to guarantee the:

- Right to education
- Work
- Public assistance in certain cases of unemployment, old age sickness and certain cases of undeserved want

It means that the State to formulate the policies to develop the economy so that it has the capacity to guarantee the said rights. The framers of the constitution had so provided considering the large size of the country, its population and the level of poverty. However, in the context of liberalization this stand is not fully acceptable because the State has much wider opportunity to mobilize resources both from within and without the country.

'Freebies' – Corrupt Practice or Addressing 'Undeserved Want'⁽¹⁹⁾: Political parties promise to distribute freebies in their election manifesto. When the Dravida Munnetra Kazhagam (DMK) promised to distribute television sets if the party was voted to power in 2006 election, it was challenged in the Madras High Court. Such promises are made to induce the voters. This affects the level playing field between the candidates, which in turn disrupts free and fair election. Although such 'freebies' are in form of an election manifesto they in reality are a bribe or inducement. Hence, they are unconstitutional in accordance with the provisions of Representation of People Act.

Later in the case on appeal the Supreme Court ruled that the promises in the election manifesto cannot be read into Section 123 for declaring it to be a corrupt practice. It was argued that the schemes challenged fall within the realm of fulfilling the Directive Principles of State Policy that they are to fulfil the undeserved want of the people. It was argued that distribution of free TVs was for the purpose of providing recreation and general knowledge to the household women, more particularly, those living in the rural areas.

The Directives Principles of State Policy in Part IV of the Constitution mandates the incumbent State government to promote the welfare of the people, who are below the poverty line or unable to come up without their support. Article 41 mandates the State to provide assistance to people in cases of undeserved wants.

The objective of the State in the era of good governance is to create a self-reliant society. To usher in to a self-reliant society it is essential to:

- Discovering the natural abilities and skills of the citizen
- Tapping the potential by educating
- Training them to use the potential appropriately
- Appropriate marketing of their potential Integrating their contribution with GDP

But the freebies do not achieve the objective of the good governance because they do not establish a self-reliant society. On the contrary, the freebies make the citizens more dependent on the State. This gives more scope for the State to interfere in the private life of the citizens which in turn may infringe upon the fundamental rights of the citizens.

2. Article 42: Provision for just and humane conditions of work

The State must make policies and law to ensure that working conditions, in organizations both public and private, are 'just and humane'. It is an obligation to provide maternity relief to worker.

Sexual harassment of women at workplace: Supreme Court Guidelines⁽¹⁰⁾

1. It shall be the duty of the employer to prevent sexual harassment by taking all steps required.
2. Sexual harassment includes such unwelcome sexually determined behaviour, whether directly or by implication as:
 - Physical contact and advances
 - A demand or request for sexual favours
 - Sexually-coloured remarks
 - Showing pornography
 - Any other unwelcome physical verbal or non-verbal conduct of sexual nature.
3. All employers should take appropriate steps to prevent sexual harassment and they should take the following steps:
 - (a) The definition of sexual harassment should be notified, circulated and published at the workplace.
 - (b) The rules/regulations relating to conduct and discipline should include rules/regulations prohibiting sexual harassment.
 - (c) Appropriate penalties in such rules against the offender must be prescribed.
 - (d) Appropriate work conditions should be provided in respect of work, leisure, health and hygiene.
 - (e) The working conditions must ensure that there is no hostile environment towards women at workplaces.
4. An appropriate complaint mechanism should be created in the organization for redress of the complaint made by the victim. Such complaint mechanism should ensure time-bound treatment of complaints.
5. A Complaints Committee must be provided in the organization. The Complaints Committee should be headed by a woman and not less than half of its member should be women.
6. The Complaints Committee should involve a third party, either NGO or other body who is familiar with the issue of sexual harassment.
7. The Complaints Committee must make an annual report and action taken by them to the government.

Sexual harassment of women at workplace (Prevention, Prohibition and Redressal) Act, 2013: Subsequently the law to prevent and protect women from sexual harassment was enacted. 'The law focuses on prevention of sexual harassment at workplace and provides a redressal mechanism. The act has been highlighted over the last year due to the efforts of the government to ensure its enforcement'.

The act upholds women's fundamental rights to equality, right to live with dignity and right to practice any profession or to carry on any occupation, trade or business which includes a right to a safe working environment, free from sexual harassment as provided under Article 19 (1) (g) of the Indian Constitution.⁽¹¹⁾

10 Supreme Court: Vishaka and others versus state of Rajasthan Judgment August 1997.

11 <http://pib.nic.in/newsite/mbErel.aspx?reid=145580>: PIB features 'Sexual Harassment at the Workplace: What it Means, and Responsibilities of Employer'.

Constitutional Safeguards for Women

- (a) Article 14: Right to equality
- (b) Article 15(3): Power of the make special provisions for the development of women and children
- (c) Article 23: Protection against trafficking and forced labour
- (d) Article 29: Protection in respect of admission to educational institutions
- (e) Article 39 (a): Right to equal means of livelihood
- (f) Article 39 (d): Right to equal pay for equal work
- (g) Article 42: Human conditions of work
- (h) Articles 243 D and 243T: Reservation of seats in *panchayats* and municipalities

3. Article 43: 'Living Wage'

Article 43 is a very liberal and openly worded. It states that the State shall 'by suitable legislation or economic organization or in any other way' provide 'living wage'. It states that the State has to provide for all workers, work, conditions of work and 'Living Wage'.

- (a) The 'Living Wage' must be adequate to ensure: Decent standard of life
- (b) Full enjoyment of leisure
- (c) Full enjoyment of social opportunities
- (d) Full enjoyment of cultural opportunities

Living Wage and Right to Life	
Article 43	Article 21
Decent standard of life.	Right to live with human dignity.
Full enjoyment of leisure, social and cultural opportunities.	Life including the 'finer graces' of human life.

'Living Wage': The founding fathers have consciously chosen to use the term 'living wage'. The concept of living wage takes into account the uncertainties caused due to inflation and other incidental factors like the differences between the cities. The term 'minimum wages' is avoided because it gives leverage to the government because 'minimum' refers to a fixed amount and might become inadequate when the circumstances change. But living wage will mean a minimum that must be adequate irrespective of the economic changes and the differences between the places of residence.

Further, living wage must be adequate to enjoy leisure, social and cultural opportunities. This needs to be read along with Article 21, the right to life. Decent standard of living, fullest enjoyment of leisure, social and cultural opportunities is an aspect of dignified life.

4. Article 43A: Participative Management

It was inserted by the 42nd Amendment Act, 1976. It sets an obligation on the State to enact legislations for participative management of organizations or industry.

5. Article 45: Childhood Care

Article 45 provides for the early childhood care as an obligation of the State. It provides education for all children until they complete the age of six years. The 86th amendment inserted Article 21A. It made the free education for children from the age of 6 to 14 years has been made a fundamental right.

Right to Education Act^{12}:

The Constitution (86th Amendment) Act, 2002, inserted Article 21 A. It provides for free and compulsory education of all children in the age group of 6 to 14 years as a fundamental right in such a manner as the State may, by law, determine.

6. Article 46: Educational and Economic interests of SCs, STs and other weaker sections

It is the constitutional duty of the State to promote the educational and economic interests of the weaker sections especially that of the Scheduled Castes and the Scheduled Tribes. They must be protected from 'social injustice and all forms of exploitation'.

7. Article 47: Providing Health and Nutrition

The State is duty-bound to raise the level of nutrition and the standard of living and to improve public health of the citizens. In particular, it is the duty of the State to prohibit the consumption of intoxicating drinks and drugs. This does not mean that the State can indulge in moral policing and interfere in the rights of the citizens. It means the State needs to build the moral values and educate the people of the ill-effects of the consumption. Towards this, the State has made it mandatory to print on the statutory warning.

National Food Security Act⁽¹³⁾

Coverage and Entitlement under Targeted Public Distribution System (TPDS): Upto 75% of the rural population and 50% of the urban population will be covered under TPDS, with uniform entitlement of 5 kg per person per month. However, since Antyodaya Anna Yojana (AAY) households constitute poorest of the poor, and are presently entitled to 35 kg per household per month, entitlement of existing AAY households will be protected at 35 kg per household per month.

State-wise coverage: Corresponding to the all India coverage of 75% and 50% in the rural and urban areas, state-wise coverage will be determined by the Central government. Planning Commission has determined the state-wise coverage by using the NSS Household Consumption Survey data for 2011–12.

Subsidized prices under TPDS and their revision: Foodgrains under TPDS will be made available at subsidized prices of ₹ 3/2/1 per kg for rice, wheat and coarse grains for a period of three years from the date of commencement of the Act. Thereafter prices will be suitably linked to Minimum Support Price (MSP).

In case, any State's allocation under the act is lower than their current allocation, it will be protected up to the level of average off-take under normal TPDS during last three years, at prices to be determined by the Central government. Existing prices for APL households i.e., ₹ 6.10 per kg for wheat and ₹ 8.30 per kg for rice has been determined as issue prices for the additional allocation to protect the average off-take during last three years.

Identification of Households: Within the coverage under TPDS determined for each State, the work of identification of eligible households is to be done by States/UTs.

Nutritional Support to Women and Children: Pregnant women and lactating mothers and children in the age group of 6 months to 14 years will be entitled to meals as per prescribed nutritional norms under Integrated Child Development Services (ICDS) and Mid-Day Meal (MDM) schemes. Higher nutritional norms have been prescribed for malnourished children upto 6 years of age.

Maternity Benefit: Pregnant women and lactating mothers will also be entitled to receive maternity benefit of not less than ₹. 6,000.

Women Empowerment: For a woman to be considered as head of household for issuance of ration card, she should be (a) 18 years or above in age and (b) eldest in the household.

Grievance Redressal Mechanism: Available at State and District levels. States have the flexibility to either use the existing machinery or set-up a separate mechanism.

Intrastate Transportation and Handling of Foodgrains Cost and FPS Dealers' Margin: Central government will provide assistance to States in meeting the expenditure incurred by them on transportation of food grains within the State, its handling and FPS dealers' margin as per norms to be devised for this purpose.

Transparency and Accountability: Provisions have been made for disclosure of records relating to PDS, social audits and setting up of Vigilance Committees in order to ensure transparency and accountability.

Food Security Allowance: Provision for food security allowance to entitled beneficiaries in case of non-supply of entitled food grains or meals.

Penalty: Provision for penalty on public servant or authority, to be imposed by the State Food Commission, in case of failure to comply with the relief recommended by the District Grievance Redressal Officer.

Who is Entitled for Free Legal Aid?

- (a) Any person who is:
- (b) Member of a Scheduled Caste or Scheduled Tribe;
- (c) Victim of trafficking in human beings or beggar as referred in Article 23 of the constitution;
- (d) Woman or a child;
- (e) Disabled person;
- (f) Victim of a mass disaster, ethnic violence, caste atrocity, flood, drought, earthquake or industrial disaster; or
- (g) An industrial workman; or
- (h) Persons in custody; or
- (i) Persons in receipt of annual income less than rupees nine thousand or such other higher amount as may be prescribed by the State government, if the case is before a court other than the Supreme Court, and less than rupees twelve thousand or such other higher amount as may be prescribed by the Central government, if the case is before the Supreme Court.

8. Article 39A: Equal justice and Free Legal aid

Article 39A was inserted by 42nd constitutional amendment. It provides for equal justice and free legal aid. In case where any citizen is not able to get legal assistance due to his economic or other disabilities, then the State shall provide free legal aid by suitable legislations or schemes.

According to the Supreme Court, Article 39A has to be read along with Article 21. With Article 21, it reinforces the right of a person to speedy trial and free legal aid. It is part of right to live with human dignity.

It means that the State has to secure the operation of the legal system that promotes justice. Consequently, the State is empowered to enact legislations towards or formulate schemes for this purpose. In the process, the State is empowered to mobilize the required resources for operating such schemes. The State also has the powers to involve the non-governmental organizations in case the State suffers from inadequacy of resources.

According to the Court, the State is also empowered to establish and run law colleges including private colleges. The State also has the powers to regulate and control such institutions.

National Legal Services Authority (NALSA): The Legal Services Authorities Act, was enacted in 1987. It came into force in 1995. NALSA seeks to establish a nationwide uniform network for providing free and competent legal services to the weaker sections of the society. The principal objective of NALSA is to provide free and competent legal services to the weaker sections of the society. It is to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities, as mandated by Article 39A. NALSA organizes Lok Adalat for amicable settlement of disputes. Other functions of NALSA include spreading legal literacy and awareness, undertaking social justice litigations, etc.

Directives Representing Gandhian Values

The following are the DPSPs that represent the Gandhian values. The provisions of Articles 40, 43, 47 and 48 represent Gandhian values.

1. Organization of Panchayats

Article 40 imposes the obligation on the State, 'to organize village *panchayats* and endow them with such powers and authority as may be necessary to enable them to function as units of self-government'. It is a measure to promote the grass roots democracy. The constitution aims at a developmental role for *panchayats*. The *panchayats* act as tools of training for development of the democratic institutions.

Towards achieving this objective, the Constitution (73rd Amendment) Act, 1992, has been passed. The amendment has added Schedule 11 which contains the functions to be devolved to the *panchayats*.

DPSP Implementation

Article 40: Constitution (73rd Amendment) Act, 1992.

Article 43: Prime Minister's Employment Generation Programme (PMEGP).

Article 47: Statutory warning on the tobacco products.

Article 48: Ban on cow Slaughter by certain states.

2. Promotion of Cottage Industry

Article 43 makes it an obligation on the State to promote cottage industries on an individual or co-operative basis in rural areas. Although, development of cottage industry is largely the responsibility of State governments, the union government has taken several measures for the promotion of cottage industries. The Ministry of Micro, Small and Medium Enterprises (MSME) has a number of schemes/interventions for the development of MSME including cottage industry on the basis of labour-intensive techniques and low per capita investment.

For example, the Ministry of Micro, Small and Medium Enterprises is implementing Prime Minister's Employment Generation Programme (PMEGP), a credit-linked subsidy programme since 2008–09 with Khadi and Village Industries Commission (KVIC) as nodal agency at the national level for generating self-employment opportunities through establishment of micro enterprises including cottage industries by organizing traditional artisans and unemployed youth, helping in preventing their migration besides increasing their earning capacity throughout the country.⁽¹⁴⁾

3. Raising level of nutrition and prohibition consumption of intoxicating drinks

The State is duty-bound to raise the level of nutrition and public health (Article 47). As part of maintaining the public health it is essential to prohibit the consumption of intoxicating drinks and drugs. It means the State needs to build the moral values and educate the people of the ill effects of the consumption. Towards this the State has made it mandatory to print on the statutory warning.

4. Prohibiting the slaughter of cows

The State is entrusted with the responsibility of prohibiting the slaughter of cows and other mulching and draught cattle by Article 48. The slaughter of cows is banned by law in certain States in India. States such as Bihar, Chandigarh, Chhattisgarh, Jammu and Kashmir, and Himachal Pradesh have enacted law to ban the slaughter of cows. In such States it is an offence punishable up to 10 years. However, the slaughter is permitted if it is essential for research, or if animal suffers from contagious disease.

14 <http://pib.nic.in/newsite/PrintRelease.aspx?relid=123783>.

Directives Representing Liberalistic Values

The following provisions of DPSPs of Articles 44, 45, 48, 48A, 49, 50 and 51 represent the liberalistic values. Liberalistic values are those which seek to promote secular values that are liberal.

1. Uniform Civil Code

Article 44, makes it an obligation on the State to promote a uniform civil code to all citizens. Uniform civil code is a set of law proposal which will replace all the laws—personal laws governing institutions like marriage, divorce, inheritance of property, etc., based on religious faith.

Need for a Uniform Civil Code: The need for a uniform civil code is promoted on the following reasons mentioned below. Firstly, India being a secular republic needs to progressive and must have a common law for all citizens. To have different rules based on religion is against the principle of equality. In fact, the fundamental rights have sought to reform many religious practices that were found to against the progress of the nation.

Secondly, a uniform civil code helps to check the caste and religion-based politics. India has shown remarkable progress in the economic front but the social progress is hampered by the anachronistic religion-based traditions and personal laws. In the social-cultural respect, Indian society remains at a midpoint—neither a modern nor a traditional society.

Thirdly, the existence of the personal laws keeps the nation divided in many respects and retards the nation-building activity.

Fourthly, the promotion of gender justice demands a uniform civil code. Indian society is primarily a patriarchal society ridden by age-old traditions that promotes unfair unequal treatment of women. The constitution declares the resolve of the people to guarantee equal rights to women, which accelerates the need for a uniform civil code.

Fifthly, the existence of various personal laws has been a loophole which is effectively exploited by the dominant and elite social class. For instance, the alternate judicial systems in rural India and the practices like honour killings are supported by the absence of the uniform civil code.

Sixthly, vote bank politics can be reduced by a uniform civil code. When all religions are brought under a single set of laws, the opportunity to offer benefits to certain religious denominations, especially the minorities, for garnering their vote will be reduced.

On the above grounds, there have been demands to make uniform civil code and implement in the past. At present, Goa is the only State in India to have a common civil code, also known as the Goa Family Law. The demand had always resulted in heated arguments for and against having the code. This had been a most debated provision even in the constituent assembly. However, the founding fathers have deliberately provided it as an unenforceable directive.

Uniform Civil Code: Why an Unenforceable Directive?: Uniform civil code aims at securing ‘harmony through uniformity’ is an undeniable truth. But making it a compulsory provision would result in a sort of regimentation of the civil code which will result in ‘discontent or dissatisfaction’.

Similarly, the Supreme Court has also ruled that although uniform civil code for all persons may be desirable, its enactment in one go may be counterproductive to the unity and integrity of the nation. Progressive changes must be brought gradually because social change is a slow process. The legislature must make or amend the existing law where there is an acute necessity. To make all laws to be uniformly applicable to all people in one go would be inexpedient and incorrect.

Important questions from Previous years' on this topics are mentioned below:

Discuss the possible factors that inhibit India from enacting for its citizens a uniform civil code as provided for in the Directive Principles of State Policy

IAS MAINS (2015)

India being a pluralist society, people have different faiths and the tenets propounded by their religious faiths are multifarious. It is indeed a challenge to achieve unity among the people professing different religious faiths, born in different castes, creeds or sub-sections in the society, speaking different languages and dialects in different regions and provided a secular constitution. 'The directive principles of the constitution themselves visualize diversity and attempt to foster uniformity among people of different faiths.'⁽¹⁵⁾

The orthodox section among the minorities such as Muslims feels that the Uniform civil code will adversely affect their identity. The issue has been sensationalized by the media which brought the debate from the need for uniform civil code to the divinity of personal law. Consequently, the demand for UCC is regarded as identity politics and viewed negatively.

Another major problem is that the prevailing religious laws in India differ with community, caste and region.

2. Organization of Agriculture and Animal Husbandry

Article 48, makes it an obligation to organize agriculture and animal husbandry on scientific lines. It is also required of the State to take steps for preserving and improving the breeds of cattle.

3. Protection and improvement of environment, safeguarding forest and wildlife

Article 48A, mandates that it is the duty of the State to 'to protect and improve the environment and to safeguard the forests and wildlife of the country'. It was inserted by the 42nd amendment in 1976.

4. Protection of monuments and places and objects of national importance

It shall be the obligation of the State to protect every monument or place or object of artistic or historic interest, declared by or under law made by Parliament to be of national importance, from spoliation, disfigurement, destruction, removal, disposal or export.⁽¹⁶⁾

5. Separation of judiciary from executive

Article 50 provides that the executive powers and judicial powers must be separated and not to be vested in the same authority. When the two powers are conferred on the same office, it will result in a conflict of interest.

6. Promotion of international peace and security

Important questions from Previous years' on this topics are mentioned below:

Value premises of the Indian constitution in the context of global constitutionalism. Comment.

IAS Mains Public Administration Paper II (2002)

Article 51 lays down that the, 'State shall endeavour to:

- (a) Promote international peace and security.
- (b) Maintain just and honourable relations between nations.
- (c) Foster respect for international law and treaty obligations in the dealings of organized peoples with one another.
- (d) Encourage settlement of international disputes by arbitration.'

This is one of the most progressive provisions of the constitution. The constitution sets the value premises that are far ahead in the present context. When the world today is attempting to establish a universal system to promote a peaceful and harmonious international political order, the constitution prescribes it as a positive obligation to India.

15 Supreme Court, Pannalal Bansilal versus state of Andhra Pradesh, AIR 1996.

16 Article 49

TABLE 10.1 Fundamental Rights and DPSPs —A Comparison**IAS MAINS GS 2007**

Bring out the differences between the fundamental rights and the Directive Principles of State Policy. Discuss some of the measures taken by the union and State governments for the implementation of the Directive Principles of State Policy.

Bases	Fundamental Rights	DPSPs
Applicability to states	Negative limitations on their powers.	Positive obligations for the State to implement.
Constitutional Perspective	Promoting individual liberty with the aim of securing individual dignity.	Ensures social welfare ushering in a welfare state promoting social and economic democracy.
Enforceability	Enforceable through the court of law.	Not enforceable through the court of law, but through political sanctions, elections, etc. Also, enforceable through administrative means. According to Article 355, the union government has powers to issue orders to states for the implementation of the DPSPs.
Impact on individual	Confers certain rights on the individuals. Even implied rights.	Acts as reasonable restrictions on the rights.
Scope	Narrow	Wider. Aims to balance individual rights and collective rights.

CONFLICT BETWEEN FUNDAMENTAL RIGHTS AND DIRECTIVE PRINCIPLES

Important questions from Previous years' on this topics are mentioned below:

- (a) What is the constitutional position of DPSP? How it has been interpreted by the judiciary after the emergency in 1975–77? *IAS MAINS (2001)*
- (b) Briefly state the stages through which the present position of the directive principles vis-a-vis the fundamental rights have emerged. *IAS MAINS (1998)*

The constitution very much accepts that under certain circumstances the implementation of the DPSPs may conflict with the fundamental rights. Article 31C was inserted by the 24th Amendment, 1971 is the evidence of such recognition. The DPSPs representing the collective liberties of the society need to be given primacy over the fundamental rights in certain cases. The Supreme Court has also ruled that the DPSPs will act as 'reasonable restrictions' on the fundamental rights. Accordingly, Article 31C provides for the supremacy of the directives in Articles 39 (b) and (c) over the fundamental rights. However, this should not be construed that there is an inherent conflict between the two.

The fundamental rights always enjoy primacy and any step taken by the State to promote the welfare of the people must be consistent with the right guaranteed by Part III. The DPSPs play an important role in the guaranteeing the fundamental rights. Many of the DPSPs represent the conditions that are essential for the fullest enjoyment of the fundamental rights. Some of them are fundamental rights that need to be guaranteed when the State has adequate resources by achieving the required economic growth.

The Constitution 42nd Amendment Act, 1976, sought to break is integration between fundamental rights and DPSP by expanding the scope of Article 31C. The amendment immunized any law seeking to give effect to any of the directives in Part IV from being declared invalid even if it infringed on the fundamental rights. However, the Supreme Court declared the amendment invalid in the Minerva Mills case (1980).

The court ruled that there is no inherent conflict between DPSP and fundamental rights. The Court quoted Granville Austin who said, 'the DPSP and the fundamental rights together constitute the conscience of the constitution'. The court evolved the Doctrine of Harmonious Construction, which states that if there appears to be a conflict between two provisions of the constitution, then the meaning that provides for the harmonious operation of both shall be taken. Any other meaning that may present a conflict between the two shall be discarded.

FUNDAMENTAL DUTIES

Fundamental duties given in Part IVA was not found in the original constitution. The concept was borrowed for former USSR. It entails that rights always goes with duties. Hence, they are complimentary to fundamental rights. It was added by the 42nd Amendment Act, 1976. The amendment added Part IVA and Article 51A.

According to the fundamental duties provided in Article 51A, it shall be the duty of every citizen of India:

- (a) To abide by the constitution and respect the National Flag and the National Anthem.
- (b) To cherish and follow the noble ideals which inspired our national struggle for freedom.
- (c) To protect the sovereignty, unity and integrity of India.
- (d) To defend the country.
- (e) To promote the spirit of common brotherhood amongst all the people of India
- (f) To preserve the rich heritage of our composite culture.
- (g) To protect and improve the natural environment.
- (h) To develop the scientific temper and spirit of inquiry.
- (i) To safeguard public property.
- (j) To strive towards excellence in all spheres of individual and collective activity.
- (k) Who is a parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years.⁽¹⁷⁾

Enforceability of Fundamental Duties

The fundamental duties are not enforceable by any court. They are prescribed as a binding value to the citizens. The citizens must undertake to abide by the fundamental duties and perform the duties as a responsibility to enjoy their fundamental rights.

The Supreme Court has ruled that the 'fundamental duties cannot be enforced by writs. They can be promoted only by constitutional methods. But they can be used for interpreting ambiguous statutes'.

¹⁷ Article 51A (k) was inserted by the Constitution (86th Amendment) Act, when the right to education was made a fundamental right by Article 21A.

Practice Questions

1. Which one of the following articles of the Indian constitution provides that, 'It shall be the duty of the union to protect every state against external aggression and internal disturbance'?
 - (a) Article 215
 - (c) Article 325
 - (b) Article 275
 - (d) Article 355
2. Which article of the constitution of India says, 'No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment'?
 - (a) Article 24
 - (c) Article 330
 - (b) Article 45
 - (d) Article 368
3. Which of the following statement is correct?
 1. The Speaker of Lok Sabha has the power to adjourn the House *sine die* but, on prorogation, it is only the President who can summon the House.
 2. Unless sooner dissolved or there is an extension of the term, there is an automatic dissolution of the Lok Sabha by efflux of time, at the end of the period of five years, even if no formal order of dissolution is issued by the President.
 3. The Speaker of Lok Sabha continues in office even after the dissolution of the House and until 'immediately before the first meeting of the House'.
 - (a) 1 and 2
 - (c) 1 and 3
 - (b) 2 and 3
 - (d) 1, 2, 3
4. Consider the following:
 1. There is no provision in the Constitution of India to encourage equal pay for equal work for both men and women.
 2. The Constitution of India does not define backward classes.

Correct statement

 - (a) 1 only
 - (c) Both 1 and 2
 - (b) 2 only
 - (d) Neither 1 nor 2
5. What does the 104th Constitution Amendment Bill relate to?
 - (a) Abolition of Legislative Councils in certain states.
 - (b) Introduction of dual citizenship for persons of Indian origin living outside India.
- (c) Providing quota to socially and educationally backward classes in private educational institutions.
- (d) Providing quota to religious minorities in the services under the Central government.
6. In the Constitution of India, promotion of international peace and security is included in the:
 - (a) Preamble to the constitution
 - (b) Directive Principles of State Policy
 - (c) Fundamental duties
 - (d) Ninth Schedule
7. According to the Constitution of India, which of the following are fundamental for the governance of the country?
 - (a) Fundamental rights
 - (b) Fundamental duties
 - (c) Directive Principles of State Policy
 - (d) Fundamental rights and fundamental duties
8. With reference to National Legal Services Authority, consider the following statements:
 1. Its objective is to provide free and competent legal services to the weaker sections of the society on the basis of equal opportunity.
 2. It issues guidelines for the State Legal Services Authorities to implement the legal programmes and schemes throughout the country.

Correct statement

 - (a) 1 only
 - (c) Both 1 and 2
 - (b) 2 only
 - (d) Neither 1 nor 2
9. Consider the following provisions under the Directive Principles of State Policy as enshrined in the Constitution of India:
 1. Securing for citizens of India a uniform civil code.
 2. Organizing village panchayats.
 3. Promoting cottage industries in rural areas.
 4. Securing for all the workers reasonable leisure and cultural opportunities.

Which of the above are the Gandhian principles that are reflected in the Directive Principles of State Policy?

- (a) 1, 2 and 4 only (c) 1, 3 and 4 only
- (b) 2 and 3 only (d) 1, 2, 3 and 4

10. Which of the following is/are included in the Directive Principles of State Policy?

1. Prohibition of traffic in human beings and forced labour.
2. Prohibition of consumption except for medicinal purposes of intoxicating drinks and of other drugs which are injurious to health.

Correct statement

- (a) 1 only (c) Both 1 and 2
- (b) 2 only (d) Neither 1 nor 2

11. With reference to the Constitution of India, consider the following statements:

1. Fundamental rights
2. Fundamental duties
3. Directive Principles of State Policy

Which of the above provisions of the Constitution of India is/are fulfilled by the National Social Assistance Programme launched by the Government of India?

- (a) 1 only (c) 1 and 3
- (b) 3 only (d) 1, 2, 3

12. Under the Constitution of India, which one of the following is not a fundamental duty?

- (a) To vote in public elections
- (b) To develop the scientific temper
- (c) To safeguard public property
- (d) To abide by the constitution and respect its ideals

13. Consider the following:

1. There are three articles which have been added to the DPSP by amendment after the commencement of the constitution.
2. All the three provisions were inserted by the Constitution (42nd Amendment) Act, 1976.

Correct statement

- (a) 1 only (c) Both 1 and 2
- (b) 2 only (d) Neither 1 nor 2

14. Which among the following statements about the DPSP is NOT correct?

- (a) Directives are to supplement fundamental rights in achieving a welfare state.
- (b) Parliament cannot amend fundamental rights for implementing the directives.
- (c) Even constitutional provisions as to fundamental rights should be adjusted in their ambit so as to give effect to the directive principles.
- (d) Legislation enacted to implement the Directive Principles should be upheld, as far as possible.

15. Consider the following situation:

It is estimated that there are about three million urban homeless in India. Night shelters are not available for more than five per cent of this population. Hundreds of these old, sick homeless people are killed by cold wave during winter. They cannot have ration and voting cards in the absence of any 'proof of residence'. Without these documents they also cannot avail government help as needy patients. A large number of these homeless people are casual workers, who earn very low wages. They travel to the city in search of work from different parts of the country.

From the above, which among the following can be inferred?

1. The implementation of the DPSP, particularly the provision of Article 41 is weak.
 2. There is a violation of Right to Life and the weak implementation of Article 41.
 3. The Supreme Court can be moved and the remedy is available under Article 32.
 4. The Supreme Court can be moved but no remedy is available under Article 32.
- (a) 1, 3, 4 only (c) 1, 2 only
 - (b) 1, 2, 4 only (d) 2, 3, 4 only

16. Consider the following:

1. The fundamental rights protect citizens against the growth of unhindered government power whereas the DPSP safeguards the citizen from the concentration of private power.
2. The DPSPs are on the one hand assurances to the people as to what they can

expect of the government and on the other certain principles that the citizens to uphold in their social life.

Correct statement

- | | |
|------------|---------------------|
| (a) 1 only | (c) Both 1 and 2 |
| (b) 2 only | (d) Neither 1 nor 2 |

17. Which among the following amendments to the constitution is NOT the one that gave priority to DPSP over the fundamental rights?

- | |
|--------------------|
| (a) 17th Amendment |
| (b) 25th Amendment |
| (c) 42nd Amendment |
| (d) 36th Amendment |

18. Consider the following:

1. The DPSPs are the yardstick to measure the social and economic progress of Indian people
2. The success or failure of a government is premised on the extent to which they have translated the DPSP into reality.

Correct statement

- | | |
|------------|---------------------|
| (a) 1 only | (c) Both 1 and 2 |
| (b) 2 only | (d) Neither 1 nor 2 |

19. Which among the following is NOT implied in the Constitution of India?

1. DPSPs are more important than the fundamental rights and if there arises a conflict between the two, the former should prevail.
2. A judiciary subordinate either to the centre or the state could not be trusted as an in partial arbiter of conflicts between centre and states.
3. No person can develop his personality 'sanely, soundly and completely' and maintain his self-respect, without the opportunity of employing in a job.

Correct statement

- | | |
|-------------|------------|
| (a) 2, 3 | (c) 1 only |
| (b) 1, 2, 3 | (d) 3 only |

20. Which of the following pairs are correctly matched?

1. Socialism: Security and decent standard of living
 2. Secular: Liberty of belief, faith and worship
 3. Democracy: Exercise of adult franchise
- | | |
|-------------|-------------|
| (a) 1, 2, 3 | (c) 2 only |
| (b) 1 and 3 | (d) 2 and 3 |

Answer Key

-
- | | | | | | | | | | |
|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|
| 1. (d), | 2. (a), | 3. (d), | 4. (b), | 5. (c), | 6. (b), | 7. (c), | 8. (c), | 9. (b), | 10. (b), |
| 11. (c), | 12. (a), | 13. (d), | 14. (b), | 15. (b), | 16. (a), | 17. (d), | 18. (a), | 19. (b), | 20. (a) |

Hints and Explanations

1. (d)

- Article 355 is a duty outside Part IV of the Constitution.
- Certain duties are enforceable by the executives.

Refer Page 10.4

2. (a)

- Article 24: Prohibition of employment of children in factories, etc. – is a Right against exploitation.

Also Know

- Article 39(f) requires the State to ensure policies protect children from exploitation.
- Article 45: Provision for early childhood care and education to children below the age of six years
- Article 330: Reservation of seats for SC and ST in Lok Sabha
- Article 368: Procedure to amend Constitution

Refer Page 10.7

3. (d)

- Adjournment sine die: When the Presiding officer adjourns the house without fixing any time or any date for the next meeting
- Article 85: Power of President to prorogue the House
- Article 83(2): Except in case of Emergency, House of People dissolves automatically at the end of 5-year term
- Article 94: Speaker continues to be in office even after dissolution

Refer Chapter 14

4. (b)

- Article 39 (d): The State shall direct policies that ensure equal pay for equal work for both men & women.
- Backward classes are identified by the National Commission for Backward Classes (Article 340).
- Also refer the Mandal Commission Case judgment of the Supreme Court.

Refer Pages 10.6, 10.7 and 7.8

5. (c)

- Provision of quota for religious minorities in State services is not provided for in the Constitution. Constitution (93rd

Amendment) Act provided for the reservation for the socially & educationally backward classes in private educational institutions.

- Abolition of Legislative Councils does not require amendment to the Constitution.
- There is no concept of dual citizenship in Indian Constitution.

Refer Chapter 16

6. (b)

- Article 51(a) requires the State to promote international peace and security.

Refer Page 10.14

7. (c)

- Article 37 mentions that though DPSPs are not enforceable by court, they are fundamental in the governance of the country.

Refer Page 10.4

8. (c)

- Legal Services Authorities Act, was enacted in 1987.
- It provides for a two-tier structure – National and State levels.
- It was instituted as mandated by Article 39A.

Refer Page 10.11

9. (b)

- DPSPs are classified as those representing – Gandhian, Liberal and Socialistic values.
- Organizing village Panchayats and Promoting cottage industries in rural areas are Gandhian Values.
- Article 44: Uniform Civil Code – Liberalistic Value
- Article 40: Organisation of village Panchayats
- Article 43: securing leisure and cultural opportunities for all workers; promoting cottage industries in rural areas – Socialistic Value

Refer Table in Page 10.5

10. (b)

- Article 23 prohibits trafficking in human beings and forced labour.
- This is a fundamental right against exploitation.



- Article 47 is a directive principle for State to prohibit the consumption of intoxicating drinks and drugs

Refer Page 10.10 and Chapter 8

11. (c)

- Provisions under Articles 15, 16, 21A, 23, 24, etc. in Fundamental Rights and those in DPSP are fulfilled by the National Social Assistance Programme.

Refer Page 10.5

12. (a)

- Fundamental Duties were inserted by Constitution (Forty-Second) Amendment Act, 1976 based on the recommendations of Swaran Singh Committee.

Refer Page 10.16

13. (d)

- There are 4 articles added to the DPSP Articles added: 39A, 43A, 43B and 48A.
- And Clause (2) was added to article 38.
- Art. 38(2) – 44th Amendment Act 1978
- Art. 39A, 43A and 48A – 42nd Amendment Act 1976
- Art. 43B – 97th Amendment Act 2011

Refer Chapter 10

14. (b)

- Fundamental rights can be amended and DPSP may be given supremacy over fundamental rights in order to secure welfare. However this can be done only under special circumstances.
- Article 31C allows the supremacy of DPSP over fundamental rights in certain cases.
- To realize objectives of Art. 39 (b) & (c), the Parliament can amend FRs such that it may abridge Art. 14 & 19.

Refer Page 10.15

15. (b)

- Right to shelter is an implied right under Article 21.
- It is the duty of the State to ensure right to work and provide public assistance in certain cases of unemployment, old age, sickness and undeserved want (Article 40)
- This right is not enforceable by a court of law.

Refer Page 10.7 and 10.8

16. (a)

DPSPs are certain:

- Principles for the State to adopt during policy making and implementation.
- Ideals of the State
- Rights which are not enforceable by court

Refer box on Page 10.15

17. (d)

- 17th Amendment, 1964: Article 31A relating to acquisition of property by State would not be struck down for being inconsistent with Articles 14, 19 & 31.
- 25th Amendment, 1971: All DPSPs have primacy over Fundamental Rights
- 42nd Amendment, 1976: Art. 39 (b) & (c) have supremacy over Art. 14 & 19 in certain cases
- 36th Amendment Act, 1975: full statehood of Sikkim

Refer Pages 10.6 and 10.16

18. (c)

- DPSP serve as a reminder to the State of its responsibilities and to the people as a list of what is due to them.

Refer Pages 10.2-4

19. (b)

- DPSPs play an important role in the guaranteeing the fundamental rights.
- In case of conflict between the two, harmonious operation of both shall be taken.
- Judiciary has to be separated from executive so as to prevent conflict of interest (Article 50)
- It is the duty of State to provide public assistance in certain cases of undeserved want.

Refer Pages 10.9 and 10.14-16

20. (a)

- Socialism means distribution of wealth and serving the common good.
- This would help ensure security and decent standard of living
- Secular means religion does not have public or official recognition.
- It would promote liberty of belief, faith and worship by restricting religious values and thoughts.
- Democracy means a form of government that allows people to choose their rulers/ representatives.
- This involves the exercise of adult franchise (right to vote).

Refer Page 10.2, 10.6 and 10.14

CHAPTER 11

Union Executive: President and Vice President

Learning Objectives

After reading this chapter, you will be able to:

- Learn the purpose and significance of the President and Vice President
- Understand the position of the President in the Constitutional scheme and how it has been altered by 42nd and 44th Amendments
- Know how the President and Vice President are elected and the issues involved in the elections
- Explain how the constitution maintains the ‘republican’ character with the indirect election of the President

INTRODUCTION

India has adopted the parliamentary form of government which requires that there must be dual executive—titular and real. The English parliamentary democracy has a constitutional monarch acts as the titular head. Since, India did not have an emperor, the office of the President was established by the constitution. Article 52 establishes the office of the President of India. The President of India is part of Parliament and the head of the executive in India.⁽¹⁾

President: Executive Head of the Government

The office of the President is modelled on the American and makes the President the executive head of the State. Article 53 provides that ‘the executive power of the Union shall be vested in the President’. It also makes the President the supreme commander of the armed forces. According to Article 53, ‘the President shall exercise

Presidents Who Had been Vice Presidents

1. Sarvepalli Radhakrishnan
2. Zakir Husain
3. V. V. Giri
4. R. Venkataraman
5. Shankar Dayal Sharma
6. K. R. Narayanan

¹ Refer Articles 53 and 79.

the executive power either directly or through officers' subordinate to him, in accordance with the constitution'. In this article the following expressions need to be noted:

- (a) Executive power
- (b) Exercise the powers in accordance with the constitution
- (c) Exercise the powers directly
- (d) Exercise through officers' subordinate to him

Executive Power: Meaning

The term 'executive power' is not defined in the constitution. The constitution does not clearly demarcate what the executive powers of the President are. It has two characteristics namely:

- (i) Multidimensional
- (ii) Residuary in nature

The 'executive power' is *multidimensional* as it includes a variety of powers such as the power to draft and initiate legislations, adjudicate in certain cases, etc. It generally means all those powers required to carrying out the administration. It is impossible to define the executive power and draw up an exhaustive list of executive power.

It is in the nature of 'residuary' power. The constitution clearly demarcates the powers of the Parliament and the judiciary but it does not demarcate the powers of the executive. Residuary nature of the executive power refers to the powers that remain after removing the powers of the Parliament and the judiciary.

'Exercise the Powers in Accordance with the Constitution'

In any case the constitution provides that the President has to exercise the powers only 'in accordance with the constitution'. It means that the President has to exercise his powers without infringing upon the constitutional provisions. Most importantly, the President has to exercise the powers:

- Without violating the fundamental rights
- With the aid and advice of the Council of Ministers
- Subjected to judicial review

In any case the President cannot go beyond the limits of the constitution. Therefore, it implies that the President cannot become a 'dictator' although the constitution vests in him all the executive powers of the Union of India.

President to Act Directly - Without Advice of Council of Ministers

- | | | |
|---------------|-----------------|-----------------|
| 1. Article 3 | 7. Article 78 | 13. Article 124 |
| 2. Article 56 | 8. Article 85 | 14. Article 143 |
| 3. Article 57 | 9. Article 103 | 15. Article 280 |
| 4. Article 61 | 10. Article 111 | 16. Article 281 |
| 5. Article 74 | 11. Article 112 | |
| 6. Article 75 | 12. Article 118 | |

Exercise the Powers 'Directly'

The expression means that the President can exercise his powers without the 'aid and advice' of the Council of Ministers. It does not mean that the President can apply his personal 'discretion' in exercising his powers.

Circumstances in which President will act without advice of Council of Ministers: There are certain circumstances in which the President will have to act without the advice of the Council of Ministers and exercise his powers 'directly'. Such circumstances are those in which the President has to:

- Comply with the conditions of the constitution.
- Apply his judgment to satisfy the requirements of the constitution.
- Apply his judgment to 'protect, preserve and defend' the constitution.
- Apply his judgment in his personal capacity.

Important questions from Previous years' on this topics are mentioned below:

What are the exceptions when the President of India is not bound by the aid and advice of the Council of Ministers?

IAS MAINS – GS – 2007

1. **Article 3:** Referring a bill seeking to alter the name, areas, boundaries of any State to the legislature of that State for expressing its views thereon within such period as may be specified in the reference.
2. **Article 56:** The President may, by writing under his hand addressed to the Vice President, resign his office.
3. **Article 57:** The President deciding to contest for re-election to the same office.
4. **Article 61:** When a charge has been preferred against the President and an impeachment procedure is initiated against him, he can appear or be represented at such investigation.
5. **Article 74:** Returning an advice tendered by the Council of Ministers for their reconsideration.
6. **Article 75:** Appointing the Prime Minister when no political party secures the required majority in the Lok Sabha in an election and there is a fractured verdict.
7. **Article 75:** Withdrawing his pleasure upon the Council of Ministers and dismissing the Council if the Council lost the confidence of the Lok Sabha and refuses to resign.
8. **Article 78:** The President may call for information relating to the administration of the affairs of the union and proposals for legislation.
9. **Article 78:** The President may direct the Prime Minister to submit for the consideration of the Council of Ministers any matter on which a decision has been taken by a minister but which has not been considered by the Council.
10. **Article 85:** The President can summon the session of the Houses, if he is satisfied that six months would elapse after the previous sitting and the next sitting and the Council of Ministers are not advising him to summon the Houses.
11. **Article 85:** Dissolve the Lok Sabha and call for election in case there is no possibility of forming a new government after the incumbent Council of Ministers resign or lost a confidence motion.
12. **Article 85:** In case the Council of Ministers after losing the confidence of the Lok Sabha instead of resigning advises the President to dissolve the House and call for election then the President may ignore the advice and explore the possibility of forming a new government.
13. **Article 103:** In deciding the question of disqualification of a member of Parliament, the President is bound by the opinion of the Election Commission and not by the advice of the Council of Ministers.
14. **Article 111:** Returning a non-money bill for the reconsideration of the House with or without any recommendations suggesting amendments to the bill. Also, declaring his decision on the assent to bills (Pocket veto).
15. **Article 112:** The President has to ensure that the budget for every financial year is laid before each house of the Parliament.
16. **Article 118:** The President may make rules as to the procedure with respect to joint sittings of the two Houses, after consultation with the Chairman of the Council of States and the Speaker of the House of the People.
17. **Article 124:** Removal of a judge of the Supreme Court or a high court when the resolution to remove him is passed by the Houses of the Parliament.
18. **Article 143:** The President can refer any matter for the opinion of the Supreme Court.

- 19. Article 280:** Constitute a Finance Commission at the expire of every fifth year irrespective of the advice of the Council of Ministers.
- 20. Article 281:** To cause every recommendation made by the Finance Commission under the provisions of this constitution together with an explanatory memorandum as to the action taken thereon to be laid before each House of Parliament.

Exercise through Officers' Subordinate to Him

The President can exercise his powers through officers who are subordinate him, that is, he can delegate his powers to any officer who he appoints under the Government of India. According to Article 77, the President is empowered to 'make rules for the more convenient transaction of the business of the Government of India and for allocation among ministers of the said business'. It implies that the President has the power to create ministries and department, appoint and assign portfolios to the ministers. According to the Supreme Court, the term 'officers subordinate' includes the Council of Ministers also.

Qualification to Office of President

Article 58 prescribes the qualification to the office of the President. To be elected as President of India any person must be a Citizen of India and have completed the age of thirty-five. He must also be qualified to be elected as a member of Lok Sabha. He must not hold any office of profit under any Government—'Union, State or Local'.

Since the constitution does not specify the mode of acquiring of citizenship and prescribes only citizenship as qualification, even a person who has acquired the citizenship by any mode is eligible to be the President of India.

According to the explanation to Article 58, 'a person shall not be deemed to hold any office of profit' if he is:

- The President or;
- The Vice President or;
- The Governor of any State or;
- A minister either for the union or for any State.

Election to the Office of the President

Important questions from Previous years' on this topics are mentioned below:

- | | |
|--|------------------|
| (a) What is the composition of the Electoral College for the election of the president of the Indian Republic? How the value of votes cast is counted? | IAS Mains – 2002 |
| (b) How is the President of India elected? | IAS MAINS – 2007 |

The President is elected by the members of an electoral college consisting of the:

- Elected members of both Houses of Parliament.
- Elected members of the Legislative Assemblies of the States (including National Capital Territory of Delhi and the Union Territory of Puducherry after the Constitution (70th Amendment) Act, 1992) (Article 54).

The nominated members of either House of Parliament or the Legislative Assemblies of State are not eligible to be included in the electoral college. Therefore, the Prime Minister will not be eligible for voting in the election to the office of the President, in case he happens to be a nominated member of Parliament. Thus, the President is elected indirectly and the citizens do not play any direct role in the election.

To contest in the election a candidate must be proposed by at least 50 members and must be seconded by at least another 50 members of the electoral college. The candidate is also required to pay a security deposit of ₹15000/-.



Manner of Election

Important questions from Previous years' on this topics are mentioned below:

- a) How are the President and the Vice President of India elected? What are the constitutional issues involved in their election?
IAS MAINS – 1997
- b) Determine the 'value' assigned to the vote of a Member of a State Legislative Assembly and of a Member of Parliament in the Indian Presidential elections.
IAS MAINS – 2012

The President is elected by the system of proportional representation and by means of the single transferable vote, exercised in a secret ballot (Article 55). The constitution mandates that as far as practicable 'uniformity in the scale of representation of the different States at the election' must be maintained. Towards maintaining this uniformity, the constitution provides for a special formula to calculate the value of the votes of the members of the Parliament and the state legislatures. The formula is based on the population of each State and the number of elected member of Parliament and of the Legislative Assembly of each State.

The value of the votes of the members of state legislatures and of Parliament is calculated in the following manner:

$$\text{Value of Vote of a member of Legislative Assembly} = \frac{\text{Total Population of the State}}{\text{Total Number of Elected Member in the State Legislature}} \times \frac{1}{1000}$$

FIGURE 11.1: Value of Votes of MLAs

$$\text{Value of Vote of Members of Parliament} = \frac{\text{Sum of the value of the votes of the MLAs of all States}}{\text{Total Number of Elected MPs in both the Houses of Parliament in the State Legislature}}$$

FIGURE 11.2: Value of Votes of MPs

According to Constitution 84th Amendment Act, 2001, the population of the States for calculating the value of votes of MLAs and MPs shall be the population of the 1971 census until the relevant population figures for the first census to be taken after the year 2026 have been published.

Proportional Representation System: System of proportional representation the election system under which any contestant who secures the necessary quota of votes is declared elected. The most common method of determining the quota is to divide the total number of valid votes cast by the total number of seats in the constituency plus one and adding one to the quotient. 'Supposing there are 100 valid voting papers and four seats are to be filled up. In order, therefore, to determine the quota 100 is divided by 4 plus 1, that is, 5 and the quotient arrived at, namely 20, is increased by one so that the quota is 21. After the quota is fixed, any candidate whose total number of first preference votes is equal to or exceeds the quota is forthwith declared elected.'⁽²⁾

2 Backgrounder: Election of the President of India (PIB).

$$\text{Quota of Votes in President's Election} = \frac{\text{Total valid votes polled}}{2} + 1$$

FIGURE 11.3: Quota of Votes

The proportional representation system prevents the minorities being excluded and they be represented adequately and effectively in all the political processes. It provides for the representation of the opinion of every section of the society. In the process the minorities do not get excluded. On the other side in the ordinary system of election which is known as 'first to past the post system', a candidate who secures maximum number of votes is declared elected. In the system although the votes polled by all other contestants is proportionately larger than the votes polled by the winner candidate.

Single Transferable Vote System: Single transferable vote means that each voter will have only one vote whatsoever number of candidates contesting in the election. In the election of the President each elector marks only his preference and does not vote for any one candidate alone. For instance, if there are four contestants in the election, then the elector indicates four preferences in succession as his first, second, third and fourth preference.

At the time of declaring results, the candidate who secures the quota of 'first preference' votes as calculated above will be declared elected. In case no candidate has secured the required quota of 'first preference' votes, then the candidate who secured the least number of votes is excluded from the election. After exclusion the votes polled by the excluded candidate is distributed among the rest of the contestants on the basis of the 'second preference' marked.

For instance, let us assume that there are four contestants namely, A, B, C and D. Of these D has received the least number of 'first preference' votes, then, he will be excluded. The electors who had preferred D as their first preference would have marked their second preference to A or B or C. Accordingly, the votes of the number of electors who had preferred A as their second preference would be added to the votes polled by A and so on to B and C respectively. This process is continued until any one of the contestants secures the required quota and emerges victorious.

Single transferable vote system helps avoiding multiple rounds of election. Since the President is elected by a proportional representation system, in case when no candidate secures the required proportional majority, it would require second round of elections. It would be unviable for India considering the costs—financial, administrative and other.

Although, the above procedure is established in accordance with the constitutional provisions and the President and Vice President Elections Act, the eventuality of applying this had not arisen until this date. As a matter of convention, the President of India is elected by means of consensus of all political parties—ruling and the opposition. This is to keep the highest constitutional office away from political controversies.

However, in 2002, when Dr A. P. J. Abdul Kalam was fielded as the NDA candidate in the President's election, the Left parties refused to accept this convention on the ground that it was against the principle of democracy. Lakshmi Sehgal was fielded as the Left Party candidate. Further, former Chief Election Commissioner T. N. Sheshan also contested the election. Subsequently, in 2007 when Dr Kalam's term as President ended, there was a fierce contest to the office. Pratibha Devi Patil and the then Vice President Bairon Singh Shekawat had a fierce battle for the office.

The issue of whether the candidate in the presidential election can campaign for votes was raised during this election. It was settled that the candidate can campaign but, in that process, he must not use any of his official facilities, in case he was an incumbent in any office that does not prevent him from contesting the election, for example, Vice President. Also, he must not utilize the State/government facility that he may enjoy as an incumbent of the office he holds, for the campaign. It shall be funded and facilitated only by the party which fields the candidate or the candidate's own expense.

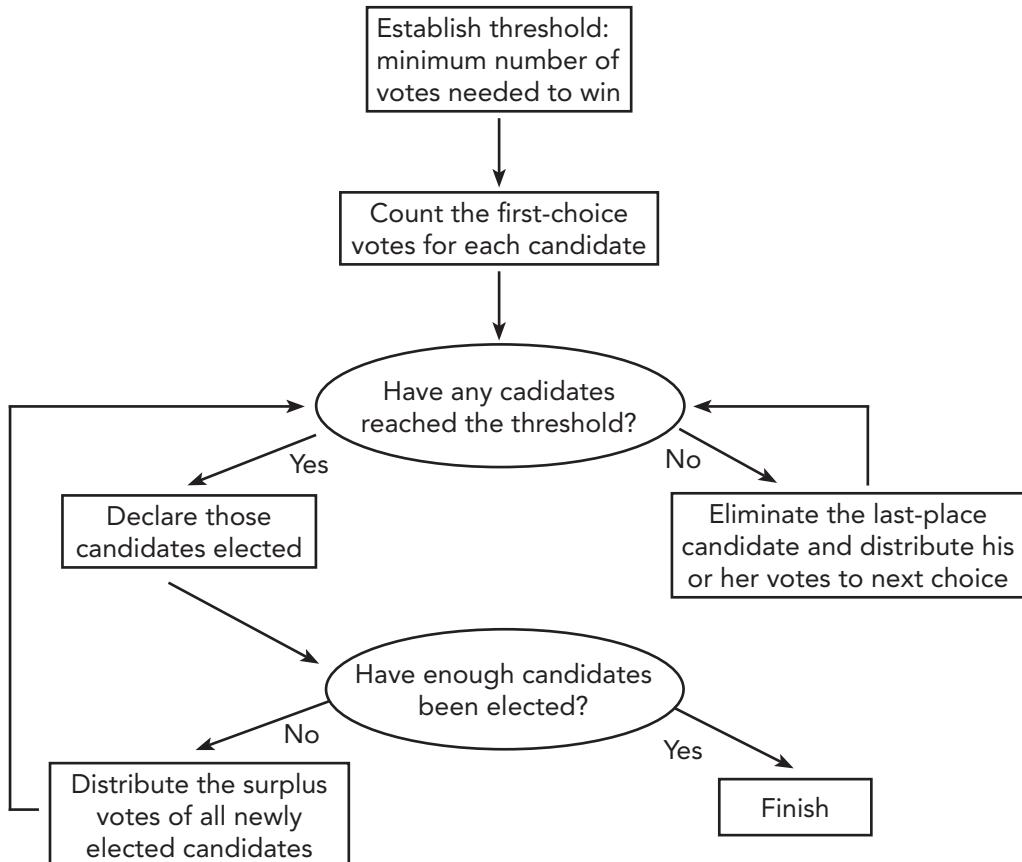


FIGURE 11.4: Election to Office of President

'Republic' and Manner of Election of the President^[3]

Although the President of India is not elected by the people directly, India is still a 'Republic'. The constitution prescribes certain conditions which injects the republican character into the constitution and makes it a truly republican constitution. The conditions are as follows:

1. The electoral college to elect the President includes the elected members of the State Legislative Assemblies also.
2. A special formula has been prescribed to calculate the value of the votes of the MLAs and MPs.
3. The President is elected by a system of proportional representation.

President's Election and Party whip: Another important issue with regard to the election to the office of President is that whether the political parties can issue whip regulating the voting of the members of the electoral college. The members of electoral college do not exercise their own vote but on behalf of the people who they represent. Further they vote by secret ballot. Hence, the party whip will not be binding on them and so they will not be disqualified in case they vote against the whip. The Election

3 Refer Chapter on Preamble for more details.

Commission had in July 2012 clarified this by its order.⁽⁴⁾ In the clarification the commission mentioned that 'voting at election to the office of President is different from voting by a member of Parliament or state legislature inside the House and that, as held by the Supreme Court, the provisions of the Tenth Schedule to the Constitution of India may not apply to the voting at the presidential election. A question arose before the Supreme Court in Kuldip Nayar versus Union of India (AIR 2006 SC 3127) whether the provisions of Tenth Schedule to the constitution would be attracted in the case of the election to the Rajya Sabha if a member of a State Legislative Assembly votes for a candidate in defiance of the party's directions, where the votes are now given by the system of open voting. The Supreme Court held that an elector would not attract the penal provisions of the Tenth Schedule for having so voted at the Rajya Sabha election.'

Do You Know?

1. Only ballot paper is used in the election to office of president.
2. There is no provision for nota in the president election.
3. The members of electoral college can choose the place where they will vote - delhi or in any state capital.
4. Anti defection law will not apply to president election.

Can Political Parties Abstain from the Election?: The issue of whether the political parties abstain from voting in the President's election came up in 2007. According to the Election Commission, the parties have the right to decide regarding participating in the election to the office of President. Therefore, the parties have the right to abstain from the election.

This could be the legal position. But when one looks at the question on the moral grounds, parties by abstaining from the election the party loses its moral ground to be a representative of the masses.

Eligibility for re-election

The President is eligible for re-election. The explanation in Article 58 excludes the office of the President from being considered as an office of profit for the purpose of election to the office of the President. Further, Article 57 expressly provides that the President is eligible for re-election.

However, except the first President of India, Bapu Rajendra Prasad, no other President had chosen to contest for re-election. Hence, as a convention, it was considered that any President of India can have a maximum of two terms. Based on this convention in 2002, President Dr K. R. Narayanan, expressed the willingness to contest for the second term. However, the BJP headed National Democratic Alliance (NDA) government was unwilling to give him second term as he belonged to Congress party. It was argued that no President other than the first President chose to contest for the second term and so, it is an established convention that the President of India shall have only a single term.

As consequence, the Congress party demanded that the then Vice President Krishan Kant shall be given the chance to be the President. It was argued that elevating the Vice President to presidency is another established convention since the constitution came into force. Hence, it was demanded that the then Vice President Krishan Kant be elevated to the presidency. However, the NDA broke this convention and made Dr A. P. J. Abdul Kalam as the presidential candidate. Similarly, in 2012, the incumbent Vice President Dr Hameed Ansari was re-elected as Vice President setting a new convention.

Thus, it is now settled that the President of India shall have only one term as a convention and there is no need to elevate the Vice President to presidency.

4 http://eci.nic.in/eci_main1/current/PN1072012.pdf: Press note clarification on right to vote or not to vote.



Disputes in Election

Article 71 provides for the settlement of any 'doubts or disputes arising out of or in connection with' the election to the office of the President. The power to inquire on to any such disputes is vested in the Supreme Court. The decision of the court is final and no appeal lies against the order of the court. In case, the court sets aside the election to the office, the acts done by him in the exercise and performance of his powers or discharging his duties as President shall not be invalidated.⁽⁵⁾

Further, the Parliament is empowered to make law to regulate the election to the office of the President and Vice President. The election can be challenged only by a person who had been a candidate in the election and no public interest litigation in this connection is entertained. The election can be challenged only after the completion of the process of election. This means the process of election cannot be suspended in the middle. This is because Article 62 mandates that the election to the office must be completed with the time prescribed.

Constitution (11th Amendment) Act, inserted Article 71 (4), which provides that the election 'shall not be called in question on the ground of the existence of any vacancy for whatever reason among the members of the electoral college electing him'.

People Appointed by a Warrant Under the Hand and Seal of the President

1. Judge of Supreme Court (Article 124)
2. Comptroller and Auditor General of India (Article 148)
3. Governor of a State (Article 155)
4. Judge of a High Court (Article 217)
5. Chairperson, Vice-Chairperson and other Members of National Commission for the Scheduled Castes (Article 338)
6. Chairperson, Vice-Chairperson and other Members of National Commission for the Scheduled Tribes (Article 338A)
7. Chairperson, Vice-Chairperson and other Members of National Commission for Socially and Educationally Backward Classes (Article 338B)

Oath of Office

Before entering upon the office, the President is administered an oath of office by the Chief Justice of India in accordance with Article 60. In case the Chief Justice is absent, the senior-most judge of the Supreme Court available shall administer the oath.

According to Article 60, the President takes the oath to 'preserve, protect and defend' the constitution and 'devote to the service and well-being of the people of India'. It implies that the founding fathers of the constitution envisaged an important role to the President.

He is the 'friend, philosopher and guide' to the Council of Ministers. He is not a mere rubber stamp who merely endorses the decisions of the Council of Ministers. He has to guide the Council of Ministers whenever they crossed the limits set by the constitution. For instance, it is required of the President to direct the Prime Minister to submit any matter for the consideration of the Council of Ministers, if in the matter he was advised by a single minister and the matter was not considered by the Council as a whole.

Further, it is appropriate to recall that there are many instances in which the President is to act without the advice of the Council, 'exercise his powers directly'. This is to ensure that the administration is conducted in accordance with the constitution and not according to the political whims.

Thus, it is clear that the office of the President is not a mere ceremonial office although he is the titular head. Under certain circumstances the President plays a very important role. Especially when no party gains

5 Article 71 (2).

majority in the election to Lok Sabha, President plays an important role in appointment of the Prime Minister. Similarly, when the incumbent Council of Ministers resign or lose the confidence of the House then the President an important role maintaining political stability and avoiding election being imposed on the people.

Important questions from Previous years' on this topics are mentioned below:

The President is like grandparent in a family. If the younger generation does not follow his/her advice, he/she is just unable to do anything. Comment

IAS MAINS – PUB AD – 2007

Term of Office

The President shall hold office for a term of five years from the date on which he enters upon his office (Article 56). The incumbent shall continue to remain in office until his successor enters upon the office, even if his term as President has expired.

However, the term can terminate before the expiration of the said five years in the following circumstances:

- (i) If the President resigns, President resigns by writing under his hand addressed to the Vice President or;
- (ii) If the President is removed from office, President is removed by the process of impeachment as given in Article 61 or;
- (iii) If the President dies or;
- (iv) In otherwise, for instance, the Supreme Court set aside the election to the office of President.

Report President to Cause to Laid Before the Houses of the Parliament

Reports of the

- (a) Comptroller and Auditor General of India relating to the accounts of the Union
- (b) UPSC
- (c) National Commission for the Scheduled Castes
- (d) National Commission for the Scheduled Tribes
- (e) National Commission for Socially and Economically Backward Classes
- (f) Commission to report on the administration of the Scheduled Areas and the welfare of the Scheduled Tribes

Time of Holding Election to Office of the President

Article 62, provides for the time of conducting the election to the office of the President. The office of the President can fall vacant if the term of office of the President expired or when in certain cases before the expiry of the term of office, casual vacancy.

The election to the office of the President must be conducted before the expiry of the term of the President. In case of a casual vacancy, vacancy due to the resignation, removal, and death or otherwise, the election has to be conducted before the expiry of six months from the date on which the vacancy occurred. In such cases the person elected as President will have a full five-year term from date on which he enters upon the office.

Impeachment of the President

The procedure for the removal of the President is given in Article 61. The process of removing the President is a quasi-judicial process and is known as 'impeachment'.



The President can be removed only on the ground of violating the constitution. The charges to remove the President can be preferred by either Lok Sabha or Rajya Sabha. When the charge is preferred in one House, the other House will act as investigating House.

The proposal to prefer the charges has to be submitted to the House subjected to the following conditions namely:

- (i) The proposal must be signed by not less than one fourth of the members of the House;
- (ii) The proposal can be moved only after a notice is served 14 days in advance

Once the proposal is moved and accepted by the House, the resolution preferring the charges must be passed by a majority of two-thirds of the total membership of the House. Once passed in the first House the charges against the President are said to have been preferred and the resolution is transmitted to the second House. The second House will act as an investigating House.

Connect

Situations when the Vice President 'ACTS' as the President:

In the event of the occurrence of any vacancy in the office of the President by reason of

1. death of the President or
2. resignation of the President or
3. removal of President from his office through impeachment or
4. otherwise – For instance if the Supreme Court sets aside the election of the President.

Situations when the Vice President 'discharges the functions' of the President and when the President is unable to discharge his functions owing to absence, illness or any other cause.

At the investigation, the President has the right to appear or be represented to defend him against the charges. This is in consonance with the principle of natural justice. If as a result of investigation, a resolution supported by not less than two-thirds of the total membership of the House is passed then, the charges against the President are sustained and the President is impeached and stands removed.

Conditions of Office

According to Article 59, the President shall not be a member of either House of Parliament or of a House of the legislature of any State. In case such a member is elected as President, his seat in the Parliament or the state legislature will automatically fall vacant once he enters upon the office of the President.

It implies that the constitution does not prohibit a member of Parliament or the state legislature to become the President but once he entered upon the office of the President, he is deemed to have vacated his seat in the legislature.⁽⁶⁾

The President is barred from holding any office of profit either in public or private organizations (Article 59 (2)).

The President is entitled to the use of his official residences without payment of rent. He is also entitled to such emoluments, allowances and privileges as may be determined by Parliament by law. The expenditures relating to the emoluments and allowances of the President and other expenditure relating to his office are charged upon the consolidated fund of India (Article 112 (3) (a)).

⁶ IAS Prelims question.

Further, the emoluments and allowances of the President shall not be diminished during his term of office. This means that the emoluments and allowances can be increased but cannot be reduced during his term of office.

Powers of the President

According to Article 53, all the executive powers of the union are vested in the President. The executive powers of the President are multidimensional in character and it includes the powers of the nature of:

- Administrative powers
- Legislative powers
- Pardoning powers
- Military powers
- Diplomatic powers
- Miscellaneous powers

Although these powers are classified into many groups, they are executive powers of the President which he shall exercise only with the aid and advice of the Council of Ministers.

(a) Administrative Powers: Administrative powers are those required for the purpose of making and implementing policy, law and administrating the departments of the government. The administrative powers include:

Important questions from Previous years' on this topics are mentioned below:

'Article 78 of the Constitution confers Executive Power on the President'. Comment.

IAS MAINS – Public Administration – 1998

- (a) The power to appoint and remove persons to various offices under the Government of India. All the constitutional offices such as Prime Minister, Council of Ministers, judges of Supreme Court and high courts, Comptroller and Auditor General of India, members of UPSC, etc.
 - (b) Most of the incumbents, except a few such as the judges of Supreme Court and high courts, Comptroller and Auditor General of India, hold office during the pleasure of the President. For instance, the ministers of the union hold office during the pleasure of the President. (Article 75 (2)). Therefore, the President also has the power to remove those whom he appoints from office.
 - (c) According to Article 77, the President has the power to 'make rules for the more convenient transaction of the business of the government'. He also has the power to allocate the portfolios to the ministers. Exercising this power, the President has made the Allocation of Business Rules and Transaction of Business Rules.
 - (d) Article 77 also empowers the President to create and abolish various ministries and departments.
 - (e) According to Article 78, the President as the head of the State and administrative head, has the powers to:
 - Be informed about the decisions of the Council of Ministers relating to the affairs of the union.
 - Call for any information relating to the administration of the affairs of the union.
- These are the duties of the Prime Minister. Thus, Article 78 confers upon the President the power to supervise and call for report. These are some of the aspects of the executive power.

(b) Legislative Powers:

Important questions from Previous years' on this topics are mentioned below:

'Indian Constitution confers vast legislative powers on the President.' Comment.

IAS MAINS – Public Administration – 2000

The legislative powers of the President are the executive powers of legislative nature because such powers are exercised by the President in accordance with the aid and advice of the Council of Ministers. Also, they are subjected to judicial review.

'The constitution vests in the President vast legislative powers'. The legislative powers of the President are 'vast' because of the following reasons:

- The President is part of the Parliament. Article 79 provides that the Parliament of India shall comprise the President and two Houses namely, the Council of States and The House of People.
- The President is empowered to nominate members to both the Houses of the Parliament and thus, the President plays role in the composition of the Houses.
- The President at times plays the role of the Parliament. In circumstances, when the Parliament is not able to make law, the President is empowered to promulgate ordinances.
- There are certain bills like Money Bill which can be introduced in the Parliament only with the previous recommendation of the President. Similarly, when the bills are passed by both the Houses, they are presented to the President for his assent. Only upon his assent, the bills become a law.
- Also, the President has the powers to veto the bills and the Indian President enjoys three types of veto namely: 'Absolute, Suspensive and Pocket Veto'. Thus, the President plays an important role in the passage of bills, right from their introduction to the bills becoming a law.

Thus, the Indian Constitution vests in the President vast legislative powers.

Legislative Powers:

1. **Article 79:** The President is part of Parliament.
2. **Article 80:** The President has the powers to nominate twelve members to be nominated from among the 'persons having special knowledge or practical experience in respect of literature, science, art and social service'.
3. **Article 331:** President has the powers to nominate two members of the Anglo-Indian community, if in his opinion the community is not adequately represented in the House of People.
4. **Articles 85 and 108:** The President has the power to summon and prorogue the Houses of the Parliament from time-to-time. However, he has to ensure that not more than six months expires between the last sitting of the previous session and the first sitting of the next session. He also has the power to dissolve the Lok Sabha, when the term of the Lok Sabha expires or whenever it is required and call for election.

Article 108 provides for the power of the President to convene a joint sitting of both the Houses of the Parliament to resolve the deadlock between the two Houses in respect of an Ordinary Bill.

5. Articles 86 and 87: Provides for the right of the President to address the Houses of the Parliament and send messages to the Houses. The President can address the Houses either separately or jointly. For the purpose he can require the attendance of the members.

The President also has the right to send messages to the Houses. Article 86 provides for the special address by the President. The first session after every general election to Lok Sabha and the first session of the Parliament every year begin with the President's address. The President informs the members the cause of the summoning of the Houses.

Issues involved: The President has to exercise these powers with the aid and advice of the Council of Ministers, since the constitution does not mention any condition. Hence, the address made by the President to the Houses is prepared by the government and the President ceremonially reads that out. The question of whether the President has the right to deviate from the text or is bound to read it verbatim was raised. It is now settled that the President can deviate and even he can express his views. The President being the 'first citizen' of the nation must be guaranteed with the right to speech and expression. Furthermore, his address being an official document, it shall not be used against him, for instance to impeach him.

Similarly, the right of the President to send messages to the Houses is also bound by the advice of the Council. As long as there is no difference of opinion between the President and the Council there will not be any issue. However, if the Council had an opposite view on the message the President

wants to send to the Houses, then it will result in a deadlock. However, no such circumstance has till date arisen and therefore, the issue is not settled.

6. Previous Sanctions to Bills: Certain bills can be introduced into the Parliament only with the previous recommendation of the President. Such bills are:

- Bills relating to creation of new states or the alteration of the names, areas or boundaries of any existing State (Article 3).
- The bill providing for compulsory acquisitioning or requisitioning of property under Article 31A.
- Money Bills can be introduced only with the previous recommendation of the President (Article 117).
- Any State Bills imposing restriction upon freedom of trade (Article 304).
- Bills affecting taxation in which States are interested (Article 274 (1)).
- A bill which, if enacted and brought into operation, would involve expenditure from the Consolidated Fund of India shall not be passed by either House of Parliament unless the President has recommended to that House the consideration of the bill (Article 117 (3)).

Need for Previous Sanction: The founding fathers have incorporated the conditions for the previous sanctions deliberately due to the following reasons:

- The President is the friend, philosopher and guide to the Council of Ministers. Whenever, the Council acts with a political motive, the President can put a break and thereby preserve, protect and defend the constitution.
- The previous sanction of the President ensures that the bill will not suffer any delay or being vetoed by the President after it is passed by the Houses. Especially certain bills like money bills could not be delayed.
- Certain bills potentially impact the federal set-up of the constitution. 'Federation' being a basic feature of the constitution cannot be taken away. The central legislation must not be permitted to adversely impact the State interest.
- Under Article 78, the President needs to be informed about the affairs of the administration including the proposals for the legislations. The previous sanctions to certain legislations are a cautious measure to ensure the proposals for certain important legislations are informed to the President.
- It is also an extra cautious measure to avoid any contingency that may arise in future.

7. Assent to Bills: According to Article 111, after a bill passed by the Houses of the Parliament, it is presented to the President for his assent. When a bill is presented to him the President may:

- Declare that he gives his assent, in this case the bill will become a law or;
- Declare that he withholds his assent, it means the President has vetoed the bill and the bill is dead or;
- Return the bill to the House in which it originated for reconsideration, with or without certain recommendations for amendment.

Power of Veto: Veto is an executive power to prevent any bill becoming a law. Normally all the modern constitutions confer this power upon the executive in order to prevent any unconstitutional matter getting passed as a law. There are four types of veto namely:

- (i) Qualified veto
- (ii) Suspensive veto
- (iii) Pocket veto

Absolute Veto: If the President declares that he withholds his assent to the bill presented to him, the bill is dead. The legislature cannot override this veto by any majority.

Qualified Veto: It is a veto that can be overridden by the legislature by an extraordinary majority (special majority) prescribed by the constitution or any law. In the USA, the presidential veto in certain bills can be overridden by the resolution of the legislature passed by a special majority. But in India this type of veto is not available.

Suspensive Veto: It is a veto that is overridden by a resolution passed by the legislature supported by an ordinary (simple) majority. The President of India enjoys this veto.

According to the proviso of Article 111, when the President returns a non-money bill for reconsideration of the House, the President is exercising his veto power. He declares that he will give his

asset to the bill in the form in which it is passed by the House. In that case, the House needs to reconsider and pass the bill again. It is the discretion of the House to either accept the recommendations of the President.

Once reconsidered and passed, the bill is presented to the President for his assent. At this juncture, the President does not have any choice but only to give his assent. Since the constitution does not prescribe any special majority for this the presidential veto is overridden by an ordinary (simple) majority. Hence, this veto is known as suspensive veto.

Important questions from Previous years' on this topics are mentioned below:

Write a short note on Pocket Veto.

IAS MAINS – GS – 2009

'The veto-power of the Indian President is a combination of the absolute, suspense and pocket veto.' Comment.

IAS MAINS- Public Administration Paper II – 2005

Pocket Veto: It is not a veto in the true sense of the term veto. It is a consequential power. The constitution does not prescribe any specific time limit within which the President needs to declare his decision on giving assent to a bill. Therefore, it implies that the President can take any length of time to decide on the bill. When the President retains the bill with him without declaring his decision, it is known as the President 'sitting on the bill'. After the expiration of a considerable length of time, the bill may lose its relevance even if it comes to force and hence, it is almost dead. In such cases the President is said to have pocketed the bill. This is known as pocket veto.

INDIAN PRESIDENT—A COMBINATION OF VETO POWER

The President of India enjoys a combination of veto powers. He possesses a combination of absolute, suspensive and pocket veto. He enjoys these veto powers in accordance with the type of the bill. This is an executive power which the President is to exercise with the aid and advice of the Council of Ministers.

Absolute Veto

The President enjoys absolute veto with respect to:

- (a) Ordinary Bills passed by the Parliament;
- (b) Money Bills passed by the Parliament;
- (c) Private Member's Bills;
- (d) Financial Bills passed by the Parliament;
- (e) State Bills reserved for his consideration.

(a) Ordinary bills passed by the Parliament: The ordinary bills passed by the Parliament can be absolutely vetoed by the President, on the advice of the Council of Ministers. After passing a bill the circumstance could change and a need for abolishing the bill may arise. For instance, in Jammu and Kashmir the legislature passed a bill that took away the right to inherit property for the Kashmiri women who married non-Kashmiri men. This bill met with huge public opposition and the government could not go ahead. So, the government advised the Governor to absolutely veto the bill. In case this power to absolutely veto the bill is not available, it would require another law to replace it or to declare it invalid. That would be a cumbersome and expensive process. However, in practice absolute veto is usually exercised in case of Private Member's Bills. With respect to Government Bills, absolute veto is exercised in circumstances when the government resigns or removed.

TABLE 11.1 Indian President: Veto Power

Type of Bill	Absolute Veto	Suspensive Veto	Pocket Veto
Ordinary Bills	Yes	Yes	Yes
Financial Bills	Yes	Yes	Yes
Money Bills	Yes	No	Yes
State Bills	Yes	Yes	Yes
Constitution Amendment Bills	No	No	No

- (b) **Money Bills passed by the Parliament:** Although the Money Bills are introduced in the Parliament with the previous recommendation of the President, it does not bind the President to give his assent. Since, it is introduced on his recommendation he cannot return the bill for reconsideration. Article 111, expressly prohibits the President from returning the Money Bill for reconsideration. If he needs any clarification on the bill, he has to clarify at the stage of introduction itself.
- (c) **Private Member's Bills:** A bill introduced by the member who is not a minister is known as Private Member's Bill. The President absolutely vetoes the bill if the Council of Ministers advised him to veto the bill.
- (d) **Financial Bills passed by the Parliament:** Financial bills are Ordinary Bills for all the practical reasons of passage in the Parliament. Hence, such bills can also be absolutely vetoed.
- (e) **State Bills reserved for his consideration:** According to Article 200, the State Bills can be reserved for the consideration of the President. The Governor of the State is empowered to reserve the bills, including the money bills, presented to him for assent. According to Article 201, the President has the powers to veto the bills absolutely.

Suspensive Veto

The President enjoys suspensive veto with respect to the Ordinary Bills including the Financial Bills of both the union and the States. In any case, the President cannot return a Money Bill for the reconsideration of the House.

First Time Veto Exercised by the President

- (a) Absolute Veto - PEPSU (Patiala, East Punjab States Union) Appropriation Bill
- (b) Pocket Veto - The Indian Post Office (Amendment) Bill, 1986
- (c) Suspense Veto exercised formally and Bill returned - Office of Profit Bill 2006

Pocket Veto

Since the constitution does not prescribe any time limit for the President to declare his decision, the President can retain any bill submitted to him. Thus, over a period of time the bill might lose its relevance and be dead. The postal amendment bill passed in 1984 was pocket vetoed the President.

Constitutional Amendment Bills

After the 24th Amendment Act, 1971, the President does not enjoy any veto power with respect to the constitution amendment bills. Article 368 (2), makes it mandatory for the President to give his assent

Recall Executive Powers of the President

- (a) He must be kept informed by the Prime Minister of all decisions of the Cabinet
- (b) He can ask the Prime Minister to submit a decision of any ministers for the consideration of the Council of Ministers
- (c) He must be supplied with such other information about the administration of the country as he asks for it
- (d) All-important appointments are made by the President on the advice of the Council of Ministers
- (e) The Prime Minister and all Union Ministers are appointed by the President
- (f) The President is the supreme commander of the Armed Forces
- (g) The initiation of legislation
- (h) The determination as well as the execution of policy

to the constitution amendment bill when passed by both the Houses of the Parliament and presented to him for his assent.

Thus, the President of India enjoys a combination of veto power.

8. Ordinance Making Power (Article 123)

Article 123 confers upon the President the power to promulgate ordinances in certain circumstances/contingencies when the Parliament is not able to enact a law. 'If at any time, except when both the Houses of Parliament are in session, the President is satisfied that the circumstances exist which render it necessary for him to take immediate action, he may promulgate' ordinances.

Safeguards: The President can promulgate ordinances only on such matters on which the union Parliament is empowered to enact law. In case the ordinance is issued on any matter on which the Parliament does not have jurisdiction, then the ordinance is void (Article 123(3)).

Except when Both Houses of Parliament are in Session Means

- Lok Sabha in session, Rajya Sabha not in session
- Rajya Sabha in session, Lok Sabha not in session
- Lok Sabha dissolved, Rajya Sabha in session
- Both Houses not in session

Any ordinance promulgated must not infringe upon any fundamental right or violate any constitutional provisions and is subjected to judicial review.

A bill to replace the ordinance has to be placed before the Houses of the Parliament, before the expiry of six weeks from the date on which the House reassembles. In case the two Houses reassembled on different dates, then the six week is calculated from the date on which the second House reassembled.

The ordinance will continue to remain in force as a law, if the bill is approved by the Parliament. In case the Parliament rejected the bill or if the said six weeks period expired before the bill to replace the ordinance is presented, then the ordinance will lapse immediately.

While presenting the bill to replace the ordinance, the Council of Ministers submit a memorandum of explanation to House explaining the circumstances leading to the need for issuing the ordinance.

Issues Involved: With respect to the ordinance making power of the President the 'satisfaction' of the President and judicial review of the 'advice' tendered to the President are important issues.

In the Cooper's case the Supreme Court ruled that the presidential satisfaction to promulgate an ordinance is not the singular satisfaction of the President but the collective satisfaction of the Council of Ministers. Hence, the possibility of political motive and any *mala fide* is not ruled out. Therefore, the satisfaction of the President can be challenged and the ordinance is subjected to judicial review.

As a consequence, 38th amendment was enacted, which inserted Article 123 (4). The new clause laid down that the President's satisfaction is final and barred the intervention of the Court. However, the 44th amendment repealed the Clause 4 to Article 123. Thus, the Cooper's judgement is given a re-entry.

This gains significance in the context of the re-promulgation of the ordinances. Since the constitution is silent about the re-promulgation of the ordinances, an ordinance can be promulgated any number of times. However, after the Supreme Court ruling in the Coopers' case and 44th amendment it is curtailed to rarity and only under unavoidable circumstances the ordinances are re-promulgated. The Supreme Court ruled that promulgation of ordinance must be regulated as the route enables the government to bypass the parliamentary accountability which is the chief feature of parliamentary democracy. If not regulated the ordinance making power will lead to 'ordinance raj' instead of Rule of Law.

In the Krishna Kumar versus State of Bihar (2017) case, the Supreme Court has ruled that it is unconstitutional if any ordinance is not placed before the House of legislature for approval. The constitution requires that any ordinance need to be replaced by a bill within six weeks from date of re-assembly. However, many a times the executive have chosen not to replace the ordinance with a bill. Instead the ordinance is allowed to lapse and it is re-promulgated. In Bihar an ordinance was promulgated for State taking over 429 Sanskrit schools in 1989. However, the ordinance was not replaced by a law and it was allowed to lapse from time-to-time and was re-promulgated. This was challenged and finally in 2017, the Supreme Court ruled that:

- The Supreme Court has the power to check whether the ordinance making power has been exercised fraudulent or whether their power is abused. The scope of judicial review is expanded by the judgement. The Supreme Court ruled that the court has the power to ascertain whether the President or the Governor had any material and the relevance of the material based on which he was satisfied to promulgate the ordinance.
- It was unconstitutional when the bill to replace the ordinance is not tabled in the legislature.
- Ordinance is different from a temporary law enacted by the legislature. A law enacted by the legislature creates 'enduring rights and liabilities' (Doctrine of Enduring Rights), which means the rights granted or the liabilities imposed by the law will sustain even after the law expires. But in case of an ordinance this is not applicable. An ordinance is not created by the legislature but by the executive.

Ordinance and Separation of Powers: Separation of powers refers to the process of clearly demarcating the scope of the powers of the executive, legislature and the judiciary. In a parliamentary democracy the executive is vested with the power to promulgate ordinance as a contingency power. When the legislature is unable to enact a law in a circumstance requiring immediate action, the executive is empowered to take measure that is appropriate to the circumstance. But in any way, it is against the concept of separation of powers.

Important questions from Previous years' on this topics are mentioned below:

'Resorting to ordinance has always raised concern on violation of the spirit of separation of powers doctrine. While noting the rationales justifying the power to promulgate ordinances, analyse whether the decisions of the Supreme Court on the issue have further facilitated resorting to this power.' Should the power to promulgate ordinances be replaced? IAS Mains-GS – 2015

However, the past experiences clearly show that the power has been abused. The executive resorts to ordinance route when the executive is reluctant to face the legislature on certain issues or if they fear to face the vehement criticism of the opposition on the floor of the House. This negates the concept of parliamentary accountability and collective responsibility. Debates and discussions on the floor of the House is an essential feature of democracy. The executive ordinance does away with the essential feature of democracy.

(c) Pardoning Powers: All the modern constitutions confer the powers to pardon upon the executive. It is an executive power of judicial nature. It is vested in the President to correct any error that may occur in the judicial decisions for no human system is perfect. The pardoning powers of the President comprise a group of five powers, each having distinct significance and legal consequence namely:

- (i) Commutation
- (ii) Remission
- (iii) Respite
- (iv) Reprieve
- (v) Pardon

Commutation: It means to substitute one form of punishment with another punishment of lighter character. For example, reducing the death sentence to life imprisonment is commutation.

Remission: It means to reduce the amount of punishment without changing the character of the punishment. For example, it is to reduce the number of years of imprisonment to a convict.

Respite: It is to award a lesser punishment instead of the prescribed punishment in view of certain special reasons such as the age of the convict or pregnancy of a woman.

Reprieve: It is to stay the execution of a sentence during when the petition for pardon is pending before the President or the Governor.

Pardon: It absolves the offender from all sentences, punishments and disqualifications.

Pardoning Powers of the President: Scope: According to Article 72, the President can exercise the above powers with respect to any offence committed against the law enacted by the union Parliament. The President is the only authority who can grant pardon in respect of:

- (i) All cases in which the sentence is one of death;
- (ii) A sentence of a court martial.

The Constitution of India does not specify the manner in which the President to exercise the pardoning powers. He has to exercise the power only in accordance with the aid and advice of the Council of Ministers, like other powers. According to a series of decisions of the Supreme Court and of some high courts:⁽⁷⁾

- (i) The exercise of the power by the President under Article 72 is primarily a matter for his discretion and the courts would not interfere with his actual decision on the merits.
- (ii) But courts exercise a very limited power of judicial review, to ensure that the President considers all relevant materials before coming to his decision.
- (iii) The President can, in the exercise of this power, examine the evidence afresh. In doing so, he is not sitting as a court of appeal. His power is independent of the judiciary. He can, therefore, afford relief not only from a sentence which he regards as unduly harsh., but also from an evident mistake.
- (iv) The President is not bound to hear a petitioner for mercy before he rejects the petition.

⁷ As given in Constitution of India: P. M. Bakshi, Thirteenth Edition Page 128, Nanavati versus State of Bombay, AIR 1961 SC 122, Ramanajah versus Superintendent, Central Jail, AIR 1974 SC 31.

President's Power to Pardon Death Sentence: With respect to the need for the power to pardon death sentence, the Law Commission of India, in its Report on Capital Punishment (1967), noted, 'there are many matters which may not have been considered by the courts. The hands of the court are tied down by the evidence placed before it'. The commission noted that whenever justice and humanity demanded, mercy must be shown. After all, 'law is made for man and justice is much more than mere codes and precedents'.^[8]

'A sentence of death passed by a court after consideration of all the materials placed before it may yet require reconsideration because of:

- (i) Facts not placed before the court.
- (ii) Facts placed before the court but not in the proper manner.
- (iii) Acts discovered after the passing of the sentence.
- (iv) Events which have developed after the passing of the sentence.
- (v) Other special features.^[9]

However, the commission also noted that to codify these special features would be impossible. Noting these reasons, the commission chose not to make any recommendation to change in the scope of the powers.

In the Gowru Venkat Reddy case, the Supreme Court ruled that granting of pardon does not overturn the verdict of conviction but it only sets aside the punishment for the crime. It only eliminates the effect of conviction but without addressing the convict's guilt or innocence.

Considerations to be Taken into Account: Presidential clemency on death sentence is a prerogative of the executive and it must not be taken in a purely legal sense alone because it involves 'several ethical and social implications'. President must exercise this prerogative only in accordance with the rule of law and justice. It must not be driven by sentiments.

According to Law Commission, it must be based on 'want of premeditation, age, mental or physical condition of the offender, past conduct, external pressures which might have impaired independent judgment, medical abnormality falling short of legal insanity and so on'.^[10] If any new evidence is discovered that must be taken into consideration.

According to Justice Arjit Pasayat and Justice S. H. Kapadia, 'caste, religion and political loyalty are must not be the considerations, for these are discriminatory'. Rule of Law is based on 'certainty of a law and fairness' which must not be compromised for political expediencies.

Conforming to this view, the executive has to declare the decision on a petition of mercy within a reasonable time. Any inordinate delay in the decision is considered to be against the public interest and the court has the power to review and grant relief to the victim.

Further, the power is not granted only to benefit the convict. Hence, while exercising the power the executive must consider the effect of the decision on the victim's family in particular, society in general and the precedent it would set for the future.

The power is not a privilege but a constitutionally mandated official duty of the executive. Hence, any discretion applied in the exercise of the power must be towards the welfare of the people and not only to benefit the convict. The executive is accountable to the people and so it be exercised only on the 'public considerations'.

Important questions from Previous years' on this topics are mentioned below:

Discuss the question of death sentence and presidential clemency.

IAS MAINS – GS – 2003

'The exercise of executive clemency is not a privilege but is based on several principles, and discretion has to be exercised in public considerations.' Analyse this statements in context of the judicial powers of the President of India.

IAS MAINS – GS – 2011

8 Law Commission Report on Capital Punishments: 1967.

9 Law Commission Report on Capital Punishments: 1967.

10 Law Commission Report on Capital Punishments: 1967.

Hence, the executive decision to grant pardon is subjected to judicial review and the courts have the power to declare a decision to pardon invalid in case the decision was *mala fide*.

Thus, the exercise of executive clemency is not a privilege but is based on several principles, and discretion has to be exercised in public considerations.

Decision on Pardon: Should a Time Limit be Prescribed?: In the recent times the power of the President to grant pardon has become subjected to severe criticism on yet another ground of 'inordinate delay' in making a decision on the petitions for pardon. This has raised the demand for setting a time frame for the President to make a decision on such petitions. The arguments placed in favour of setting a time frame are as follows:

Firstly, any delay in disposing the petition for pardon results in causing anguish and suffering of the convict who waits for the decision.

Secondly, the waiting for the presidential decision on his petition for pardon a convict sentenced to death suffers from a serious mental agony. When after a long delay if the President rejects granting pardon and upholds the death sentence, the suffering of the convict is manifold. This amounts to a double jeopardy.

Thirdly, an inordinate delay is a clear violation of Article 21. The Right to Life guarantee by Article 21 is not a mere 'animal existence' but a right to live with human dignity. This right has to be guaranteed to every person within the territory of India until he is alive and his last breath. The inordinate delay in the decision on pardon violates this.

Fourthly, the power is not a privilege that President enjoys but an official duty which he discharges with the aid and advice of the Council of Ministers. The advice of the Council in this regard is binding on the President. Hence, one cannot rule out political motive in withholding the decision on a petition for pardon in certain cases. In the past there have been several cases in which the executive clemency was granted on political grounds. Epuru Sudhakar case in which the Supreme Court set aside the commutation granted by the then Andhra Pradesh Governor on the ground that it was granted on political expediency.

Similarly, the President Pratibha Devi Patil granted 28 pardons out of 30 petitions and 22 out the 28 related to brutal crimes such as murdering children, rape and murder of children. It is unclear why the President granted pardon to such criminals who indulged most heinous crimes within such short span of time.

The above arguments make it clear that there must be a reasonable time spent on making decision on the mercy petition. The very idea of vesting the pardoning powers in the executive is to ensure law to be a tool of reform. Pardoning goes beyond reforming a convict but redeeming him into the society. It is essential that the President exercises the power with utmost care and reason. Hence, it becomes reasonable to set time frame for the President to make the decision.

Arguments Against Time Frame: First of all, the power to pardon under Articles 72 and 161 are to executive powers to be exercised on the advice of the Council of Ministers. The Council might have to focus on many issues that are more pressing and the delay could be unavoidable. Although the decision on the petitions for pardon is essential the regular executive and legislative functions for securing the welfare of the citizens assumes the natural priority. Further, Article 74 (2) expressly lays down that the advice given by the Council to the President is beyond judicial review.

Though the arguments for and against setting a time frame for the President are placed, the spirit of a democratic welfare state demands that the State must be 'just, fair and reasonable' in the exercise of the powers conferred by the constitution.

Important questions from Previous years' on this topics are mentioned below:

Instances of President's delay in commuting death sentences has come under public debate as denial of justice. Should there be a time specified for the President to accept/reject such petitions? Analyse.

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(d) Military Powers: According to Article 53 (2), the President is the supreme commander of the armed forces and the exercise of this power is regulated by the law. Thus, the President is only authority who can declare war and peace.

(e) Diplomatic Powers: The President is the only authority who delegates the Indian envoys to foreign countries and it is to him the foreign envoys submit their credentials.

(f) Miscellaneous Powers: Other powers of the President than the above are included in the miscellaneous powers. Such powers include:

1. Administration of the UTs
2. Administration of tribal areas
3. Special powers in respect of Scheduled Castes and Scheduled Tribes
4. Emergency powers
5. Other powers

1. Administration of the Union Territories

Union Territories (UTs) are under the direct administration of the Union government. The President carries out the administration of the UTs. The administrator is responsible only to the President. Final legislative power to make regulations with respect to Andaman and Nicobar Islands, the Lakshadweep, Dadra and Nagar Haveli is with the President. According to Article 240, President has the power to amend any law of the Parliament to apply to these UTs. He may even repeal any law relating to the UTs.

2. Administration of Tribal areas

With respect to the Scheduled Area and Tribes and Tribal Area in Assam the President has certain special powers which are mentioned below:

- (a) The President has the power to declare any area to be a Scheduled Area. He also has power to alter the Scheduled Area (Schedule V Para 6).
- (b) According to Para 4 of Schedule V, the President has the powers to direct the establishment of a Tribes Council in the States having Scheduled Tribes.
- (c) The regulations made by the Governor of a State for the peace and good government of the Scheduled Areas has to be submitted to the President and assented to by the President for it to come into effect (Schedule V Para 5 (4)).
- (d) President has the powers to give directions for the administration of Scheduled Areas and direct the Governor to make report on the administration (Schedule V, Para 3).

3. Special Powers in respect of Scheduled Castes and Scheduled Tribes

The President has certain special powers and responsibilities regarding Scheduled Castes and Tribes:

- (a) According to Article 341, the President has the power to draw up the list of Scheduled Caste in the States and UTs in consultation with the Governor.
- (b) According to Article 342, the President has the power to draw up the list of Scheduled Tribes in the States and UTs in consultation with the Governor.

4. Emergency Powers⁽¹¹⁾

The emergency powers are vested in the President. Articles 352 to 360 deal with the emergency powers. Article 352 provides for National Emergency. According to Article 356, the President can proclaim constitutional emergency based on the report of the Governor or otherwise. Article 360 confers the power to proclaim financial emergency.

5. Other Powers

According to Article 213, the President has the power to give instructions to the Governor to issue ordinances in case the bill containing the same provisions requires the previous sanction of the President. The President can refer any matter of public importance to Supreme Court for its opinion.

11 For details refer Chapter 23 on Emergency.

Commissions to report on the administration of Schedules Areas and welfare of Scheduled Tribes and Backward Classes; the Finance Commission; Commission on Official Language; an Interstate Council are such other bodies which are appointed by the President.

VICE PRESIDENT

Article 63 of the constitution provides that, 'there shall be a Vice President of India'. The office is modelled on the lines of the Vice President of the USA. The office is needed for dealing with any contingency that arises due the temporary inability of the President to discharge his duties or when there occurs a vacancy in the office of the President.

Do You Know?

- (1) Constitution is silent about who will perform the duties of the Vice President when casual vacancy occurs.
- (2) Constitution is silent who will perform the duties of the Vice President when he acts as President.

This is because the constitution does not confer any function on the Vice President.

According to Article 65, 'in the event of the occurrence of any vacancy in the office of the President by reason of his death, resignation or removal, or otherwise, the Vice President shall act as President until the date on which a new President elected'.

'When the President is unable to discharge his functions owing to absence, illness or any other cause, the Vice President shall discharge his functions until the date on which the President resumes his duties' (Article 65 (2)).

During when the Vice President is so acting as, or discharging the functions of, the President, he shall:

- Have all the powers and immunities of the President.
- Be entitled to such emoluments, allowances and privileges as may be determined by Parliament by law.
- Not perform the duties of the office of Chairman of the Council of States and shall not be entitled to any salary or allowance payable to the Chairman of the Council of States under Article 97.

During normal times when such a contingency had not arisen, the Vice President is the ex-officio Chairman of the Rajya Sabha. As the Chairman of the Rajya Sabha, the Vice President is entitled to such salaries and allowances fixed by Parliament by law.

Qualification

Article 66 lays down the qualification for the office of the Vice President. Accordingly, to be elected as Vice President a person must:

- (a) Be a citizen of India.
- (b) Have completed the age of thirty-five years.
- (c) Be qualified for election as a member of the Council of States.
- (d) Not be holding any office of profit under the Government of India or the Government of any State or under any local or other authority subjected to the control of any of the said governments.

The following are exempted from being an office of profit for the purpose of being elected as Vice President namely:

- (a) President or;
- (b) Vice President of the Union or;
- (c) Governor of any State or;
- (d) Minister for the Union or for any State.

Election of Vice President

The Vice President is elected by an 'electoral college consisting of the members of both Houses of Parliament in accordance with the system of proportional representation by means of the single transferable vote and the voting at such election shall be by secret ballot' (Article 66).

In the original constitution it was provided that the election will take place in a joint sitting of both the Houses. However, by the 11th amendment 1961, the provision for joint sitting was removed.

The Vice President shall not be a member of either Lok Sabha or Rajya Sabha or any state legislature. In case a member of Parliament or a state legislature is elected as Vice President, his seat in the House will fall vacant automatically, on the date on which he enters upon the office of the Vice President. This implies that the constitution does not bar a member of Parliament or a state legislature from contesting the election to the office of Vice President.⁽¹²⁾

Term of Office

The Vice President will hold office for a term of five years from the date on which he enters upon the office (Article 67). This means that with respect to the Rajya Sabha, the Chairman will have a term of five years whereas the members will have term of six years.⁽¹³⁾ However, the Vice President will continue to hold the office even after his term expires until the next Vice President enters upon the office. The office of the Vice President may fall vacant before the expiry of the term by reason of his death, resignation or removal.

The Vice President can resign from office by writing under his hand, addressed to the President. He can be removed from office by a resolution of Rajya Sabha supported by a majority of all the then members and agreed to by the Lok Sabha. Since the electoral college electing the Vice President includes the members of Lok Sabha, it is essential that the resolution to remove him needs to be agreed to by the House.

Majority for his Removal

The expression 'majority of all the then members' in Article 67, means the 'Effective Majority' or 'Absolute Majority'. It means the majority of the total members of the House from which the total number of vacancies on the said date must be excluded. Hence, it is the majority of the effective strength of the House. Since it excludes the vacancy it is the majority of the House in its absolute terms and hence, known as absolute majority.

$$\text{Effective Strength of the House} = \text{Total Strength of the House} - \text{Vacancy}$$

$$\text{Majority of all the then members} = \text{Majority of the Effective Strength}$$

FIGURE 11.5: Effective Strength

For instance, on a given date there are 20 vacancies in the Rajya Sabha, the effective strength will be 230, which total strength (250) minus the vacancy (20).

Article 67 (b) lays down that the Vice President the proposal for his removal can be taken by the House only after serving a notice fourteen days in advance to the Vice President.

12 The statement is a potential question for Prelims as this has been asked with respect to Governor.

13 *Ibid.*



According to Article 68, the election to the office of Vice President must be completed before the expiration of the term of his office. In case of occurrence of a casual vacancy, the election must be completed as soon as possible. Like for the President the constitution does not prescribe any time limit. According to the President and Vice President (Election) Act, it has to be completed within three months from the date of occurrence of such vacancy.

TABLE 11.2 Comparison of the offices of President and Vice President

	President	Vice President
Election	The President is elected by an electoral college consisting of only the elected members of both Houses of Parliament and Legislative Assemblies of State. The nominated members have no right to vote.	The electoral college is limited to members of both Houses of Parliament. Members of State Assemblies do not participate. But nominated members of the Parliament eligible to vote.
Manner of Election	Election in both the cases is by secret ballot and in accordance with the system of proportional representation by single transferable vote.	
Qualifications	<ul style="list-style-type: none"> • Citizen of India • Completed the age of 35 years • Qualified for election to Lok Sabha 	<ul style="list-style-type: none"> • Citizen of India • Completed the age of 35 years • Qualified for election to Rajya Sabha
Condition	Both must not hold any office of profit	
Term of Office	Five years from the date of entering office	Five years from the date of entering office
Resignation	May resign office by writing addressed to the Vice President	May resign office by writing addressed to the President
Removal	May be removed by impeachment. (Majority of two-third of the total membership of the house. i.e., two-third of 552 and two-third of 250 respectively, in Lok Sabha and Rajya Sabha).	No impeachment but may be removed by resolution passed by a majority of the then members of the Rajya Sabha (effective majority) and agreed to by the Lok Sabha (simple majority).
Re-election	Eligible for re-election any number of times	Eligible for re-election any number of times
Functions	<ul style="list-style-type: none"> • Numerous functions under the constitution. 	<ul style="list-style-type: none"> • The only function is acting as a Chairman of the Council of States. • When the office of the President is vacant, he acts as the President or discharges the functions of the President.

Practice Questions

- 1.** Under which Article of the Indian Constitution did the President make a reference to the Supreme Court to seek the court's opinion on the constitutional validity of the Election Commission's decision on deferring the Gujarat Assembly elections?

(a) Article 142 (c) Article 144
 (b) Article 143 (d) Article 145

- 2.** Consider the following statements: In the electoral college for presidential election in India:

1. The value of the vote of an elected member of Legislative Assembly equals

$$\frac{\text{State population}}{\text{Number of elected MLAs}} \times 100$$

2. The value of the vote of an elected member of Parliament equals

$$\frac{\text{Total value of the votes of all elected MLAs}}{\text{Total number of elected MPs}}$$

3. There were more than 5000 members in the latest election

Correct statement

- (a) 1 and 2 (c) 1 and 3
 (b) 2 only (d) 3 only

- 3.** Consider the following:

1. The Chairman and the Deputy Chairman of the Rajya Sabha are not the members of that House.

2. While the nominated members of the two Houses of the Parliament have no voting right in the presidential election, they have the right to vote in the election of the Vice President.

Correct statement

- (a) 1 only (c) Both 1 and 2
 (b) 2 only (d) Neither 1 nor 2

- 4.** Who among the following have held the office of the Vice President of India?

1. Mohammad Hidayatullah
2. Fakhruddin Ali Ahmed
3. Neelam Sanjiva Reddy
4. Shankar Dayal Sharma

Correct answer

- (a) 1, 2, 3, 4 (c) 2 and 3
 (b) 1 and 4 (d) 3 and 4

- 5.** Who of the following shall cause every recommendation made by the Finance Commission to be laid before each House of Parliament?

- (a) The President of India
 (b) The Speaker of Lok Sabha
 (c) The Prime Minister of India
 (d) The Union Finance Minister

- 6.** With reference to the Finance Commission of India, which of the following statements is correct?

- (a) It encourages the inflow of foreign capital for infrastructure development.
 (b) It facilitates the proper distribution of finances among the Public Sector Undertakings.
 (c) It ensures transparency in financial administration.
 (d) None of the statements (a), (b) and (c) given above is correct in this context.

- 7.** The electoral college electing the President of India serves certain purposes, such purposes include:

1. President who is a constitutional head need not be elected by direct election by the entire electorate.
 2. The President must be elected by as popular a body as possible.
- (a) 1 only (c) Both 1 and 2
 (b) 2 only (d) Neither 1 nor 2

- 8.** The 'Proportional Representation System' followed in the President's election is advantageous as:

1. It ensures an absolute majority of the total number of votes polled.
 2. It helps the smaller parties who are strong only in some states to have a voice in the election.
- (a) 1 only (c) Both 1 and 2
 (b) 2 only (d) Neither 1 nor 2

- 9.** Which among the following statements regarding the impeachment of the President is NOT correct?
- The motion of impeachment can be initiated in either House of Parliament.
 - The motion must have the support of two-thirds of the total membership of the House.
 - The House which has passed the motion for investigation shall not investigate the charge.
 - If the investigating House finds the President guilty, it must do so by a majority of the total membership and by a majority of not less than two-thirds of the members present and voting.
- 10.** Consider the following statements:
- A no confidence resolution does not involve disgrace or imputation of moral turpitude but is only a disapproval of the government's policy.
 - An impeachment motion will practically amount to the ruination of the President's public career, if convicted.
- Correct statement
- 1 only
 - 2 only
 - Both 1 and 2
 - Neither 1 nor 2
- 11.** According to the Constitution of India: Which of the following statement is NOT correct?
- All executive action of the Government of India shall be expressed to be taken in the name of the President during normal times.
 - All executive action of the Government of India shall be expressed to be taken in the name of the President during when a Proclamation of Emergency remains in operation.
 - All executive actions of the government a State shall be expressed to be taken in the name of the Governor during normal times.
 - All executive action of the government of a State shall be expressed to be taken in the name of the President during a Proclamation of Emergency remains in operation.
- 12.** Consider the following statement's regarding President's pardoning powers. Which of the following is NOT correct?
- The exercise of the power by the President under Article 72 is a matter for his discretion and the courts should not interfere with his actual decision on the merits.
 - The courts exercise a power of judicial review, to ensure that the President considers all relevant materials before coming to his decision.
 - The President can, in the exercise of this power, examine the evidence afresh. In doing so, he is not sitting as a court of appeal.
 - His power is independent of the judiciary. He can afford relief not only from a sentence which he regards as unduly harsh, but also from an evident mistake.
- 13.** A sentence of death passed by a court after consideration of all the materials placed before it may yet require reconsideration by the President because of:
- Facts not placed before the courts.
 - Facts placed before the court but not in the proper manner.
 - Acts discovered after the passing of the sentence.
 - Events which have developed after the passing of the sentence.
 - 1, 2, 3 only
 - 1, 2 only
 - 3, 4 only
 - All of the above
- 14.** Which of the following statements regarding the election of Vice President is incorrect?
- The Vice President is elected in accordance with the system of proportional representation.
 - The concept of a single transferable vote is applied in the election.
 - The electoral college consists of elected members of both Houses of the Parliament.
 - The members of the state legislatures have no role to play in the election.
- 15.** Which one of the following statements regarding the removal of Vice President is NOT correct?
- Vice President may be removed from his office by a resolution of the Council of States passed by a majority of all the then members of the Council and agreed to by the House of the People.

- (b) No resolution for the purpose of this clause shall be moved unless at least fourteen days notice has been given of the intention to move the resolution.
- (c) While electing the Vice President both the Houses take part but in the process for removal only the members Rajya Sabha participate.
- (d) While acting as the President, Vice President shall be removed only on the like manner as the President of India is removed.

- 16.** Which of the following statements is correct?
- (a) The elected members of the Parliament take part in the election of the President but do not take part in his impeachment.
 - (b) The nominated members of the Parliament do not take part in both the processes of election and impeachment of the President.
 - (c) The nominated members of the Parliament do not take part in the impeachment of the President but the take part in his election.
 - (d) The nominated members of the Parliament do not take part in the election of the President but they take part in his impeachment.

- 17.** Which of the following statements is NOT correct?
- (a) The President shall not be answerable to any court for the exercise and performance of the powers and duties of his office.
 - (b) Parliament can initiate, in accordance with the procedure laid down in the constitution, impeachment proceedings against the President during the term of his office.
 - (c) Civil proceedings can be instituted against the President, in respect of any act done in his personal capacity before he entered upon his office as President, during the term of his office.
 - (d) No criminal proceedings shall be instituted or continued against the President in any court during his term of office.

18. Consider the following: The 'Proportional Representation System' followed in the President's election is advantageous as:

- 1. It ensures an absolute majority of the total number of votes polled.
- 2. It helps the smaller parties who are strong only in some states to have a voice in the election.

Correct statement

- | | |
|------------|---------------------|
| (a) 1 only | (c) Both 1 and 2 |
| (b) 2 only | (d) Neither 1 nor 2 |

19. Consider the following statement's regarding President's pardoning powers. Which of the following is NOT correct?

- (a) The exercise of the power by the President under Article 72 is a matter for his discretion and the courts should not interfere with his actual decision on the merits.
- (b) The courts exercise a power of judicial review, to ensure that the President considers all relevant materials before coming to his decision.
- (c) The President can, in the exercise of this power, examine the evidence afresh. In doing so, he is not sitting as a court of appeal.
- (d) His power is independent of the judiciary. He can afford relief not only from a sentence which he regards as unduly harsh, but also from an evident mistake.

20. Which among the following statements regarding the election of the President is NOT correct?

- (a) Article 71 gives Supreme Court the power to inquire into any disputes with regard to election to the office of President.
- (b) The Parliament is empowered to make law to regulate the election to the office of the President and Vice President.
- (c) The election can be challenged only by a person who had been a candidate in the election and no public interest litigation in this connection is entertained.
- (d) The election can be challenged any time during the process of election to the office of President.

Answer Key

- | | | | | | | | | | |
|----------|----------|----------|----------|----------|----------|----------|----------|----------|----------|
| 1. (b), | 2. (b), | 3. (b), | 4. (b), | 5. (a), | 6. (d), | 7. (c), | 8. (c), | 9. (d), | 10. (c), |
| 11. (d), | 12. (a), | 13. (d), | 14. (c), | 15. (d), | 16. (d), | 17. (c), | 18. (c), | 19. (a), | 20. (d) |

Hints and Explanations

- 1. (b)**
- Article 143 is the advisory jurisdiction of Supreme Court.
- Refer Page 11.3 and Chapter 17
- 2. (b)**
- The Electoral College consists of 4896 members in the last election.
 - The elected members' strength of Lok Sabha is 543, of Rajya Sabha is 238 and remaining of members of State Assemblies.
- Refer Page 11.5
- 3. (b)**
- The Vice President is the ex-officio Chairman of Rajya Sabha and hence, not a member of that House.
 - Deputy Chairman is elected from amongst the members of Rajya Sabha and hence, a member.
- Refer Page 11.25 – Table 11.2
- 4. (b)**
- Refer box on Page 11.1
- 5. (a)**
- Refer Page 11.4 and 11.22
- 6. (d)**
- The President of India constitutes Finance Commission every fifth year by Article 280.
- Refer Chapter 25
- 7. (c)**
- The President of India is the representative symbol of republican character of the Indian Constitution.
 - One of the ways this is ensured is through the Electoral College.
- Refer Page 11.7
- 8. (c)**
- In the Proportional Representation System, a candidate is said to be elected when he obtains a necessary quota of votes.
- 9. (d)**
- The method to determine the quota is by dividing the total number of valid votes cast by the total number of seats in the constituency plus one and adding one to the quotient (absolute majority).
 - In this process, the minorities do not get excluded.
- Refer Page 11.5 and 11.6
- 10. (c)**
- If the investigating House finds the President guilty, it must do so by a majority of the total membership.
- Refer Page 11.10
- 11. (d)**
- Proclamation of emergency or national emergency does not affect the executive powers of the Governor.
 - Hence, all executive actions in the State are said to be taken in the name of Governor during when proclamation of emergency is in operation.
- Refer Chapter 23
- 12. (b)**
- The courts exercise very limited power of judicial review.
- Refer Page 11.19
- 13. (d)**
- Refer Page 11.19
- 14. (c)**
- The Electoral College for the election of Vice President consists of the both elected and nominated members of both Houses of Parliament.
- Refer Page 11.23
- 15. (c)**
- Since the Electoral College electing the Vice President includes the members of Lok Sabha, it is essential that the resolu-

tion to remove him needs to be agreed to by the House.

Refer Page 11.24

16. (d)

- Article 54 provides the Electoral College for the election of President and Article 61 provides the procedure for impeachment.

Refer Page 11.25 – Table 11.2

17. (c)

- Article 361 provides for exception from Article 14 to the President.
- Civil proceedings can be instituted against the President, in respect of any act done in his personal capacity after he entered upon his office as President

Refer Chapter 7

18. (c)

- Allocation of portfolios to Ministers is an executive power of the President.

Refer Page 11.12

19. (c)

- Article 57 expressly provides that the President is eligible for re-election.
- The President of India shall have only one term as a convention.

Refer Page 11.8

20. (d)

- The election can be challenged only after the completion of the process of election.

Refer Page 11.9

Union Executive: Council of Ministers and the Prime Minister

Learning Objectives

After reading this chapter, you will be able to:

- Know the composition of the Council of Ministers, cabinet and the office of the Prime Minister (PM)
- Understand the concepts of minimum government and maximum governance, portfolio system
- Learn the functions of the Council of Ministers
- Know about the Council of Ministers in relation to the President
- Explain the issues relating to appointment of PM, functions and duties of the PM

INTRODUCTION

Article 74 of the constitution provides for the Council of Ministers. It provides that, 'there shall be a Council of Ministers to aid and advise the President'. The Council of Ministers is a constitutional body as it provided by the constitution itself. The Council of Ministers with the Prime Minister as its head is the real executive. The importance of the Council of Ministers is that the President cannot exercise his powers without the advice of the Council.

COMPOSITION

The Council of Ministers comprises the Prime Minister and other ministers. Once the Prime Minister is appointed the Council of Ministers is said to have come into existence. Other ministers are appointed by the President on the advice of the Prime Minister. The President is bound by the advice of the Prime Minister and he does not have any choice in this regard (Article 75 (1)).

By the Constitution (91st Amendment) Act, 2003, Article 75 (1A) was inserted. It sets the limit to the size of the Council of Ministers. According to Article 75, the total number of ministers in the Council of Ministers, including the Prime Minister, shall not exceed fifteen per cent of the total number of members of the House of the People.

The Council of Ministers hold office during the pleasure of the President (Article 75 (2)). However, in reality they hold office during the pleasure of the Prime Minister as the advice of the Prime Minister is binding on the President. Hence, the Prime Minister has the powers to shuffle his ministerial pack any time.

TABLE 12.1 Difference between Collective Responsibility and Ministerial Responsibility

Collective Responsibility	Ministerial Responsibility
Cause	Effect
All ministers are responsible for the government decisions.	Minster is accountable to the Parliament.
A minister is responsible for the government decisions even if it is not concerning the ministry in his charge.	The civil servants are to be responsible for the functions and is not to be held publicly accountable.

The Council of Ministers are collectively responsible to the House of People. That is, the Council can remain in power as long as it enjoys the confidence of the House. They are also individually responsible to the Houses of the Parliament under the concept of ministerial responsibility.⁽¹⁾

At the time of independence, the Council of Ministers had a five-tiered (ranks) structure namely member of cabinet, minster of cabinet rank, Minister of State, deputy ministers and parliamentary secretaries. Later with the recommendations of the Gopalaswamy Ayyangar Committee, it was made a three-tiered structure. At present, the council comprises ministers of three ranks namely, member of cabinet, Minister of State and deputy ministers.

However, the constitution does not differentiate between the ministers. Article 75 (6), empowers the Parliament to determine the salary and allowances of the ministers, does not distinguish between the different categories of the ministers. Hence, all members of the Council of Ministers including the Prime Minister, enjoy equal constitutional status.

COUNCIL OF MINISTERS AND CABINET

Important questions from Previous years' on this topics are mentioned below:

State the difference between Council of Ministers and the cabinet.

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While the Council of Ministers is a constitutional body, the cabinet is an extraconstitutional body. 'Cabinet' did not find any mention in the original constitution. But the 44th amendment gave a constitutional recognition by including the term in Article 352. Cabinet is a subset of the Council, which comprises the ministers who are of the cabinet rank.

In practice, cabinet is synonymously used to mention the Council of Ministers. This is because the decisions made by the cabinet are binding on the Council. Rarely the full Council of Ministers meet and only the cabinet makes all the important decision.

The ministers of the cabinet rank head the ministries/departments and are independent. Whereas, the Ministers of State hold only such departments and are in-charge of such functions allocated to them by the cabinet ministers. Thus, they work under the cabinet ministers.

Interesting Facts

- Administrative Reforms Commission (1966) recommended for the ceiling in the strength of the Council of Ministers.
- While Council of Ministers is a constitutional body, the cabinet is an extraconstitutional body.
- Article 352 is the only article of the constitution in which the term 'Cabinet' is mentioned.

1 Refer chapter on the salient features of the constitution.

The deputy ministers discharge such functions as deputed by the cabinet minister under whom they work. They assist the cabinet minister. In case the cabinet minister is unable to be present in the House in which some question relating to his portfolio is raised, he may direct the deputy minister to answer on his behalf.

Is the Cabinet a Dictator and Omnipotent?

Given the powerful position of the cabinet it appears that the 'Cabinet' enjoys a dictatorial position and is apparently omnipotent. However, when one takes a close look the position is different. Though the 'cabinet dictatorship' is real it is not omnipotent to do whatever it likes to.

The cabinet enjoys this clout and dictatorial position due to the proximity of the Prime Minister and its composition. The heavy weights of the party in power in the union and the politically important leaders of the party are the members of the cabinet. Hence, the cabinet is very influential. However, the cabinet is not omnipotent and cannot function independently due to the following reasons:

The decisions of the cabinet are not final and they have to be approved by the Parliament. On the floor of the Houses of the Parliament, the decisions are subjected to thorough scrutiny. This, in turn, triggers public discourse on the issue. Hence, the cabinet is subjected to public accountability.

Secondly, any decision of the cabinet needs to be in conformity with the provisions of the constitution. The decisions are subjected to judicial review and the Supreme Court and the High courts can declare any decision of the cabinet invalid, if the court finds it to be ultra vires the constitution.

Thirdly, the cabinet is bound by the need for going back to the people for their mandate after its term expires through election. At that time, the cabinet will lose its face, if its decisions were not made with consideration of peoples' welfare.

Fourthly, the cabinet does not enjoy any power, but it is only a 'delegate' of the President. The cabinet is only to advise the President and all decisions are expressed to be taken in the name of the President (Article 77 (1)). Hence, the President can veto the decision and return the decision for reconsideration. In such circumstances the Council has to reconsider the decision. In the past, a healthy convention of discarding the decision returned by the President for reconsideration has been well established. When Dr Kalam as President returned the advice of the Council to proclaim constitutional emergency on Bihar, the then government chose to discard the advice. From the foregoing points it is clear that, 'although the cabinet dictatorship is a stark reality, the cabinet is not omnipotent.'⁽²⁾

'Cabinet is the creature that
leads its own creator'

Herman Finer

'Minimum Government Maximum Governance' – an Analysis

Important questions from Previous years' on this topics are mentioned below:

'Though the dictatorship of the cabinet is a stark reality in modern times, it does not mean that the cabinet is omnipotent'. Comment. *IAS MAINS Public Administration Paper II (2000)*

The size of the cabinet should be as big governmental work justifies and as big as the Prime Minister can manage as a team. How far the efficacy of a government then is inversely related to the size of the cabinet? Discuss *IAS Mains (GS Paper II) (2014)*

2 Indian Public Administration: Institutions and Issues Ramesh. K. Arora and Rajni Goyal: The statement was asked as a question in 2000 (Public Administration Paper II).

SMART Government

To achieve the maximum governance the government needs to be a 'SMART' government

- S-Simple
- M-Moral
- A-Accountable
- R-Responsive
- T-Transparent

In 2014, after assuming the charge as Prime Minister, Narendra Modi declared that his focus would be on the quality of governance by keeping the size of the government small but efficient. 'Government has no business in business' was the watchword of this idea. It means to rollback the government from economic and commercial activities. The government must permit the private players to take the role wherever they are willing and possible. The government thus, must minimize its role in the market and shall only be a regulator, facilitator and promoter. According to the Government of India, the 'maximum governance' is to:

- (a) Establish a government that is citizen friendly and accountable.
- (b) Simplify the procedures.
- (c) Identify and repeal obsolete/archaic laws/rules and rationalizing existing rules.
- (d) Using technology to usher in a transparent administration that is capable of delivering services at a faster pace. This is to be achieved through 'Digital India' scheme.
- (e) An effective public grievance redressal mechanism.
- (f) Keep the decision-making level in the government at a minimum and setting up platform for promoting interaction with the citizens and get the advice from the citizen in order to make policy need-based.

The concept means to have the number of executive departments at a minimum. This would reduce the size of the human resource and would result in a right-sized administration. The right-sized administration will be more responsive and efficient. It will also reduce the financial burden of the government. The financial resource thus, conserved can be utilized for other purposes such welfare programmes.

The concept also entails having a simple administration which will have simplified procedures that are less difficult to understand for the common man and enable compliance. This will increase the confidence of the citizen on the government and makes the system more citizen-friendly.

It further means the citizen must have easy access to the administrators and the administration. This must be possible both in case of the citizen being able to tell his needs to the policy-makers and also get the grievances appropriately redressed within reasonable time and cost.

On the other hand, the idea of minimum government, maximum governance must not be equated with a smaller size of the Council of Ministers or cabinet. After the Constitution (91st Amendment) Act, 2003, there is a ceiling in the maximum size of the Council imposed by the constitution. Hence, it is not essential to further reduce the size of the Council. The size of the Council and cabinet must be optimized according to the need of the government, functions that the government is called to perform and the ability of the Prime Minister to handle the Council.

If the Council is too small, then the ministers would be overburdened and the efficiency of the government will be lost. In 2014, when the NDA government took charge, the strength of the Council of Ministers was 46 which were much less than sanctioned by the constitution. Thus, many ministers were entrusted with more than one portfolio. For instance, the Finance Minister was holding defence portfolio as well as finance. This is not a workable arrangement. Thus, the Prime Minister reshuffled the Council and today the Council is 76 strong.

Thus, it may be clear from the foregoing that the idea of 'Minimum Government Maximum Governance' does not have any relation with the size of the Council of Ministers or the cabinet.

Qualification to be Minister

The constitution does not prescribe any qualification to be a minister. However, to be a minister a person has to be a member of Parliament—either Lok Sabha or Rajya Sabha. It is not required for any person to be a member of Parliament at the time of appointment as a minister. But he has to be a member of Parliament within six months from the date on which enters upon the office as minister (Article 75 (5)).

According to Article 75 (1B), inserted by 93rd amendment, any member of Parliament who has been disqualified on ground of defection must not be appointed as a minister. This prohibition is for the ‘duration of the period commencing from the date of his disqualification till the date on which the term of his office as such member would expire or where he contests any election to either House of Parliament before the expiry of such period, till the date on which he is declared elected, whichever is earlier’.

PORTFOLIO SYSTEM

India follows the cabinet form of government in which the government business is allocated to various ministers. Article 77 (3) empowers the President to allocate the business of the government among ministers. This system is known as ‘portfolio system’. Thus, each minister will be in-charge of one or more department.

However, in reality the allocation is the prerogative of the Prime Minister. The President is bound by the advice of the Prime Minister. Hence, the Prime Minister can at any time alter the portfolio of the ministers.

In this system, a minister who holds a particular ministry will be responsible for various activities concerning the ministry. He is responsible for the introduction of various bills, policies, demand for grants, etc., and answering any question relating to the ministry, raised on the floor of the House.

Functions of the Council of Ministers

The Council performs three types of functions namely—legislative, executive and financial.

Legislative Functions

The Council of Ministers due to the support of the majority members of the Lok Sabha has good control over the Parliament. The Council formulates the policies and budget of the government, presents them to the Parliament and secures the approval for implementation. All the important legalizations are initiated by the ministers and got approved.

Exercise of Executive Powers

The government may do any act provided:It is not an act assigned by the constitution to any other authority or body such as the legislature or the judiciary or the Public Service Commission.

- (a) It is not contrary to the provisions of the constitution, or of any law.
- (b) It does not encroach upon or otherwise infringe the legal rights of an individual.
- (c) It does not involve payment of any money to any foreign power.
- (d) The powers required for carrying out a policy are not available from the existing law.
- (e) Where the constitution says that an act may be done only by legislation.

‘Committee to identify the Central Acts which are not relevant or no longer needed or require repeal/re-enactment in the present socio-economic context’,

Executive Functions

The Council of Ministers is the executive of the union. According to Article 53, the term 'officers subordinate to President' includes the Council of Ministers. The Council provides 'aid and advice' to the President. The Council by way of 'aid' discharge the responsibilities delegated to them by the President. The ministers head the departments and are the political heads of the department and are responsible for the functioning of the ministries. They are accountable to the people through the Parliament.

The Council also advises the President in discharge his functions and exercise of his powers. Any advice tendered to the President by the Council of Ministers is not subjected to judicial review (Article 74 (2)). The Council also brings coordination among the policies of various departments.

Financial Functions

The Council controls the financial administration and the policy relating to them. All major economic and financial decisions are made by the Council.

COUNCIL OF MINISTERS AND THE PRESIDENT

Important questions from Previous years' on this topics are mentioned below:

'Presidents of India prior to the passage of 42nd and 44th amendment could afford to be more assertive'. Comment

IAS MAINS Public Administration Paper II

According to Article 74, the Council of Ministers is to aid and the advice the President. Until 1976, the President had some amount of discretion with respect to accepting the advice of the Council. However, the 42nd amendment made the advice of the Council binding on the President. This made the President to just endorse the decisions of the Council and made him a mere rubber stamp of the Council. But this was not the position envisaged by the founding fathers of the constitution.

This anomaly was, to some extent, set right by the 44th amendment. The 44th amendment inserted the proviso to Article 74 (1), which enables the President to return the advice of the Council for reconsideration once. When the President returns any advice for reconsideration, the Council has to reconsider and advise the President accordingly. The advice tendered by the Council after such reconsideration is binding on the President.

44th amendment did not fully restore the pre-1976 position of the President. This has a constitutionally significant reason. In the pre-1976 position the President had the discretion to either accept

TABLE 12.2 Longest and shortest serving Prime Ministers

Prime Minister	Number of Years
Jawaharlal Nehru	16 years, 286 days
Indira Gandhi	15 Years, 350 days
Manmohan Singh	10 years, 4 days
Vishwanath Pratap Singh	343 days
Inder Kumar Gujral	332 days
H. D. Deve Gowda	324 days
Chandra Shekhar	223 days
Charan Singh	170 days

or reject the advice of the Council and act according to his discretion. This will completely breach the 'checks and balances' system that the constitution seeks to establish. The President then could get the advice of the Council to satisfy the condition imposed by Article 74 and might choose to discard and make a decision of his own discretion. This creates a position in which the President can become a dictator. In order to prevent this eventuality, the 44th amendment did not restore the pre-1976 position of the President, but just provided him the power to return the advice for reconsideration once.

PRIME MINISTER

The Prime Minister is the head of the Council of Ministers and is the leader of the nation. He is the pivot of the government system. The office has been borrowed from English parliamentary system.

Appointment of the PM

Important questions from Previous years' on this topics are mentioned below:

Do you justify the Prime Minister's entry into Parliament through Rajya Sabha?

IAS MAINS GS (2000)

The Prime Minister is appointed by the President. Usually the President appoints the leader of the party that enjoys the majority support of the Lok Sabha as the PM. When any one party emerges out with the required majority in the House, the President will not be facing any challenge in the appointment of the PM.

However, in case of a hung Parliament in which no political party gains the required majority the President has to apply his discretion. In such circumstances, the President follows a convention. He invites the leader of the single largest party in the Lok Sabha to form the government. When he fails to form the government, President may call the leader of the alliance of parties formed before the election. In case the alliance also fails to make, only then he appoints the leader of the post-election alliance.

This convention was evolved to avoid the 'horse-trading', in which the members of Parliament keep shifting their loyalty and support to different political groups for 'considerations' like money, power, ministerial berth, etc.

The PM like other ministers needs to be a member of Parliament. However, he need not to be a member of Parliament at the time of appointment. Also, the constitution does not bar the PM being a member of either House of the Parliament. However, the PM being a member of Lok Sabha is considered more appropriate than he being a member of Rajya Sabha. This is on the moral ground as the PM is the leader of the nation and he needs to be representing the people rather than any State.

Horse-trading: What does it mean?

In Business

It means informal negotiations involving hard bargaining and different levels of compromises.

In Politics

It refers to the phenomenon of luring members of Parliament or State Legislative Assembly from one party to another with money, posts, etc., *in lieu* of their support.

In India

- It is popularly and comically known as '*Aya Ram and Gaya Ram*'.
- In 1967, the Haryana MLA Gaya Lal switched his support thrice in 15 days and finally settled with Indian National Congress.
- Congress leader Rao Birendra Singh was the first to use this phrase when he said '*Gaya Ram is now Aya Ram*'.

The PM also holds office during pleasure of the President but the President cannot withdraw his pleasure unless certain conditions are satisfied. The President may withdraw his pleasure and remove the Prime Minister if:

- (i) The PM fails to prove his majority support on the floor of Lok Sabha.
- (ii) The PM loses the confidence vote and refuses to resign.
- (iii) A no confidence motion is carried against the Council of Ministers.
- (iv) If the term of Lok Sabha expires and the PM refuses to resign and advises the President to call for elections.

Prime Minister and the Council of Ministers

Important questions from Previous years' on this topics are mentioned below:

'The Prime Minister stands out as the most powerful authority even today'. Comment.

IAS MAINS Public Administration (2001)

The PM enjoys the status of *primus inter pares*, first among the equals with respect to his Council of Ministers. The Prime minister is the head of the Council of Ministers (Article 74). It implies that the Council must always be headed by the PM.

Once the Prime Minister appointed the Council of Ministers is said to have come into force. He is the kingpin of the Council and it sails or sink with the Prime Minister. In case of any difference of opinion between any minister and the Prime Minister, then the minister has to change resolve it in accordance with the PM's view or he has to resign.

The Prime Minister's choice of the membership of the Council is final and the President has to appoint the ministers in accordance with the recommendation of the PM. Similarly, the President allocates the portfolios to the ministers in accordance with the recommendation of the PM.

After allocating the portfolios to other ministers, the PM holds the all of the rest portfolios. This is known as 'Residuary Portfolios' and the PM is known as 'Resort of Residual Legatee'.

The Council of Ministers, in practice, hold office during the pleasure of the PM. In case the PM wants to reshuffle his Council at any time, he is free to do. He can either direct any of his ministers to resign or in case they refuse he can advise the President to 'withdraw his pleasure' and remove the minister. Thus, even today the PM stands out to be most powerful.

Deputy Prime Minister

- The constitution does not provide for the post of Deputy PM.
- It is created according to the political contingencies.
- Though known as Deputy PM, the post does not carry any responsibility.
- Under the Council of Ministers Act, 1952, the Deputy PM is equal to other ministers.
- Since independence there have been seven Deputy PMs namely Vallabhbhai Patel, Morarji Desai, Charan Singh, Jagjivan Ram, Yashwantrao Chavan, Devi Lal and Lal Krishna Advani.

On the other hand, it is not that the PM is omnipotent and can be a dictator. He is bound by several conditions and constraints—both constitutional and political, in respect of the Council of Ministers such as:

- (i) Article 75 (1A) imposes a ceiling on the strength of the Council of Ministers.
- (ii) The PM has to accommodate the party heavy weights in the Council of Ministers appropriately.
- (iii) He has to distribute the seats in the Council in accordance with the vote share of various region of the country.
- (iv) He needs to take into account the representation of all communities, especially the minorities, women, Scheduled Castes and Scheduled Tribes in the Council.

- (v) He needs to take into account the representation of certain regions like the North East in the Council.
- (vi) Above all he needs to consider the capability of the persons who are appointed as ministers and their background—political, criminal, etc., while appointing them as ministers.

This is all the more difficult in a coalition era. The PM will have to accommodate the wishes and demands of the coalition partners while constituting the Council. Especially, when the coalition partner is important and is crucial for the survival of the government, the burden on the PM is very heavy. Thus, the PM is very much constrained and cannot have a free hand in determining the composition of the Council of Ministers.

Further, the constitution does not confer any powers to the PM directly. All the powers what he exercises are the powers vested in the President. The exercise of such powers is also subjected to the constitutional provisions, approval of the Parliament and is also subjected to judicial review. Hence, in spite of all the powers, the PM cannot become a dictator.

TABLE 12.3 Funds Under PM

PM National Relief Fund	National Defence Fund
<ol style="list-style-type: none"> 1. Established in January 1948 to assist displaced persons from Pakistan. 2. Now utilized for immediate relief to families of those killed in natural calamities like floods, earthquakes, etc., and to victims of major accidents and riots. 3. Not constituted by Parliament. 4. Consists entirely of public contributions. 5. No budgetary support. 6. Invested with scheduled commercial banks in various forms. 7. Disbursed with approval of Prime Minister. 	<ol style="list-style-type: none"> 1. Set-up to manage voluntary donations received for promotion of the national defence effort. 2. Used for welfare of members of Armed Forces (including Para Military Forces) and their dependents. 3. Administered by an Executive Committee with PM as Chairperson and Defence, Finance and Home Ministers as members. Finance Minister is the Treasurer of the Fund. 4. Accounts of the Fund are kept with Reserve Bank of India. 5. Consists entirely of voluntary public contributions. 6. No budgetary support.

Understanding the Office of PM

Although the position of the PM is described through phrases like *primus inter pares*, one can understand the office only by observing the evolution of the office. The office of the PM has been evolving and it is closely associated with the personality and charisma of the PM. The importance of the office had varied due to the personality and the charisma of the incumbent. Accordingly, the Indian Prime Ministers can be classified into two categories namely those who were more than *primus inter pares* and those who were less than *primus inter pares*.

Jawaharlal Nehru, Indra Gandhi, Rajiv Gandhi and the present PM Narendra Modi can be included in the first category. These PMs enjoyed greater charisma and popularity, as a result of which they had been able to influence the electoral performance of the party to which they belonged. Their ability to guide their party to electoral winning had given them a stronger hold over their party and they were hardly challenged by their party colleagues. They could play more decisive role with respect to the decisions of the government and the party.

On the other hand, PMs like Lal Bahadur Shastri, Morarji Desai, P. V. Narashima Rao, Vajpayee, I. K. Gujral, Deve Gowda and Dr Manamohan Singh belong to the second category. For many reasons they were not having strong hold over the office and the party. Lal Bahadur Shastri took over as Prime Minister immediately after Nehru who was towering personality both at the national and international level. Hence, he needed to consolidate his position. Similarly, P. V. N. Rao became the PM at the time when the country was facing a crisis and hence, he also faced several hurdles. Also, Congress party was not having its own majority to form the government and he was more dependent on his alliance partners. The other three Prime Ministers were heading a coalition government and were subjected to the pulls and pressures of the coalition partners.

Such PMs who did not enjoy that much charisma attempted to strengthen their position by several means. One of the means is to strengthen the Prime Minister's Office (PMO), previously called as Prime Minister's Secretariat. For instance, when Vajpayee was the PM, the National Security Commission and the office of the National Security Advisor (NSA) were established. The Principal Secretary to the PMO was made the ex-officio NSA which resulted in the concentration of power in the PMO and effectively in the PM. However, when the Congress head UPA alliance government was formed in 2004, the PMO and NSA were separated. This resulted in the weakening of the PM. Later in 2014 when the BJP emerged as the single largest party with the required majority to form the government, the alliance partners of the party in the present National Democratic Alliance do not have much leverage over the government. This overwhelming electoral win is attributed to the PM Modi's charisma and he has now emerged as a stronger PM. This has been reinforced with the subsequent electoral gains in State election, especially the BJP winning in the UP state elections in 2017.

Thus, it is better to understand the office of PM, by examining how the office has actually evolved over time rather than describing the Prime Minister's position through phrases.^[3]

Functions and Duties of the PM

The PM performs the following functions and the duties:

- (i) He is the head of the Council of Ministers. As the head he presides over all the meetings of the Council and the cabinet.
 - (ii) He is also the head of several cabinet committees, and it is his decision to constitute the cabinet committees.
 - (iii) He is the only channel of communication between the Council of Ministers and the President.
- According to Article 78, the following are the duties of the PM:
1. To communicate to the President all decisions of the Council of Ministers relating to the administration of the affairs of the union and proposals for legislation. To furnish such information relating to the administration of the affairs of the Union and proposals for legislation as the President may call for. If the President so requires, to submit for the consideration of the Council of Ministers any matter on which a decision has been taken by a minister but which has not been considered by the Council.
 2. He is the leader of the House in which he is attending, irrespective of whether he is the member of that House. As the leader of the House he is responsible for maintaining the decorum and discipline in the House, especially the conduct of the ruling party members. He has to ensure that the members belonging to the opposition party and other independent members are given with adequate opportunity to speak and ensure the ministers participate in the discussions in the House responsibly. In the process, he needs to wholeheartedly support the Speaker of Lok Sabha or the Chairman of Rajya Sabha. His presence strengthens his cabinet colleagues and motivates the ruling party members.
 3. He is the ex-officio chairperson of the NITI Ayog, entrusted with the planned development of the country.

Prime Minister: Role

- Head of the Council of Ministers
- Channel of communication between the Council of Ministers and the President
- Leader of the House in which he is attending
- Ex-officio chairperson of the NITI Ayog

³ IAS Mains (1996): 'Rather than describing the Prime Minister's position through phrases, it is better to examine how the office of the Prime Minister has actually evolved over time.'

Practice Questions

- 1.** Which one of the following statements is NOT correct?
- In Lok Sabha, a no confidence motion has to set out the grounds on which it is based.
 - In the case of a no confidence motion in Lok Sabha, no conditions of admissibility have been laid down in the rules.
 - A motion of no confidence, once admitted, has to be taken up within ten days of the leave being granted.
 - Rajya Sabha is not empowered to entertain a motion of no confidence.
- 2.** Consider the following statements:
- The Rajya Sabha alone has the power to declare that it would be in national interest for the Parliament to legislate with respect to a matter in the State List.
 - Resolution approving the Proclamation of Emergency are passed only by the Lok Sabha.
- Correct statement
- 1 only
 - 2 only
 - Both 1 and 2
 - Neither 1 nor 2
- 3.** Which of the following Constitution Amendment Acts seeks that the size of the Councils of Ministers at the Centre and in a State must not exceed 15 per cent of the total number of members in the Lok Sabha and the total number of members of the Legislative Assembly of that state, respectively?
- 91st
 - 93rd
 - 95th
 - 97th
- 4.** Consider the following statements:
- The President shall make rules for the more convenient transaction of the business of the Government of India and forth allocation among ministers of the said business.
 - All executive actions of the Government of India shall be expressed to be taken in the name of the Prime Minister.
- Which of the statements given above is/are correct?
- 1 only
 - 2 only
 - Both 1 and 2
 - Neither 1 nor 2
- 5.** Which one of the following Schedules of the Constitution of India contains provisions regarding anti-defection Act?
- Second Schedule
 - Fifth Schedule
 - Eighth Schedule
 - Tenth Schedule
- 6.** Consider the following statements:
- The Council of Ministers in the Centre shall be collectively responsible to the Parliament.
 - The union ministers shall hold the office during the pleasure of the President of India.
 - The Prime Minister shall communicate to the President about the proposals for legislation.
- Correct statement
- 1 only
 - 2 and 3 only
 - 1 and 3 only
 - 1, 2 and 3
- 7.** In the context of India, which of the following principles is/are implied institutionally in the parliamentary government?
- Members of the cabinet are members of the Parliament.
 - Ministers hold the office till they enjoy confidence in the Parliament.
 - Cabinet is headed by the Head of the State.
- Correct answer
- 1 and 2 only
 - 3 only
 - 2 and 3 only
 - 1, 2 and 3
- 8.** Consider the following statements: The Parliamentary Committee on Public Accounts (PAC)
- Consists of not more than 25 members of the Lok Sabha.
 - Scrutinizes appropriation and finance accounts of the government.
 - Examines the report of the Comptroller and Auditor General of India (CAG).
- Correct statement
- 1 only
 - 2 and 3 only
 - 3 only
 - 1, 2 and 3

- 9.** The Prime Minister of India, at the time of his/her appointment:
- Need not necessarily be a member of one of the Houses of the Parliament but must become a member of one of the Houses within six months.
 - Need not necessarily be a member of one of the Houses of the Parliament but must become a member of the Lok Sabha within six months.
 - Must be a member of one of the Houses of the Parliament.
 - Must be a member of the Lok Sabha.
- 10.** With reference to union government, consider the following statements:
- The Constitution of India provides that all cabinet ministers shall be compulsorily the sitting members of Lok Sabha only.
 - The Union cabinet secretariat operates under the direction of the Ministry of Parliamentary Affairs.
- Correct statement
- 1 only
 - 2 only
 - Both 1 and 2
 - Neither 1 nor 2
- 11.** With reference to union government consider the following:
- The ministries/departments of the Government of India are created by the Prime Minister on the advice of the cabinet secretary.
 - Each of the ministries is assigned to a minister by the President of India on the advice of the Prime Minister.
- Correct statement
- 1 only
 - 2 only
 - Both 1 and 2
 - Neither 1 nor 2
- 12.** The members of the Council of Ministers are appointed by the President on the recommendation of the
- Lok Sabha
 - Prime Minister
 - Chief Justice
- Speaker of the Lok Sabha
- 13.** The provision relating to the disqualification of members on ground of defection for forgoing the membership of the party to which he belongs is NOT applicable to:
- Nominated members
 - Speaker of Lok Sabha
 - Independent members
 - Prime Minister
- 14.** Which of the following are NOT mentioned in the Constitution of India?
- Council of Ministers
 - Collective responsibility
 - Resignation of ministers
 - Office of the Deputy Prime Minister
- Correct answers
- 1 and 2
 - 2 and 3
 - 3 and 4
 - 1 and 3
- 15.** Which of the following inferences can be drawn from the constitution?
- The holders of office of profit 'under the government' are barred from being a member of Parliament because a person cannot exercise his functions independently of the executive of which he is a part.
 - The President is bound to dismiss the Council of Ministers losing confidence of the Parliament because there cannot be a conflict between the will of the representatives of people and that of the President.
- 1 only
 - 2 only
 - Both 1 and 2
 - Neither 1 nor 2
- 16.** Which one of the following is NOT correct in accordance with the principle of collective responsibility of the Council of Ministers?
- It means that all the ministers stand together and fall together.
 - The resignation of the Prime Minister means the resignation of the Council of Ministers.
 - Collective responsibility means responsibility of all for all.
 - A vote of no confidence against even a single minister is a vote of no confidence against whole of the Council of Ministers.

- 17.** Which one of the following is constitutionally correct?
- The Prime Minister decides allocation of portfolios among the ministers.
 - When the Prime Minister resigns, the Council of Ministers gets dissolved.
 - All the principal policy announcements of the government are made by the Prime Minister.
 - It shall be the duty of the Prime Minister to communicate to the President all decisions of the cabinet relating to the administration of the affairs of the union.
- 18.** Consider the following: Article 78 of the constitution does NOT provide for
- Right of the Prime Minister to obtain any information regarding the affairs of the administration.
 - Right of the President to obtain any information regarding the affairs of the administration.
 - Duty of the Prime Minister to supply any information demanded by the President.
 - Duty of the Prime Minister to submit to Council of the Ministers for their consideration a matter in which a minister had advised without it being considered by the Council.
- 19.** While appointing the Prime Minister, the President select:
- Leader of the largest party in the Lok Sabha.
 - Leader of the largest party in the alliance which secures a majority in the Lok Sabha.
 - The leader of the largest party in the Rajya Sabha.
 - Leader of the alliance or party that has the support of the majority in Lok Sabha.
- 20.** Match:
- | List I | List II | | |
|------------------------------|--------------------------------------|----------|----------|
| A. Cabinet minister | 1. Political troubleshooters | | |
| B. Minister of State | 2. Attached to a cabinet minister | | |
| C. Deputy minister | 3. Political head of a ministry | | |
| D. Parliamentary secretaries | 4. Answering questions in Parliament | | |
| A | B | C | D |
| (a) 3 | 4 | 2 | 1 |
| (b) 3 | 1 | 4 | 2 |
| (c) 4 | 3 | 1 | 2 |
| (d) 3 | 2 | 4 | 1 |

Answer Key

-
- 1.** (a), **2.** (a), **3.** (a), **4.** (a), **5.** (d), **6.** (b), **7.** (a), **8.** (b), **9.** (a), **10.** (d),
11. (b), **12.** (b), **13.** (b), **14.** (c), **15.** (c), **16.** (d), **17.** (d), **18.** (a), **19.** (a), **20.** (d)

Hints and Explanations

1. (a)

- To move a no-confidence motion grounds need not be specified
- A No-Confidence Motion is moved only in Lok Sabha as Article 75(3) states that Council of Ministers are collectively responsible to the House of People.

Refer Chapter 14

2. (a)

- Article 249 allows Rajya Sabha to pass a resolution allowing Parliament to legislate in matters of State subject in national interest.
- For approving Proclamation of Emergency, both Houses have equal powers and have to pass the resolution separately.

Refer Chapter 14

3. (a)

- Constitution (Ninety-First) Amendment Act, 2003 sets the cap on size of Council of Ministers to 15% of total number of members of House of People.
- Same condition is extended to the State Legislative Assembly.

Refer Page 12.1

4. (a)

- By Article 77, all executive actions are said to be taken in the name of the President.
- President makes rules for the convenient transaction of business of Government and allocation of such business among the Ministers.

Refer Page 12.6

5. (d)

- Provisions associated with anti-defection is found in Tenth Schedule inserted by Constitution (Fifty-second) Amendment Act, 1985.
- Defection is a ground for disqualification under Article 102.

Refer Chapter 14

6. (b)

- Article 75(3) states that the Council of Ministers are collectively responsible to the House of People.

Refer Page 12.1, 12.2 and 12.10

7. (a)

- President is the Head of the State.
- Prime Minister heading the cabinet is the Head of Government.

Refer Page 12.2

8. (b)

- Public Accounts Committee has 22 members: 15 from Lok Sabha and 7 from Rajya Sabha

Refer Chapter 14

9. (a)

- Refer article 75 (5)
- Prime Minister is appointed by the President.
- Usually the President appoints the leader of the party that enjoys the majority support of the Lok Sabha as the PM

Refer Page 12.7

10. (d)

- The constitution does not prescribe any qualification to be a minister.
- To be a minister a person has to be a member of Parliament—either Lok Sabha or Rajya Sabha
- Cabinet Secretariat operates under Prime Minister

Refer Page 12.5

11. (b)

- Article 77 : Conduct of business of Government of India
- Ministries/Departments are created by the President on the advice of PM.

Refer Page 12.5

12. (b)

Refer Page 1 Composition of the Council of Ministers

13. (b)

Para 5 of Tenth Schedule mentions the exemption to disqualification on grounds of defection.

- Speaker and Deputy Speaker of Lok Sabha and State Legislative Assembly
- Deputy Chairman of the Council of States
- Chairman or the Deputy Chairman of the State Legislative Council

Refer Chapter 14

14. (c)

- Article 74 provides for the Council of Ministers.
- Article 75 provides for collective responsibility
- Any Minister may resign by writing addressed to President. However in practice the Minister who wants to resign submits his resignation to the PM who in turn submits to the President. But, this is not provided in the Constitution.
- Post of Deputy PM was created for political contingencies.

Refer Box on Page 12.8

15. (c)

- Members holding an office of profit under the government is considered disqualified as a Member of Parliament under Article 102.

Refer Chapter 14

16. (d)

- A no confidence motion can be moved against the entire council of ministers.
- Collective responsibility means respon-

sibility of the Council of Ministers to the House of People.

Refer Page 12.2

17. (d)

- Article 78: Duties of PM
- President allocates business to the Ministers

Refer Page 12.10

18. (a)

Article 78: Duties of PM to the President

- (a) to communicate all decisions of the Council of Ministers relating to the administration of the affairs of the Union and proposals for legislation;
- (b) Duty of the Prime minister to supply any information demanded by the President
- (c) if required submit for the consideration of the Council of Ministers any matter on which a decision has been taken by a Minister but which has not been considered by the Council

Refer Page 12.10

19. (d)

- Normally, leader of the party or alliance who has the support of majority of the Lower House is appointed as PM.
- In case of hung Parliament, President can use his discretion.

Refer Page 12.7

20. (d)

Self-explanatory

Refer Page 12.2

State Executive: Governor, Council of Ministers and Chief Minister

Learning Objectives

After reading this chapter, you will be able to:

- Understand the office of the Governor, its importance and the issues involved
- Know the powers of a Governor and his discretionary powers and special responsibilities
- Learn the office of the Governor in comparison with the office of President
- Know the functions of Council of Ministers and Chief Minister

INTRODUCTION

The Constitution of India provides for parliamentary form of government in both Centre and the States. Hence, the State government also consists of a titular head and a real head. The titular head of the State is the Governor and the real head is the Council of Ministers with Chief Minister as its head. All the 29 states in India have the uniform structure of government.

OFFICE OF THE GOVERNOR

Article 153, provides that 'there shall be a Governor for each State'. This is similar to the provision corresponding to the office of the President. The Constitution (7th Amendment) Act, inserted the proviso to Article 153, which provides for the appointment of the Governor of a State, as the Governor of any other State or administrator of any union territory in case of the occurrence of a casual vacancy in the State or Union Territory.

Where the same person is appointed as Governor of two or more States, the emoluments and allowances payable to the Governor shall be allocated among the States in such proportion as the President may by order determine (Article 158 (2)).

Appointment and Term of Office

Important questions from Previous years' on this topics are mentioned below:

Is there any provision to impeach the Governor of a State?

IAS MAINS - GS - 1999

The Governor of a State is appointed by the President under his hand and seal. The President exercises the power to appoint the Governor only on the advice of the union Council of Ministers. The Governor holds office during the pleasure of the President—Article 156. The constitution does not specify on what grounds the President may withdraw his pleasure. The President may ‘withdraw’ his pleasure on the advice of the union Council of Ministers. Thus, in effect the Governor is appointed by and holds office during the pleasure of the Prime Minister. This has resulted in the rise of controversies.

The Governor may at any time resign from office by writing under his hand addressed to the President. Subjected to these conditions the Governor holds office for a period of five years from the date on which he enters upon the office. However, the Governor will continue to remain in office, even after the expiration of the term, until his successor enters upon office.⁽¹⁾

In case of any casual vacancy of the office of the Governor on any other reason than removal, resignation or death then the President has the power to determine how the functions of the office (Article 160).

Qualifications and Conditions of Office

To be appointed as Governor any person need to be a citizen of India and must have completed thirty-five years of age (Article 157).

According to Article 158, the Governor must be a member of state legislature or a member of Parliament. Here, it is to be noted that the constitution does not bar any member of state legislature or a member of Parliament being appointed as Governor. But if a member of state legislature or a member of Parliament is appointed as the Governor, then his seat in the House will automatically fall vacant on the date on which he enters upon the office of the Governor.⁽²⁾

Article 158 (2) provides that the Governor must not hold any office of profit during his term as Governor. The Governor is entitled to a rent-free official residence, the residence of the Governor is known as *Raj Bhavan*. The emoluments, allowances and privileges of the Governor are as fixed by the law of the Parliament.

The emoluments and allowances of the Governor shall not be diminished during his term of office. This is to ensure the independence and the dignity of the office of the Governor.

Appointed Governor: Reasons

Important questions from Previous years' on this topics are mentioned below:

What were the two major considerations to have the appointed and not elected?

IAS MAINS GS (2008)

The draft constitution contained a provision for elected Governor. However, later the constituent assembly provided for the ‘appointed’ Governor. The reasons for the constitution providing for an appointed Governor are given below.

Firstly, if the Governor was also to be elected, then it will result in another election. Since, the Governor is only a nominal head, the election to the office will be contested on personal issues. This is would result in unnecessary tarnishing of his image which would be inappropriate to the dignity of the office.

1 Article 156

2 IAS prelims question



Secondly, it would involve a huge exercise involving the people without any fruitful outcome.

Thirdly, the election involves huge costs—administrative, social, and financial and other, which is unnecessary considering the powers vested in the office of the Governor.

Fourthly, the constitution envisages the role of a nominal head to the Governor. It is inappropriate to make the Governor, after being elected by the people directly, a nominal head. In case the Governor to be elected by the people directly, then he may not prefer to be a nominal head. It will not be appropriate to make the Chief Minister representing a constituency the head of the government.

Fifthly, in such cases the Governor might demand a more meaningful position; he may aspire to become a Minister or Chief Minister with effective powers. This would detrimentally affect the constitutional scheme.

Sixthly, the Governor is not only the head of the State but also the agent of the Centre and through the Governor the Centre exercises control over the State. The President appointing the Governor makes the control effective.

Seventhly, the Governor needs to be detached from the active politics of the State in order to be neutral. In case of election to his office, this political neutrality could be affected.

Although these arguments are acceptable, there are equally strong arguments against 'appointed' Governor. A Governor nominated by the Centre, may not have adequate understanding about the State, its culture, political dynamics, etc. Hence, he may not be able to discharge his responsibilities effectively. In all the federal systems the Governor of the provinces are elected. India being a federal system must also have the Governor elected.

It is sometimes argued that the elected Governor does not conform to the parliamentary system. This argument is not acceptable because the union President is also elected. When it is possible to have an elected President as the nominal head, a similar system could be thought out for the Governor also.

The possibility of misunderstanding and resultant friction between Governor and the Chief Minister is not acceptable as it can happen with the nominated Governor.

Governor: Importance of the Office

According to the Sarkaria Commission, Governor is a 'bridge' between the Union and the State who can foster better understanding between them. It is his duty to inform the Union about the affairs of the State Administration. This is more important 'whenever he feels that matters are not going in accordance with the constitution, or there are developments endangering the security or integrity of the country'. Thus, the Governor assists the Union in discharging its responsibilities towards the States. The part which the Governor plays to help to maintain the democratic form of Government in accordance with the constitution is of vital importance. 'He therefore, is sentinel of the constitution'.⁽³⁾

The Governor plays a pivotal role in our constitutional system and in its working. He is the linchpin of the constitutional apparatus of the State.⁽⁴⁾ Important functions of Governor are given below:

- (a) All executive action of the State government is expressed to be taken in name of Governor.
- (b) He chooses and appoints the Chief Minister in his discretion, on the criterion that the latter should be able to form a Ministry commanding majority support in the Assembly without his assent, no bill can become law.
- (c) Without his prior authorization no Money Bill can be introduced in the state legislature.
- (d) Without his orders, the House or Houses of State legislature cannot be summoned or prorogued. It is he who orders dissolution of Legislative Assembly, sometimes in his discretion when satisfied after exploring all alternatives that there is no person commanding majority support in the Assembly to form a Council of Ministers.
- (e) A large number of other important functions have also been entrusted by the constitution to the Governor. It is not necessary to recapitulate all of them here.

3 Sarkaria Commission on Centre-State relations, Chapter IV—Role of Governor.

4 *Ibid.*

Conference of Governors 2018

- A tradition almost as old as independence.
- First conference presided over by C. Rajagopalachari, Governor General of India held in 1949. 48th Conference held in 2018

Role of Governor Views in the 48th Conference

President

- A bridge between union government and states.
- Could help to raise discussion quality, provide an impetus to society and state government
- Can give direction to youth by constantly engaging with students and teachers.
- Can inspire universities to develop as innovation centres.

Vice President

- Should act as catalysts and facilitators in the change process

Home Minister

- Can contribute towards strengthening confidence building measures so that people's faith in the democracy is maintained.

Office of the Governor: Issues Involved

The controversy relating to the office of the Governor is prevalent since independence. The office is considered as the British creation and the State Chief Ministers deplored and demanded the abolition of the office. It is one of the non-federal features of the constitution.

Issue 1: Appointment of Governor

The appointment and the removal of the Governor has been a controversy since then. The Sarkaria Commission focussing on the role of the Governor, made the following recommendations regarding the appointment of the Governor:

- (a) He should be a man of some eminence in some field.
- (b) He should not belong to the State where he has to serve as the Governor.
- (c) He should be a detached figure with little record of participation in the local politics of the State.
- (d) He should be a person who has not taken too great a part in politics generally, particularly in the recent past.
- (e) Preference should continue to be given to the minority groups as hitherto.
- (f) It is desirable that a politician from the ruling party at the Centre should not be made the Governor of a State run by another party or a coalition of parties.
- (g) Article 155 of the constitution should be suitably amended to ensure effective consultation with the Chief Minister of a State while appointing a Governor in that State.
- (h) The Vice-President of India and the Speaker of the Lok Sabha should also be consulted while making this appointment though this consultation should be 'confidential', 'informal' and not a matter of constitutional obligations.



Issue 2: Discretionary Powers of Governor

Founding fathers of the constitution had vested the ‘discretionary powers’ in the Governor with the confidence that he would use such powers rationally according to the need of the circumstances. Opposed to this expectation the Governors had exercised the powers ‘dictatorially’. They had attempted to satisfy the union government for political reasons which are not the constitutional obligations of the office.

Article 164 provides that the Chief Minister shall be appointed by the Governor and other ministers are to be appointed by the Governor on the recommendations of the Chief Minister. They hold office ‘during the pleasure of the Governor’. This ‘pleasure clause’ is pretty vague and has resulted in controversies. According to Dr Ambedkar, the Governor shall not withdraw his pleasure on the Council of Ministers, which enjoyed the confidence of the Legislative Assembly. However, in practices the Governors had dismissed the Council of Ministers without any reasons on the political reasons.

There were several occasions in which the Governors have chosen to act according to the direction of the Union Government and dismiss the State Council of Ministers. Until the S. R. Bommai case judgment this was practised widely although there were litigations. After the Bommai case rulings this practise has reduced, yet not eliminated. The dismissal of Arunachal Pradesh Government in 2016 is a recent example.

Another discretionary power of the Governor is relating to Article 356. According Article 356, the Governor’s report is the basis for proclaiming the constitutional emergency. Many a time the report is got from the Governor only after the proclamation.⁽⁵⁾

The Sarkaria Commission on Centre-State relations recommended that the discretionary powers under Articles 163 and 164 and the powers under Article 356 must be sparingly used and must be resorted to only when unavoidable circumstances arise.

Connect

Which is NOT a ‘discretionary power’ of the Governor?

1. Seeking instructions from the President before promulgating ordinance.
2. Dissolution of State Assembly.
3. Advising the President for proclamation of an emergency.

Issue 3: Media Exposure of Governor

Next important issue relating to the office of Governor is that whether Governor can express his views in media. Governor is a symbolic office and is to exercise his powers on the aid and advice of the Council of Ministers. He is to act as the ‘friend, philosopher and guide’ to the Council of Ministers but without intruding into the powers of the Council of Ministers.

However, in the past this has not been so. In Karnataka in 2010, the then Governor openly commented to the press for the removal of two ministers who were accused of illegal mining. He also demanded the removal of the two ministers—G. Janardhana Reddy and G. Karunakara Reddy. Eyeing on the electoral funding the two brothers offered to the BJP, the party high command was soft on them. But the Governor openly demanding their removal was subjected to criticism. The National Commission to Review the Working of the Constitution reiterated the recommendations of Sarkaria Commission that the Governor ‘should be a person who has not taken too great a part in politics generally, and particularly in the recent past’.

5 This is dealt with in detail in the Emergency Chapter.

Governor's Overreach? Or Exercise of Powers?

The Tamil Nadu Governor and the Lt Governor of Puducherry took certain measures which are considered to be Governor's overreach. But they claimed it to be well within their powers. The TN Governor visited various districts and conducted meeting with district officials. This triggered the controversy.

Many viewed that this was unconventional and unnecessary intervention of the Governor in administration.

Another view is that Governor, when he or she has any issue to take up with the State government, can get it done through the Council of Ministers.

Rejecting or overruling cabinet recommendations and complaining to Centre about the State or micromanaging is not part of the constitutional role of the Governor.

Issue 4: Removal of Governor

While the constitution has mentioned the ground on which the President can be removed and the procedure for his removal, it is not in the case of Governor. The Governor holds office during the pleasure of the President. These words in reality mean that the Governor will be in office as long as the union government extends its pleasure. The President may withdraw his pleasure on the Governor on any ground on the advice of the union Council of Ministers. Thus, there is no 'security of tenure or fixed term of office' for the office in effect. In the past whenever a new union government is formed after election to Lok Sabha, the Governors of the States and UTs being removed has become an established practice.

In Hargovind Pant versus Dr Raghukul Tilak case (1979), the Supreme Court held that 'Governor is an independent constitutional office which is not subjected to the control of Government of India'. Given the powers vested in the office and the functions the Governor is expected to perform, he is 'not an employee or a servant of the Centre in any sense of the term'.⁽⁶⁾

In 2010, in the B. P. Singhal case the Supreme Court ruled that the President's power to remove a Governor is subjected to judicial review. The Supreme Court ruled that Governor not being synchronous with the ideology of the union government or the Governor losing the confidence of the union government cannot be a ground for the removal. The change in the government cannot be ground for the removal. The court also ruled that there must be a cause existing for the removal of the Governor, although the President need not disclose the cause. The court has limited power to judicially review the decision to remove the Governor in case there was any arbitrariness or *mala fide* intention or political grounds or whimsically.

POWERS OF THE GOVERNOR

Article 154 reads that 'the executive power of the State shall be vested in the Governor and shall be exercised by him either directly or through officers' sub-ordinate to him in accordance with this constitution'. The terms 'executive power', 'exercised by him either directly or through officers' subordinate to him' have been explained elsewhere.⁽⁷⁾ The powers of the Governor can be classified into:

- (a) Administrative powers
- (b) Legislative powers
- (c) Pardoning powers
- (d) Miscellaneous powers

6 Supreme Court - Hargovind Pant versus Raghukul Tilak case 1979.

7 Refer the Chapter on President

TABLE 13.1 Power of Governor and Judicial Review

Orders passed by Governor	Judicial Review
Exercise of executive power in accordance with the provisions of the constitution by or under the order of the Governor.	Full judicial review is available
On the aid and advice of the Council of Ministers headed by the Chief Minister.	Full judicial review is available
Like the grant of pardon under Article 161 and the orders passed by the President on the report submitted by the Governor under Article 356.	Limited judicial review is available
In his own discretion under Article 163.	Judicial review is not available

The executive powers of the Governor will extend over the subjects on which the State legislature is empowered to make law. This means that the Governor will have powers on the subject matters in the State List and the Concurrent List of the Schedule 7. With respect to the concurrent list the power is limited by the executive power of the union government and the law made by the Parliament.

TABLE 13.2 Distribution of Seats in Rajya Sabha and Lok Sabha

Name of States	Number of Seats	
	Rajya Sabha	Lok Sabha
1. Andhra Pradesh (AP)	11	20
2. Arunachal Pradesh (AR)	1	2
3. Assam (AS)	7	14
4. Bihar (BR)	16	38
5. Chhattisgarh (CHT)	5	10
6. Goa (GOA)	1	2
7. Gujarat (GJ)	11	26
8. Haryana (HR)	5	10
9. Himachal Pradesh (HP)	3	4
10. Jammu & Kashmir (J & K)	4	4
11. Jharkhand (JHK)	6	14
12. Karnataka (KAR)	12	27
13. Kerala (KR)	9	18
14. Madhya Pradesh (MP)	11	27
15. Maharashtra (MH)	19	48
16. Manipur (MN)	1	2
17. Meghalaya (MGH)	1	1
18. Mizoram (MZ)	1	1
19. Nagaland (NG)	1	1

(Continued)

TABLE 13.2 Distribution of Seats in Rajya Sabha and Lok Sabh (Continued)

Name of States	Number of Seats	
	Rajya Sabha	Lok Sabha
20. Odisha (OR)	10	19
21. Punjab (PB)	7	13
22. Rajasthan (RJ)	10	23
23. Sikkim (SK)	1	1
24. Tamil Nadu (TN)	18	38
25. Telangana (TG)	7	15
26. Tripura (TR)	1	2
27. Uttar Pradesh (UP)	31	80
28. Uttarakhand (UTK)	3	5
29. West Bengal (WB)	16	41

TABLE 13.3 Distribution of Seats in Rajya Sabha and Lok Sabh

Name of UTs	Number of Seats	
	Rajya Sabha	Lok Sabha
1. Andaman and Nicobar	–	1
2. Chandigarh	–	1
3. Dadra and Nagar Haveli	–	1
4. Daman and Diu	–	1
5. Lakshadweep	–	1
6. National Capital Territory of Delhi	3	7
7. Puducherry	1	1

Administrative Powers

Administrative powers are those required for the purpose of making and implementing policy, law and administrating the departments of the government. The administrative powers of the Governor include:

1. The power to appoint and remove persons to various offices under the Government of India: All the constitutional offices such as Chief Minister, Council of Ministers, members of State Public Service Commission, etc.
2. The Governor appoints the Advocate-General for the State and he holds office during the pleasure of the Governor. The Governor also has the powers to determine the remuneration to be paid to him.
3. According to Article 166, all the executive actions of the State have to be expressed to be taken in the name of the Governor.
4. The Governor has the powers to make rules for the more convenient transaction of the business of the government of the State.

5. According to Article 167, the Governor has the power to call for reports about the affairs of the State and its administration.

Constitutional Authorities appointed by Governor

- (a) State Finance Commission
- (b) State Election Commission
- (c) Chief Minister and Council of Ministers
- (d) Advocate General
- (e) Chairman and Member of State Public Service Commission
- (f) *Protem* Speaker of Legislative Assembly when both the office of Speaker and Deputy Speaker are vacant
- (g) District Judges

Legislative Powers

The legislative powers of the Governor are the executive powers of legislative nature because such powers are exercised by the President in accordance with the aid and advice of the Council of Ministers. Also, they are subjected to judicial review.

1. According to Article 167, the Governor is part of state legislature.
2. The Governor has the powers to nominate one member from the Anglo-Indian Community to Legislative Assembly (Article 333). The Governor has power to nominate one-sixth of the total members of the Legislative Council of the State. The persons who are eminent in literature, science, art, cooperative movement and social service.
3. According to Article 213, the Governor has the power to promulgate ordinances. The power of the Governor to issue ordinance is similar to that of the President in all respects except one. In case the ordinance contained any matter, which would have required the Governor to reserve a bill containing the same matter for the consideration of the President, then the Governor can issue the ordinance only with the consent of the President.
4. The Governor has the powers to summon and prorogue the sessions of the state legislatures. According to Article 172, the Governor must ensure that at least two sessions of the Legislature takes place in a year. The Governor can dissolve the Legislative Assembly. However, the Legislative Council is not dissolved as it is a permanent House.
5. Like the President, the Governor also has the powers to address the Houses of Legislature and send messages to the Houses. Article 175 confers on him the right of Governor to address and send messages to the House or Houses. Article 176 provides for the special address by the Governor.
6. Certain bills can be introduced in the state legislature only on the previous recommendation of the President. For instance, the Money Bills have to be introduced only on the previous recommendation of the Governor.
7. Assent to Bills and Veto: Like in the union Parliament, any bill passed by the state legislature need to be presented to the Governor for his assent. Only upon the Governor giving his assent, the bill becomes a law. When a bill is presented to the Governor the Governor may declare that he:
 - (a) Gives his assent, then the bill becomes a law or;
 - (b) Withholds his assent, which means he vetoes the bill and the bill is dead or;
 - (c) Returns a non-Money Bill for the reconsideration of the House or;Reserves the bill for the consideration of the President.

Bills Reserved for Consideration of President: Critical View

- It is subversive of the true federal principle.
- It is 'basically inconsistent with the supremacy of state legislature'
- Power operates to subordinate the 'state legislature to the union executive'.
- Power is not being exercised in conformity with the purpose and object of these provisions. Governors reserve bills contrary to advice of Council of Ministers.
- Power being misused to serve the partisan interests of the Union Council of Ministers.
- Since there is no time frame fixed for the President, it leads to delay of the enactment of laws.

Source: Interstate Council Report

Article 201: Bills Reserved for Consideration of President

When a bill is reserved for the consideration is presented to the President, he may declare that he

- (a) Gives his assent, then the bill becomes a law or;
- (b) Withholds his assent, which means he vetoes the bill and the bill is dead or;
- (c) Direct the Governor to return a non-money bill for the reconsideration of the House with or without his recommendations. When the President directs so, the Governor returns the bill to the House. The House must reconsider the Bill and pass the bill again before six months from date on which it received by the House. It is the discretion of the House to accept the amendments recommended by the President. Once passed, the bill is again presented to the President for his assent. Unlike the Parliament bills, the President can reject the bill in the second instance also. That is the President can veto the Bill even after reconsideration by the House. Therefore, the State Legislatures do not have the power to override the veto of the President.

Bills to be Reserved for Consideration

The Governor can reserve a bill if:

- (a) In his opinion the bill may unduly encroaches the constitution.
- (b) The bill is not formulated with a national outlook and if becomes a law could affect the national interest adversely.
- (c) The bill is violating the directive principles.
- (d) The bill deals with the acquisitioning of property.

Pardoning Powers

Articles 72, 145 and 161 of the constitution deals with the pardoning powers of the Governor. According to Article 161, the Governor has the powers to grant remission, respite, reprieve and pardon or commute the sentence with respect to any offence committed against a law enacted by the state legislature.

This power is subjected to Article 145. In case a convict has appealed to the Governor seeking and has also appealed to the Supreme Court against the orders of the high court, then the Governor shall not make any order on the petition if the Supreme Court had admitted the appeal. The Supreme Court has the powers to strike down the order made by the Governor in such cases.

According to Article 72 (3), the Governor has the power to suspend, commute or remit a death sentence. But he cannot grant pardon in case of death sentence. Only the President has the power to grant pardon in case of death sentence.

The pardoning powers of the Governor are amenable to judicial review. 'If the Governor is found to have exercised the power himself without being advised by the Government or if the Governor trans-

gresses the jurisdiction in exercising the same or it is established that the Governor has passed the order without application of mind or the order in question is a *mala fide* one or the Governor has passed the order on some extraneous consideration.¹⁸⁾

TABLE 13.2 Pardoning Powers

Remission	To reduce the amount of punishment without changing the nature.
Commutation	Changing the sentence from a higher punishment to one of lighter character.
Respite	Commuting or remitting on the ground of some special reason.
Reprieve	Suspending or withholding the execution of the punishment during the mercy petition pending before the President/Governor.
Pardon	Complete absolution of the convict from all sentences and disqualifications.

Tribes Advisory Council

- Constituted by Para 4 Schedule 5 in States having scheduled areas.
- May be constituted in any State having Scheduled Tribes but not Scheduled Areas if President directs.
- Composition: 20 Members, of this three-fourth (15 members) must be tribal MLAs.
- If that many MLAs not available then the seats must be filled by other members belonging to the tribe community.
- Duty of the Council is to advise on matters pertaining to welfare and advancement of the STs in the State.
- Governor must consult the Council before making any regulation.

Miscellaneous Powers

The Governor has certain power with respect to the administration of the tribal areas under Schedule 5 and Schedule 6.

Powers of the Governor Under Schedule 5

Schedule 5 corresponds to Article (1), which relates to the ‘administration and control of the scheduled areas and Scheduled Tribes in any State other than the States of Assam, Meghalaya, Tripura and Mizoram’. The following are the responsibilities of the Governor under Schedule 5:

- (a) The Governor has to make an annual report to the President regarding the administration of the Scheduled Areas in that State. He shall also make such reports required by the President from time to time.
- (b) The Governor has the powers to make rules regarding the number of members of the Tribes Advisory Council, their appointment and the conduct of its meetings.
- (c) The Governor has the power to make regulations for the ‘peace and good government’ of any area a scheduled area.

8 Supreme Court: Satpal versus state of Haryana Case.

States Having Tribes Advisory Council (as of September 2018)

(a) States having scheduled areas:

1. Andhra Pradesh
2. Chhattisgarh
3. Gujarat
4. Himachal Pradesh
5. Jharkhand
6. Madhya Pradesh
7. Maharashtra
8. Odisha
9. RajasthanTelangana

(b) States not having scheduled areas Tamil Nadu, Uttarakhand and West Bengal.

(d) The Governor has the power to amend any law made by the Parliament or state legislature for its application to any Scheduled Area. He can also declare any law to be inapplicable to Scheduled Areas.

(e) The Governor has the powers to:

- (i)** 'Prohibit or restrict the transfer of land by or among members of the Scheduled Tribes in a Scheduled Area.
- (ii)** Regulate the allotment of land to members of the Scheduled Tribes in such area.
- (iii)** Regulate the carrying on of business as moneylender by persons who lend money to members of the Scheduled Tribes in such area'.⁽⁹⁾

Powers of the Governor Under Schedule 6

Schedule 5 corresponds to Article 244 (2), which relates to the administration of the tribal areas in the States of Assam, Meghalaya, Tripura and Mizoram. With respect to such areas the Governor has the following powers:

1. The Governor can divide the tribal areas into 'autonomous' areas if different tribes are inhabited in the area.
2. The Governor has the powers to:
 - (a) Include any area in or exclude any area from scheduled area.
 - (b) Create a new autonomous district.
 - (c) Increase or diminish the area of any autonomous district.
 - (d) Unite two or more autonomous districts or parts thereof.
 - (e) Alter the name of any autonomous district.
 - (f) Define the boundaries of any autonomous district.
3. The Governor can nominate not more than four persons to the District Council.
4. The Governor has the powers to make rules with respect to:
 - (a) 'The composition of the District Councils and Regional Councils and the allocation of seats therein.
 - (b) The delimitation of territorial constituencies for the purpose of elections to those Councils.
 - (c) The qualifications for voting at such elections and the preparation of electoral rolls therefor.
 - (d) The qualifications for being elected at such elections as members of such Councils.
 - (e) The term of office of members of Regional Councils.
 - (f) Any other matter relating to or connected with elections or nominations to such Council.

9 Para 5: Schedule 5—Constitution of India.

- (g) The procedure and the conduct of business including the power to act notwithstanding any vacancy in the District and Regional Councils.
- (h) The appointment of officers and staff of the District and Regional Councils.⁽¹⁰⁾
- 5. The Governor has the powers to confer on or withdraw the powers under the Code of Civil Procedure, 1908, and the Code of Criminal Procedure, 18981, on the Regional and District Councils and on certain courts and officers for the trial of certain suits, cases and offences.
- 6. The Governor has the powers to make rules for the management of the District Fund or the Regional Fund.
- 7. Governor may at any time appoint a Commission to examine and report on any matter specified by him relating to the administration of the autonomous districts and autonomous regions in the State.
- 8. Governor can suspend or annul any act or resolution of the District or a Regional Council if it is endangering the 'safety of India or prejudicial to public order'.
- 9. Governor has the power to dissolve the District or Regional Councils.

Discretionary Powers of the Governor

Important questions from Previous years' on this topics are mentioned below:

Explain the discretionary powers of the Governor of a State.

IAS MAINS (2003)

Unlike the President the Governor enjoys certain discretionary powers. The constitution expressly confers upon the Governor the discretionary powers. However, the Governor cannot exercise these powers according to his whims. The discretionary powers need to be exercised without the aid and advice of the Council of Ministers, in accordance with the constitution. Article 154 reads that 'the executive power of the State shall be vested in the Governor and shall be exercised by him either directly or through officers subordinated to him in accordance with this constitution'. Hence, it is not his personal discretion but the constitutional requirements which must be the basis for the exercise of his discretionary powers.

- (a) Article 163 confers discretionary powers on the Governor. If any question arises as to whether any power is discretionary power or not will also be determined by the Governor in his discretion.⁽¹¹⁾ The decision of the Governor in this regard is not subjected to judicial review and his decision is final.
- (b) Governor of a State can be appointed as the administrator of a union territory under Article 239(2). When so appointed the Governor will exercise his powers and discharge the duties relating to the union territory without the advice of the Council of Ministers.

Does Governor have Discretionary Powers under Schedule 5?

This is an interesting point.

2010: Attorney General gave the opinion that the Governor had discretionary powers under Schedule 5.

2015: Government reversed the stand that it was not a discretionary power.

- (c) Under Article 356, the Governor needs to make periodical report to the President, on the affairs of the administration of the State. This report is one of the bases on which the President proclaims constitutional emergency over a State.⁽¹²⁾

10 Para 2: Schedule 6—Constitution of India.

11 Article 163 (2).

12 Refer Chapter on Emergency for details.

- (d) Under Article 371 (2), the Governor of Maharashtra, has to discharge certain responsibilities under the direction of the President and not on the advice of the Council of Ministers. The Governor has the special responsibility for:
- The establishment of separate development boards for Vidarbha and Marathwada.
 - Equitable allocation of funds for developmental expenditure.
 - Equitable arrangement providing adequate facilities for technical education and vocational training.
 - Adequate opportunities for employment in services under the State government for those areas.

TABLE 13.3 Comparison between the Office of President and the Governor

President	Governor
1. A constitutional office and nominal head.	1. A constitutional office and nominal head.
2. Exercise the powers on the advice of the Council of Ministers. Enjoys limited discretionary powers. Constitution does not confer discretionary powers. For Example: Appointment of the Prime Minister and dissolution of the Lok Sabha in exceptional situations.	2. Functions are ceremonial in nature but the constitution expressly confers discretionary powers. For Example: Reserving bills for the assent of the President, special responsibilities in regard to some States as mentioned in 371 group of articles, making a report to the President under Articles 356, etc.
3. The constitution does not expressly mention any area in which the President is to function independently of the Council of Ministers.	3. Article 163 expressly provides for discretionary powers of the Governor. If any question arises whether any matter is discretionary or not the decision of the Governor in his discretion will be final.
4. President has absolute veto on State bills reserved for his consideration (Article 201).	4. Governor may reserve a bill passed by state legislature for consideration of President (Article 200).
5. President cannot function without a Council of Ministers. Article 74 reads there shall be a Council of Ministers, which means there shall always be a council of ministers. President cannot assume all executive power of the union to himself and become a dictator.	5. During a constitutional emergency under Article 356, President can assume the executive powers of the State. Governor functions without a Council of Ministers.
6. President has no special responsibility vested in him regarding any State.	6. With respect to certain States Governor has a special responsibility. He can apply his discretion without the advice of Council of Ministers which cannot be questioned in a court of law.
7. President's power to grant pardon is much wider. They cover death sentence and court martial.	7. Governor's powers are limited to offences against any law falling within the State List.
8. The President has emergency powers as defined in Articles 352, 356 and 360.	8. Excepting the Governor of Jammu and Kashmir who may impose Governor's rule under the State constitution, no other Governor has any emergency powers. The only power a Governor has is to make a report to the President.
9. The President is the supreme commander of the Armed Forces.	9. The Governor has no powers or functions in relation to the Armed Forces.

Why does Governor need Discretionary Powers?

- Ways in which the constitution can be tampered with cannot be foreseen.
- Political pressures and human ingenuity may try many methods of circumventing the constitution and creating chaos.

Source: Interstate Council Report

- (e) Under Article 371 (2), the Governor of Gujarat, has to discharge certain responsibilities under the direction of the President and not on the advice of the Council of Ministers. The Governor has the special responsibility for:
 - The establishment of separate development boards for Saurashtra and Kutch.
 - Equitable allocation of funds for developmental expenditure.
 - Equitable arrangement providing adequate facilities for technical education and vocational training.
 - Adequate opportunities for employment in services under the State government for those areas.
- (f) Under Article 371A (1) (b), the Governor of Nagaland shall have special responsibility with respect to law and order in the State of Nagaland for so long as in his opinion internal disturbances occurring in the Naga Hills (Tuensang area).
- (g) Under Article 371A, the Governor of Manipur has to make an annual report or periodical report, if the President requires, regarding the administration of the hill areas in the State.
- (h) Under Article 371F, the Governor of Sikkim shall have special responsibility for peace and for an equitable arrangement for ensuring the social and economic advancement of different sections of the population of Sikkim, in accordance with the directions of the President.
- (i) Under Article 371J, the Governor of Karnataka has the special responsibility for: The establishment of a separate development board for Hyderabad-Karnataka region.
 - Equitable allocation of funds for developmental expenditure for the region.
 - Equitable opportunities and facilities for the people belonging to the said region in matters of public employment, education and vocational training.
 - Reservation of a proportion of seats in educational and vocational training institutions in the Hyderabad-Karnataka region for students who belong to that region by birth or by domicile.
 - For appointment thereto by direct recruitment or by promotion or in any other manner.

CHIEF MINISTER AND COUNCIL OF MINISTERS

Article 163, provides for the Council of Ministers with Chief Minister as its head. The Council of Ministers comprises the Chief Minister and other ministers.

The Chief Minister is appointed by the Governor. The legislature party leader of the party which has the majority support of the Legislative Assembly is appointed as the Chief Minister. In case no political party enjoys the majority support then the Governor may apply his discretion. In such circumstances the Governor follows the convention as in the union.

The Governor would invite the leader of the single largest party in the Legislative Assembly to form the government. When he fails to form the government, Governor may call the leader of the alliance of parties formed before the election. In case the alliance also fails to make, only then he appoints the leader of the post-election alliance.

The Chief Minister enjoys the status of '*Primus inter pares*', first among the equals with respect to his Council of Ministers. The Chief Minister is the head of the Council of Ministers (Article 163). It implies that the Council must always be headed by the Chief Minister.

According to article 164, other ministers are appointed by the Governor on the advice of the Chief Minister and hold office during the pleasure of the Governor. The Governor has no discretion with respect to the appointment of the ministers. Hence, the Council of Ministers in effect hold office during the pleasure of the Chief Minister.

According to Article 164, in Chhattisgarh, Jharkhand, Madhya Pradesh and Odisha, a minister in-charge of tribal welfare must be appointed. Such minister is also in-charge of the welfare of the Scheduled Castes and backward classes or any other work in addition to tribal welfare.

Second Arc View

- The size and composition of the Council of Ministers is of basic importance to effective public administration.
- The ministry and the cabinet come into existence for the specific purpose of running the administration efficiently and hence, it needs to be compact and homogenous, its size being determined by administrative needs.
- It would depend on factors such as the area of the State, its population, the stage of economic development and its peculiar problems.

After the Constitution (91st Amendment) Act, 2003, the total number of Ministers in the Council of Ministers, including the Chief Minister, shall not exceed fifteen per cent of the total number of members of the Legislative Assembly. Further, any person who has been disqualified to be a Member of State Legislature on the ground of defection must not be appointed as a minister.

Issue of Constitutional Validity of Parliamentary Secretary

Parliamentary secretary is one of the members of the Council of Ministers when there was a five-tier system. After the Gopalswami Ayyangar Committee recommendations five-tier system was abolished and the three-tier system came in to practice. As a consequence, in the union there are only three-tiers of ministers namely, member of cabinet, Minister of State and deputy ministers. The practice of appointing the parliamentary secretary was discontinued. However, the States continued to appoint the parliamentary secretary even after this, in order to accommodate ‘politically important persons’.

This practice has been challenged in the court on several occasions. After the 91st amendment there is a ceiling fixed on the strength of the Council of Ministers of States and union. The appointment of parliamentary secretaries violates this limit. This is because the parliamentary secretaries enjoy the status of a member of Council of Ministers and are vested with powers equivalent to ministers.

In the recent times, the appointment of parliamentary secretaries in Delhi has triggered a fresh debate on this issue. The President rejected the proposed legislation by the Delhi government to remove the office of parliamentary secretary being considered as an ‘office-of-profit’. The President rejected the bill as it was not introduced in the legislature in accordance with the procedure prescribed for the UTs. Accordingly, the bill must have been recommended by the Lt Governor after the approval of the Union Ministry of Home.

The Law Ministry presumes that the parliamentary secretaries are ministers based on the previous five-tier system. Hence, the question of ‘office-of-profit’ need not have been applied. But the Delhi Government’s attempt to exempt it from the purview of office-of-profit triggered the debate.

When one looks the issue neutrally, the appointment of parliamentary secretaries is not acceptable on the following grounds:

It is a discontinued practice, which is being followed by the States only with political motive. It is to accommodate the ‘political vested interest’. In that regard it can be considered unconstitutional.

Secondly, it is clearly violating Article 239AA of the constitution which fixes the limit on the size of the Council of Ministers of the National Capital Territory of Delhi. Since the parliamentary secretaries are considered as ministers and enjoy the status and powers of ministers and are entitled to the remuneration equal to ministers, it is a violation of Article 239AA. Hence, the appointment is unconstitutional even if it is not to be an ‘office-of-profit’.

Practice Questions

1. Under which Article of the Indian Constitution did the President give his assent to the ordinance on electoral reforms when it was sent back to him by the union cabinet without making any changes (in the year 2002)?
 - (a) Article 121
 - (c) Article 123
 - (b) Article 122
 - (d) Article 124
2. Which of the following are the discretionary powers given to the Governor of a state?
 1. Sending a report to the President of India for imposing the President's rule.
 2. Appointing the ministers.
 3. Reserving certain bills passed by the state legislature for consideration of the President of India.
 4. Making the rules to conduct the business of the State government. Select the correct answer using the code given below.
 - (a) 1 and 2 only
 - (c) 2, 3 and 4 only
 - (b) 1 and 3 only
 - (d) 1, 2, 3 and 4
3. Which one of the following statements is correct?
 - (a) In India, the same person cannot be appointed as Governor for two or more States at the same time.
 - (b) The judges of the high court of the states in India are appointed by the Governor of the State just as the judges of the Supreme Court are appointed by the President.
 - (c) No procedure has been laid down in the Constitution of India for the removal of a Governor from his/her post.
 - (d) In the case of a union territory having a legislative set-up, the Chief Minister is appointed by the Lt Governor on the basis of majority support.
4. Consider the following:
 1. The Governor of Punjab is concurrently the Administrator of Chandigarh.
 2. The Governor of Kerala is concurrently the Administrator of Lakshadweep.

Correct statement

 - (a) 1 only
 - (c) Both 1 and 2
 - (b) 2 only
 - (d) Neither 1 nor 2
5. Which among the following is a discretionary power of the Governor?
 - (a) Appointment of State Finance Commission
 - (b) Appointment of State Election Commission
 - (c) Appointment of the Chief Minister of a State
 - (d) Appointment of the ministers of a State
6. Consider the following and identify the correct statement.
 - (a) Only in case of an ordinary bill, the Governor can either give his assent or reserve for the consideration of the President.
 - (b) In case of a money bill, the Governor can either give his assent or veto the bill but cannot reserve for the consideration of the President.
 - (c) In case of a money bill, the Governor can either give his assent, veto the bill or reserve for the consideration of the President but cannot return for reconsideration.
 - (d) In case of an ordinary bill, the Governor can either give his assent, veto the bill or reserve for the consideration of the President but cannot return for reconsideration.
7. The Governor is entrusted with pardoning powers which include the power to:
 1. Suspend the sentence
 2. Commute the sentence
 3. Grant remission of punishment
 4. Grant reprieve of punishment
 5. Grant respite of punishment
 6. Grant pardon
 - (a) 1, 2, 3, 4, 5 only
 - (b) 3, 4, 5 only
 - (c) 1, 2 only
 - (d) 1, 2, 3, 4, 5, 6
8. The Constitution of India lays down the:
 1. Qualification for the office of Governor
 2. Conditions of office of the Governor
 3. Conditions for the removal of Governor
 4. Procedure for the removal of Governor

<ol style="list-style-type: none"> (a) 1, 2 only (b) 1, 2, 3 only 	<ol style="list-style-type: none"> (c) 4 only (d) 1 and 3 only
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- 9.** The office of the Chief Minister of a state is pivotal. Identify the incorrect statement regarding the Chief Minister.
- The Chief Minister is the link between the Governor and the Council of Ministers.
 - The Chief Minister, in practice, holds the executive powers of State government.
 - The Chief Minister is the chief spokesperson of the government of a State.
 - The Chief Minister is vested with the above powers by the constitutional provision, Article 167.
- 10.** The power to make such provision for the discharge of the functions of the Governor of a State in any contingency not provided for in the constitution is vested in the:
- Parliament
 - President
 - Council of Ministers of the State
 - Legislature of the State
- 11.** Consider the following regarding:
- The conditions prescribed by the constitution regarding the appointment of the Council of Ministers, to the Chief Minister includes:
- The total number of ministers in the Council of Ministers in a State, including the Chief Minister, shall not exceed fifteen per cent of the total number of members of the Legislative Assembly of that State.
 - A person who is disqualified under the Tenth Schedule shall also be disqualified to be appointed as a minister.
 - A minister in-charge of tribal welfare has to be appointed in each State.
 - The total number of ministers in the Council of Ministers in a State, excluding the Chief Minister, shall not exceed fifteen per cent of the total number of members of the Legislative Assembly of that State.

(a) 1 and 2 only	(c) 3 and 4 only
(b) 3 only	(d) 2 Only
- 12.** Which one of the following statements is NOT correct?
- A minister is appointed by the Governor on the advice of the Chief Minister.
 - Before minister enters upon his office, the Governor shall administer to him the oath of office and secrecy.
- 13.** There shall be a Council of Ministers with the Chief Minister at the head to aid and advise the Governor who shall, in the exercise of his functions, act in accordance with such advice.
- Only the Governor of Jammu and Kashmir is vested with the power to impose Governor's rule in Jammu and Kashmir.
- 14.** Who is responsible for the observance of the 'Rules of Business' of the state Government in India?
- The Governor
 - The Chief Minister
 - The Advocate General
 - The Chief Secretary of the State government
- 15.** Which one of the following statements, with regard to the state legislature, is NOT correct?
- The Council of Ministers is collectively responsible to the Governor.
 - Under Article 167 of the Constitution of India, the Chief Minister has to communicate to the Governor all decisions of the Council of Ministers relating to the administration of the affairs of the State and proposals for legislation.
 - Once the Governor reserves a bill for the consideration of the President, the subsequent enactment of the bill is in the hands of the President and the Governor shall have no further part in its career.
 - The executive power of the State is vested with the Governor and all executive actions of the State has to be taken in the name of the Governor.
- 16.** Which among the following is NOT a qualification for the office of the Governor?
- He is a citizen of India
 - Completed the age of thirty-five years
 - He must be qualified to be elected to the Legislative Assembly
 - He shall not hold any office-of-profit
- 17.** Which of the following types of bills can be reserved by the Governor for the assent of the President?
- All bills passed by the state legislature
 - Certain types of bills passed by the state legislature
 - Financial bills only

- (a) 1, 2, 3 (c) 2 only
 (b) 1 only (d) 1 and 2

17. Consider the following statements:

1. The ordinance can be challenged if the Governor directly violated a constitutional provision
2. The ordinance can be challenged if the Governor exceeded his constitutional power to make an ordinance.
3. The ordinance can be challenged if the Governor has made a colourable use of power.
4. The ordinance can be challenged if it is of *mala fide* intention.

Correct statement

- (a) 1, 2, 4 (c) 1 and 3
 (b) 2, 3, 4 (d) 1, 2, 3, 4

18. Consider the following statements:

1. The Council of Ministers of a State in India is collectively as well as individually responsible to the Legislative Assembly of the State.
2. The Governor of a State has the power to appoint the members of the State Public Service Commission as well as the state high court judges.

Correct statement

- (a) 1 only (c) Both 1 and 2
 (b) 2 only (d) Neither 1 nor 2

19. The salaries and allowances of the Council of Ministers of the State government are paid from the:

- (a) Reserve Bank of India
 (b) Treasury of the state government
 (c) Contingency Fund of the State
 (d) Consolidated Fund of the State

20. Which of the following is NOT a recommendation of the Sarkaria Commission for appointing a person as the Governor of the State?

- (a) He should be eminent in some walk of life.
 (b) He should be a person from outside the state.
 (c) He should be closely related to the local politics.
 (d) In recent past he has not taken active part in politics.

Answer Key

- 1.** (c), **2.** (b), **3.** (c), **4.** (a), **5.** (c), **6.** (c), **7.** (d), **8.** (a), **9.** (d), **10.** (b),
11. (a), **12.** (c), **13.** (d), **14.** (a), **15.** (c), **16.** (c), **17.** (d), **18.** (a), **19.** (d), **20.** (c)

Hints and Explanations

1. (c)

Refer Chapter 11 – ordinance making power

2. (b)

- Governor does not have discretionary powers in the appointment of Ministers and in making rules to conduct the business of the State government.
- He is bound by the aid and advice of the Council of Ministers.
- Article 163 provides that the decision of Governor is final in determining which matter falls in his/her discretion.

Refer Page 13.5

3. (c)

- Governor holds office in the pleasure of the President.

Refer Page 13.6

4. (a)

- Article 153 provides that the same person can be appointed as Governor of two or more states.
- Article 239(2) provides that President may appoint the Governor of a State as the administrator of an adjoining Union territory.
- There is a separate Administrator for Lakshadweep.

Refer Page 13.1 and 13.12

5. (c)

- The legislature party leader of the party which has the majority support of the Legislative Assembly is appointed as the Chief Minister by the Governor.
- In case no political party enjoys the majority support then the Governor may apply his discretion

Refer Page 13.7 (Box) and 13.14

6. (c)

Refer Page 13.8

7. (d)

- Governor can grant pardon in all cases except in case of death sentence.

Refer Page 13.5

8. (a)

Qualifications for office of Governor: (Article 157)

- Citizen of India
- Completed 35 years of age

Conditions of office: (Article 158)

- Not a member of either House of Parliament or State legislature
- Not hold office of profit
- Salaries and emoluments cannot be diminished during his/her term
- As Governor for two or more States, emoluments and allowances to be shared proportionately by those States.

Refer Page 13.2

9. (d)

- Article 167 provides the duties of the Chief Minister.

Also refer Page 13.14

10. (b)

- Article 160 provides that the President may make such provision for the discharge of the functions of the Governor of a State in any contingency not provided for in the Constitution

Refer Page 13.2

11. (a)

- Minister in charge of tribal welfare has to be appointed in States of Chhattisgarh, Jharkhand, Madhya Pradesh and Odisha.
- The limit of 15% was introduced by 91st Amendment Act 2003.

Refer Page 13.14 and 13.15

12. (c)

- Governor also has discretionary power where he/she can act without aid and advice of Council of Ministers.

Refer Page 13.5

13. (d)

- Governor has the power to make rules for convenient transaction of business of State Government.

- Chief Secretary is responsible for observance of rules of business.

Refer Page 13.7

14. (a)

- Article 164(2): Council of Ministers are collectively responsible to the State Legislative Assembly.

15. (c)

- Article 157 & 158 provide the qualifications and conditions of office for Governor.
- If a member of Parliament of State Legislature is appointed the Governor, his/her seat is deemed to have been vacated.

Refer Page 13.2

16. (c)

- Any Bill impacting power and position of High Court is reserved for the consideration of the President under Article 200.
- There are other conditions based on which Governor may reserve a Bill for the consideration of President.

Refer Page 13.8 and 13.9

17. (d)

- Article 213 provides ordinance making powers to the Governor.

- Ordinance can be promulgated by Governor only with instructions from the President.
- Ordinances shall have the same force and effect as an Act of the Legislature of the State assented to by the Governor.

Refer Page 13.8

18. (a)

- President and not the Governor appoints the judges of State High Courts.

Refer Page 13.7

19. (d)

- The salaries & allowances of the Council of Ministers of the State Government may be determined by State law but until then, it would be as per Second Schedule.

20. (c)

- Governor should be a detached figure with little record of participation in the local politics of the State

Refer Page 13.4

CHAPTER 14

Legislature:

Union Parliament

Learning Objectives

After reading this chapter, you will be able to:

- Understand the composition, importance and the utility of the Houses of the Parliament
- Know how the constituencies are delimited, manner of election to the Houses, qualification and disqualification of the members especially disqualification under defection
- Know the powers, privileges and immunities of the Houses and office of the Speaker, his powers
- Build an understanding of the sessions of the Houses, the parliamentary procedures, critically analyse, and passage of bills
- Know the parliamentary committees and their functions

INTRODUCTION

Part V, Chapter II of the constitution between Articles 79 and 123 deal with the provisions relating to the Union Parliament. Article 79 provides that, ‘there shall be a Parliament which shall consist of the President and two Houses to be known respectively as the Council of States and the House of the People’. The President is not a member of the Parliament but he is a constituent part of the Parliament. Therefore, the President enjoys vast legislative powers.

⁽¹⁾ Hence, the constitution prescribes that the President must be qualified to be elected as a member of Lok Sabha.

COMPOSITION OF RAJYA SABHA: ARTICLE 80

Rajya Sabha is the upper House of the Indian Parliament. In contrast to the House of Lords of the English Parliament, Rajya Sabha is modelled on the American Senate. However, the number of members allotted to each State is in proportion to the population of the State, unlike the American system where all the States have equal membership. Thus, it is considered as a non-federal feature of the Indian Constitution. The Schedule IV of the constitution provides for the allocation of seats in Rajya Sabha for the States.

Important questions from Previous years’ on this topics are mentioned below:

Who and what does the Indian Parliament consist of?

IAS MAINS (2005)

1 For details of the legislative powers of the President refer the Chapter on Union Executive—President.

The total sanctioned strength of the Rajya Sabha is 250. Of these 238 members are to be elected as the representatives of the States and 12 members are to be nominated by the President from among the persons having special knowledge and eminence in the fields of literature, arts, science and social service. The present strength of Rajya Sabha is 245, of which 233 members represent the States and the UTs of Delhi and Puducherry and 12 are nominated by the President.

Rajya Sabha History

- Rajya Sabha traces its origin to Montagu–Chelmsford Report of 1918.
- Provision for creating a second chamber to be known as 'Council of State' was contained in Government of India Act, 1919.
- It was created and came into existence in 1921.
- Governor-General was the ex officio President of the Council of State.

The members of Rajya Sabha representing the States are elected by the members of the State Legislative Assembly. The members of Rajya Sabha are indirectly elected by the proportional representation system by means of a single transferable vote.⁽²⁾

Article 80 (5) provides that the members representing the Union Territories are to be elected in the manner prescribed by the Parliament by law. However, the Parliament has not prescribed any special procedure for that and they are elected in the same manner as the members representing the States are elected. The members representing the UTs of Delhi and Puducherry are to be elected by the members of the respective Legislative Assemblies. Currently, 4 members represent the UTs. Delhi has three members and Puducherry has one member in the Rajya Sabha.

Reasons for the Proportional Representation

Rajya Sabha is a federal House representing the States in the centre. However, the constitution envisages the representation must be of the people of the State and not that of the government of the State. The members of the Legislative Assembly vote on behalf of the people of the State. Hence, the proportional representation is prescribed for the elections to the Rajya Sabha. This will ensure that all people including the minorities are adequately represented.

Points to Remember

- Rajya Sabha is the Federal House.
- Rajya Sabha is chaired by Vice-President, a non-member of the House.
- While the members of the House have a term of six years, the Chairperson has only a term of five years.
- Rajya Sabha does not have financial powers.
- Members are elected by proportional representation system.
- Approval of Rajya Sabha is enough in case an emergency proclamation is made during when Lok Sabha is dissolved.

Qualification of Members

Article 84 prescribes the qualification of members of Rajya Sabha. To be a member of Rajya Sabha any person should:

- (a) Be a citizen of India;
- (b) Have completed the age of 30 years;
- (c) Possess other qualification as prescribed by the law of the Parliament. Section 3 of the Representation of People's Act, 1951, prescribes that to be a member of Rajya Sabha any person should be a registered voter in any parliamentary constituency in India.
- (d) Article 84 also provides that a person contesting in the election to Rajya Sabha has to 'subscribe an oath or affirmation according to the form set out for the purpose in the Third Schedule'.

There is no need for the person to be a domicile of a State which he represents in the Rajya Sabha because:

1. The constitution provides only for single citizenship. The very idea of providing single citizenship as a nation-building process and to promote Indianess among the citizens.
2. Although a member who is not a domicile or native of particular State, he will be representing the interests of the State which he represents in the House not those of his State of origin. This is ensured by the whip system. This will be enabling the nation-building process in another sense.
3. Further, it may not be viable for any person to represent a State in the House unless he had a practical knowledge about and standing in the State, so as to get elected from the State.

If the rule of origin is prescribed the above purposes will be defeated. However, in the present context of Indian politics the membership of Rajya Sabha is more used as political bargain for electoral alliances and to appease the party heavy weights. Further, it is also used as an incentive for loyalty to political leadership. This needs to be controlled and electoral reforms must include this.

Leader of the House Rajya Sabha

- If the PM is a member of Rajya Sabha, he will be the Leader of the House.
- If he is not then he will nominate a minister who is a member of Rajya Sabha to be the Leader of the House.
- Leader of the House occupies the first seat in the Chamber in first row at right the side of the chair so that he is easily available to the Presiding Officer for consultation.
- Leader of the House is consulted by the Chairman in regard to arrangement of business in the House.
- He ensures that all possible and reasonable facilities are made available for a meaningful discussion on any matter.
- He is the spokesperson of the House in expressing sense of the House and represents it on ceremonial or formal occasions.

Source: Rajya Sabha Manual

Duration of the House

Rajya Sabha is a standing (permanent) House and therefore, is not subjected to dissolution. However, one third of the members of the House retire every two years. Hence, the election to Rajya Sabha is conducted once in every two years i.e., at the beginning of every third year. Every member of the House has a term of six years and those who have completed the six-year term will retire.

However, in the first House the members retired at the expiry of two years based on their seniority by age. That is, the senior-most members by age retired at the expiry of the first two years and subsequently the six-year term got established.

Utility of Rajya Sabha

The utility of Rajya Sabha was thoroughly debated in the Constituent Assembly. There were arguments placed against the House as some of the members considered it to be redundant and superfluous. However, it was decided to have the House for the following reasons:

1. Given the immense diversity of India society the founding fathers decided to have federal constitution with bicameral legislatures. Rajya Sabha is a federal House representing the interest of the States in the union legislations and policies. With the view of national interest, the local interests must not be sacrificed. Rajya Sabha ensures this.
2. Rajya Sabha provides opportunity for senior statesmen who are not willing or capable to contest election to Lok Sabha to enter the Parliament so that their talent and experience is not lost to the nation.
3. Rajya Sabha acts as a 'revising House' on the legislations enacted by the Lok Sabha. Lok Sabha being a popular body may act with haste. Further, Lok Sabha being a directly elected body may be guided by the needs of the electoral politics which might undermine public welfare.
4. Rajya Sabha can potentially stop any attempt to drastically change the constitution or law by delaying and revising. Hence, the House prevents any undue encroachment on the constitution or a law.
5. Although the constitution does not vest financial powers in the Rajya Sabha, the system of departmental standing committee has been designed to make use of the experience of the membership of Rajya Sabha.

Rajya Sabha—Special Powers

As a federal House, Rajya Sabha has special powers. The following are the special powers:

1. By Article 249, Rajya Sabha has the power to pass a resolution by a majority of not less than two-thirds of members present and voting saying that it is 'necessary or expedient in the national interest' authorising the Parliament to enact a law on any matter given in the State List.
2. By Article 312, Rajya Sabha has the power to pass a resolution by a majority of not less than two-thirds of members present and voting and declares that it is necessary or expedient in the national interest to create one or more All India Services common to the union and the States, then the Parliament can create new All India Services by law such.
3. Rajya Sabha has the powers to approve the Proclamation of Emergency—national, constitutional or financial emergency, if at the time of Proclamation of Emergency the Lok Sabha was dissolved.

Role of Rajya Sabha in the Changing Political Scenario

In the changing political scenario after the 1990s and the turn of the millennium, Rajya Sabha plays a very significant role. After the rise and growth of the regional political parties the national parties that come to power in the centre did to enjoy the majority in the Rajya Sabha. This gave a significant role for Rajya Sabha to secure the interest of the States and strengthen the federal structure. This was all the truer in the era of the coalition.

Without the majority support in the Rajya Sabha the Government was not able to bring about legislations according to their whims and fancies. It has effectively prevented the amendments like that of 42nd amendment.

Important questions from Previous years' on this topics are mentioned below:

Explain the relevance of Rajya Sabha as a second chamber in the federal set-up of Indian parliamentary system.
 IAS MAINS (2003)

In what ways is the Rajya Sabha expected to play a special role in today's changing political scenario?
 IAS MAINS 1999)

With the constitution of the Departmentally Related Standing Committees, the experience and wisdom of the Rajya Sabha members has been fully utilized by the Indian Parliament. The constitution does not confer financial powers to the Rajya Sabha and the House can retain the Money Bills only for 14 days. The Departmentally Related Standing Committees system has done away with this anomaly.

COMPOSITION OF LOK SABHA

Lok Sabha is the lower House of the Indian Parliament. Members of the Lok Sabha are elected directly by the people from the single member territorial constituencies. The total sanctioned strength of the House is 552. Of the 552, 530 members are to be elected by the people of the States and 20 members from the Union Territories. The President nominates two members from the Anglo-Indian community if in the opinion of the President the community is not adequately represented (Article 331). At present Lok Sabha has 545 members—543 are elected and 2 nominated from Anglo-Indian community.

The members of the House are elected directly by the people by a system of 'First Past the Post System' by means of adult suffrage exercised in a secret ballot. In this system the candidate who has secured the maximum number of votes out of all the contestants in the election.

TABLE 14.1 Difference between Nominated and Elected Members

Nominated Members	Elected Members
1. Cannot vote in election to the office of President.	Cannot vote in election to the office of President.
2. Can vote in election to the office of Vice-President.	Can vote in election to the office of Vice-President.
3. Can be appointed as ministers.	Can be appointed as ministers.
4. If appointed as Prime Minister cannot vote in the confidence vote or no-confidence motion.	Can vote.
5. Can vote in the impeachment of President and other constitutional office such as Judges of Supreme Court.	Can vote in the impeachment of President and other constitutional office such as judges of Supreme Court.
6. Can join a political party within 6 months from the date of entering upon office. If he joins after six months he is considered as defected.	Cannot leave the party of which he is a member and join any political party. If he joins, he is considered as defected.

Reasons for First Past the Post System

- It is a simple system to administer and simplifies the counting of votes. It is more suitable for India where the literacy rate among the voters is significantly low.
- In this system the candidate and the party fielding the candidate are inseparable and enables the elector would be clear about his choice.
- In a system of single member territorial constituency, it helps the development of healthy relationship between the legislator (MP or MLA) and the people who he represents.
- It can effectively prevent any political party with extremist tendencies because such parties may not secure enough votes in any constituency.
- In a society with vast diversity, the system makes the political parties to represent the diverse sections of the society in general. This is because the party needs the support of all sections and cannot be concentrating on a single section. For example, in India, the parties representing the sectional interest or the caste-based parties have not been able to rise to power.

TABLE 14.2 Difference between Proportional Representation and First Past the Post System

Proportional Representation System	First Past the Post System
One who secures more than 50% of polled votes is the winner	One who polls the maximum number of votes is the winner
Absolute majority	Relative majority
If no candidate secures the required majority election will take multiple rounds	No such circumstance will arise

- Further, it also gives rise to a coherent opposition.
- The system enables the voter to assess the performance of the individual candidates. For instance, it provides the opportunity to the independent candidates (candidates who do not represent any political party).

However, the system is not without demerits. The demerits of the system are:

- The representatives are not elected on the basis of proportionate majority. As a consequence, the candidate who is not favoured by the majority end up representing the constituency.
- It can potentially exclude the minority, women and other weaker sections. In the system the party field candidate who is broadly acceptable to the community that has a relatively maximum vote share.
- It also promotes the vote bank politics. The winnability of the candidate governs the electoral strategy of the parties than the public interest or the performance. Thus, it affects the voting behaviour of the voters.
- All political parties field the candidates belonging to a particular community or caste aiming to tap the winnability based on the votes of a particular dominant caste or community. Thus, the votes get split.
- The consequence of the vote bank politics is the emergence of the political parties based on caste and communal interests but without any political philosophy or strong socio-political objectives.
- Yet, another consequence is the influence of the money and muscle power in the elections.
- In the system the marginal and swinging voters largely determine the outcome of the election. For instance, in any constituency certain small proportion of voters may be swinging in their allegiance to political parties. Such swinging votes make votes of the other major portion insignificant. Hence, the political parties tend to appease these minority voters than focussing on the performance.

Single Member Territorial Constituency

For the purpose of Lok Sabha elections, the country is divided into single member territorial constituency. The process of dividing the constituency is known as 'Delimitation' and the power to exercise delimitation is vested in the Election Commission.

Delimitation of Constituencies

Important questions from Previous years' on this topics are mentioned below:

Discuss the methods of delimiting constituencies for parliamentary elections in India.

IAS MAIN (2002)

Delimitation is the 'process of fixing limits or boundaries of territorial constituencies in a country or a State having a legislative body. The job of delimitation is assigned to a Delimitation Commission or a Boundary Commission.

Articles 82 and 170 of the constitution provides for the readjustment of the number of seats in the House of People and Legislative Assemblies after every census. Accordingly, the power to delimit the constituencies is done by the Election Commission. But the 42nd amendment provided that the delimitation shall be done only after year 2000. Until then the number of constituencies shall be fixed on the basis of the population figures of census 1971.

As a result, after the census 2001 the readjustment of seats needs to be done. But the population in the southern States such as Tamil Nadu and Kerala had decreased whereas the States such as Rajasthan and UP the population had increased. If the readjustment exercise were to be undertaken the number of seats in the Lok Sabha for the southern States would have to be reduced and it was not acceptable to these States. It would also be illogical to reduce the representation of the States for effectively implementing the population control measures.

To avoid such consequence, the 84th amendment was enacted. It provided that the readjustment of the number of seats shall be done only after the first census after 2026. Hence, the readjustment of the number of seats in the Lok Sabha and the Legislative Assemblies was postponed for next 25 years. However, due to the change in demographic pattern as result of migration triggered by globalization, economic growth, etc., it was decided to:

- Adjust the boundaries of the Lok Sabha and Assembly constituencies
- Seats allocated to SCs
- Seats allocated to STs.

Towards fulfilling the exercise, the Delimitation Commission was set-up in 2002 under the Chairmanship of Mr Justice Kuldip Singh.

The orders of the Delimitation Commission have the force of law and cannot be called in question before any court. The orders need to be laid before the House of the People and the concerned state Legislative Assembly however, the House has no power to modify the orders.

Qualification of Members

Article 84 prescribes the qualification of members of Lok Sabha. To be a member of Lok Sabha any person should:

- (a) Be a citizen of India;
- (b) Have completed the age of 25 years;
- (c) Possess other qualification as prescribed by the law of the Parliament. Section 3 of the Representation of People's Act, 1951, prescribes that to be a member of Rajya Sabha any person should be a registered voter in any parliamentary constituency in India.

Disqualification of Members

Important questions from Previous years' on this topics are mentioned below:

What are the grounds of disqualification of a Member of Parliament from either House? Quote relevant provisions in your answer. IAS MAINS (2010)

Article 102 deals with the disqualification of the members of the Parliament. According to Article 102 (1), persons are disqualified for being chosen as and for being a member of Parliament if he:

- Holds any office of profit under the Union or the State government or;
- Suffers from unsoundness of mind or;
- He is an undischarged insolvent or;
- He is not a citizen of India or has voluntarily renounced the citizenship of India or;
- He is disqualified under any law made by Parliament.

As a sequel to Article 102 (1) (e), the Representation of People's Act lays down the following grounds on which a person is disqualified for being chosen as and for being a member of Parliament:

- A member of Parliament should not have been found guilty by a court or an Election Tribunal of certain election offences or corrupt practices in election.
- He should not have been convicted by a court in India of any offence and sentenced to imprisonment for a period of not less than two years.
- He should not have failed to lodge an account of his election expenses within the time and in the manner prescribed.
- He should not have been dismissed for corruption or disloyalty from government service.
- He should not be a director or managing agent or hold an office of profit under any corporation in which the government has any financial interest.
- He should not have any interest in government contracts, execution of government work or service.

These disqualifications should not exist on the date of nomination of a candidate for election and on the date when the results are declared.

Disqualification on ground of Defection: Article 102 (2) provides that a person is disqualified for being chosen as and for being a member of Parliament if he is disqualified under the Tenth Schedule on the ground of defection. A person is disqualified on the ground of defection under the Tenth Schedule if:

1. He voluntarily gives up the membership of the party which had set him as a candidate in the election.
2. If he votes or abstains from voting contrary to any direction issued by his political party, without obtaining permission of such party and the party has not condoned such voting or abstention within 15 days from the date of such voting or abstention.
3. If any nominated member joins a party after the expiry of six months from the date, he takes his seat.
4. A member who has been elected as an independent member shall be disqualified if he joins any political party.

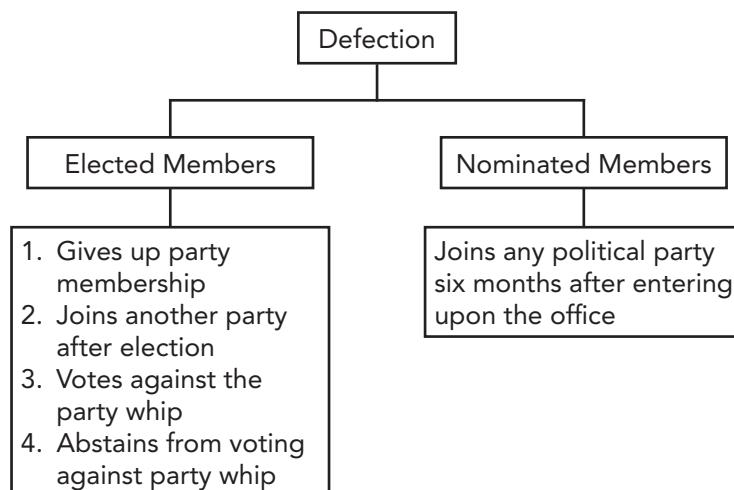


FIGURE 14.1: Disqualification on ground of Defection

Exception to the Rule of Defection: According to Para 4 of Schedule 10, the disqualification as a consequence of defection does not apply if the original party of a member merges with another party and he either changes his political party as a consequence of the merger or does not accept merger and opts to function as a separate group. A merger is deemed to take place only if not less than two-third of the members of the legislative party agree to such merger.

Decision on Disqualification

Important questions from Previous years' on this topics are mentioned below:

Which of the cases regarding disqualification's for membership of either House of Parliament are decided by the President? IAS MAINS (1998)

In case of disqualification of any member on the grounds given in Article 102, the President has the power to make decision. The President shall make the decision after consulting the Election Commission and the opinion of the Election Commission is binding on the President. The power is vested in the President by Article 103.

In case of disqualification on the grounds of defection the power to make decision is vested in the Speaker in case of Lok Sabha and the Chairman in case of Rajya Sabha. The decision of the Speaker or Chairman shall be final (Para 6). The decision of the Speaker or Chairman shall not be questioned in a court of law. Para 7 of the Schedule 10 expressly bars the jurisdiction of any court.

Vacation of Seats: Article 101

In the Parliament, a seat may fall vacant in case a member:

- Resigns by writing under his hand addressed to the Chairman or the Speaker or;
- Dies or;
- Disqualified on the grounds given in Article 102 or;
- Disqualified on the ground of defection or;
- Becomes a member of Houses—both Lok Sabha and legislature of a state or;
- Is absent for a period of sixty days without permission of the House.

Duration of the House

The Lok Sabha shall have a term of five years from the date appointed for its first meeting and no longer. However, the term of the Lok Sabha may be extended by one year when a proclamation of national emergency is in operation. Similarly, the House may be dissolved before the expiry of the term by the President.

SESSIONS OF THE PARLIAMENT

Article 85 deals with the sessions of the Parliament. The President has the powers to summon and prorogue the sessions of the Houses of the Parliament and dissolve the Lok Sabha. The constitution lays down the condition that not more than six months shall expire between two sessions of the Parliament. Hence, in any year at least two sessions of the Parliament must be held. It is a constitutional obligation on the President to summon the House(s) even if the Council of Ministers did not advise him to summon the House.

Important questions from Previous years' on this topics are mentioned below:

IAS MAINS (2006)

Explain the following terms:

- (i) Dissolution of the House
- (ii) Prorogation of the House
- (iii) Adjournment of the business of the House
- (iv) Adjournment sine die

What is the maximum gap between two sessions of the Indian Parliament?

What is meant by the 'lame duck session' of the legislature?

IAS MAINS (1999)

IAS MAINS (2002)

Session

The meeting of the House of Parliament held period of time is known as a Session of the House. A period from date of commencing the first sitting of the House is till the date on which the President prorogues the House or in case of Lok Sabha dissolves, the House is a Session of the Parliament.

A session of the House consists of several 'sitting' of the House. The meeting of the House held to transact a business every day is known as a sitting of the House. There can be more than one sitting on a day. Every sitting close when the Presiding Officer of the House adjourns the House.

Usually, there are three sessions of the Parliament every year namely, the Budget Session, Monsoon Session and Winter Session. The Budget Session is the first session of every year and is the longest of all sessions. The Winter Session is the shortest session.

Quorum is the minimum number of members to be present for any sitting of the House to be conducted. According to Article 100, the quorum for any sitting is one-tenth of the total membership of the House.

In case of state legislatures, Article 189 prescribes that the quorum shall be ten members or one-tenth of the total number of members of the House, whichever is greater.

Lame duck Session: The last session of a dissolved Lok Sabha is known as a lame duck session. The session is held after the general election to the Lok Sabha and so in effect it is the first session after the general election.

The session is meant for bidding farewell to those members of the dissolved house who have not contested the election or been elected again in the general election. No major legislative business is transacted in the session as the House has no mandate and the new House after the general election is yet to be constituted. Hence, the session is known as 'Lame duck session' and the members are known as 'Lame ducks'.

Summoning of the House: Summoning of the House refers to the calling the Houses for the session. It is the power of the President to be exercised with the aid and advice of the Council of Ministers.

Proroguing the House: This is also the power of the President which exercise with the aid and advice of the Council of Ministers. When prorogued the session comes to an end. The President can prorogue the session of the House at any time.

Adjournment: Adjournment is the suspension of work in a sitting announced by the Presiding officer. It may range from a few minutes to days together.

Adjournment Sine die: When the Presiding Officer adjourns the House without fixing any time or any date for the next meeting it is called adjournment *sine die*. *Sine die* means without setting a day (for the next meeting) or in other words where the adjournment is for an indefinite period. Usually on the last day of the session the House is adjourned *sine die*.

Dissolution: Dissolution ends the life of the Lok Sabha. A new Lok Sabha takes its place after the general elections are held. Rajya Sabha being a permanent chamber cannot be dissolved. Only the Lok Sabha is subjected to dissolution.

POWERS, PRIVILEGES AND IMMUNITIES OF THE PARLIAMENT

Articles 105 and 194 provide for the powers, privileges and immunities of the Houses of the Parliament and the state legislatures respectively. 'Parliamentary privilege' refers to 'certain rights and immunities enjoyed by each House of Parliament and committees of each House collectively, and by members of each House individually'. () The privileges are important for the effective functioning of the Houses and the

TABLE 14.3 Lok Sabha and Rajya Sabha: A Comparison

Base	Lok Sabha	Rajya Sabha
Passage of Constitution Amendment Bills	Equal powers	Equal powers
Passage of Ordinary Bills	Equal powers	Equal powers
Joint sitting	Can dominate Rajya Sabha due to numerical strength. Speaker of Lok Sabha presides.	Enjoys equal powers with Lok Sabha, but the decision of Lok Sabha prevails due to its numerical strength. Deputy Chairman may preside in case of absence of Speaker and Deputy Speaker.
Financial Bills	Class I financial bills can be introduced only in Lok Sabha. In the passage of these bills both Houses enjoy equal powers. Class II Financial Bills are like Ordinary Bills so both Houses enjoy equal powers.	In respect of passage, enjoys equal powers with Lok Sabha. But Class I Financial Bills cannot be introduced in the Rajya Sabha.
Money Bill	Have exclusive powers to pass the Money Bills. Speaker certifies a bill as Money Bill and his decision is final.	Can retain the bill for a maximum period of 14 days. Have no further powers.
Council of Ministers	Collectively responsible (Article 75)	No such powers
Demands for grants	Has power to grant the demands and cut motions can be moved	No such powers
Power to make law on State matters	No power to authorize	Can authorize the Parliament to make law on State subject
All India Services	No powers	Can authorize the Parliament to create new All India Service

members. The privileges of the Houses aim at safeguarding the freedom, the authority and the dignity of Parliament.

Powers of the Parliament

- Article 16:** Parliament has the power to prescribe the domicile as a requirement for any public employment under any State.
- Article 246:** The Parliament has the exclusive powers to make law on all the subjects in the Union List of Schedules 7. The laws made by the Parliament will have extra territorial jurisdiction that is the laws are valid even beyond the territory of India.
- Article 247:** The Parliament has the power to establish additional courts for the better administration of laws made by Parliament.

4. Article 248: The residuary powers are vested in the Parliament. Accordingly, the Parliament has the powers to make law on any matters that is not listed in any of the lists of the Schedule 7. The power includes the power to impose tax.
5. Article 249: Parliament has the powers to enact law on the matters in State List if Rajya Sabha passes a resolution.
6. Article 250: Parliament has unlimited powers to make law on any matter in State List during a National Emergency.
7. Article 252: Parliament can enact law on a matter in State List if two or more States request.
8. Article 253: Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body.
9. Article 262: The power to establish an Interstate River Water Dispute Settlement Tribunal is vested in the Parliament.
10. Article 302: Parliament has the power to impose restriction on the trade, commerce and intercourse throughout the territory of India in the public interest.
11. Article 304: Parliament has the powers to make law for making provision in order to deal with the scarcity of any good. Parliament may enact a law to give preference or discriminate any State under such conditions of scarcity or famine.
12. Article 307: Parliament has the power to establish an interstate commerce commission by law.

Privileges of Parliament

The privileges of the Parliament are grouped as the privileges of the individual members and those of the House collectively. The privileges enjoyed by the members individually are:

- (a) Freedom of speech
- (b) Freedom from being a witness
- (c) Freedom from arrest

Contempt of the House

Breach of Privilege

Any disregard or wilfully attacking the privileges of the House or any of its members. All breaches of privilege are contempt of the House.

Contempt of the House

Any act or omission which:

- Obstructs or impedes the House of Parliament or; state legislature in the performance of its functions or;
- Impedes any member or officers of such House in the discharge of his or her duty or;
- Has a tendency, directly or indirectly, to produce such results even though there is no precedent of the offence or;
- Wilful disobedience to the orders of the House or its committee even if there is no breach of any privilege.

Freedom of Speech: The members of the Parliament or state legislature shall have the right to freedom of speech in the House. A member of Parliament or state legislature shall not be held answerable in a court of law for whatever he speaks on the floor of the House while participating in any proceeding of the House.

However, such freedom is subjected to the rules of procedures of the House. The members shall not speak anything or in any manner which may adversely affect the dignity or decorum of the House.

Another restriction imposed on the freedom is that the members of Parliament or state legislature shall not discuss anything on the conduct of a judge of Supreme Court or high court except when the resolution for the removal of the Judge is being considered. This restriction is imposed by Articles 121 and 211 respectively.

This freedom of speech is different from the freedom of speech guaranteed to the citizen by Article 19 (1) (a). While the freedom of speech as a fundamental right is restricted on the grounds given in Article 19 (2), the freedom of the members of the legislature is completely immunized from being restricted or questioned in a court of law.

Freedom from Being a Witness: A member of Parliament or state legislature shall be summoned to be a witness before a court of law without the permission of the House, during when the Parliament or the state legislature is in session.

Freedom from Arrest: A member of Parliament or state legislature shall not be arrested during

1. The time when the House in which he is a member is meeting.
2. The time when the Parliamentary committee in which he is a member is meeting.
3. The period of forty days before and after the meeting of the House or its committee.

However, this immunity is only on the civil arrest and does not apply to arrest in any criminal proceeding or preventive detention.

Privileges of the House: The Houses of Union Parliament and the state legislatures as a whole enjoy the following:

1. House has the power to exclude the strangers during any of its proceedings.
2. House has the power to permit or restrain the publishing of any of its proceedings. Also, the House.
3. House has the exclusive powers to make rules of procedure regulating the business in the House. Such rules shall not be questioned in a court of law.
4. House has the power to punish for the breach of its privileges or its contempt.⁽⁴⁾

Codification of Parliamentary Privileges – Difficulties

Important questions from Previous years' on this topics are mentioned below:

Article 105: Powers, privileges, immunities of Parliament and its members—Reasons for absence of legal codification and how it can be addressed? IAS MAINS GS (2014)

Unlike the English Constitution, the Indian Constitution expressly provides for the codification of the privileges of the Parliament and the state legislatures. Both Articles 105 and 196 lay down that the powers, privileges and immunities of the Parliament and state legislature to be as those of the English House of Commons (the mention about the English House of Commons is deleted after 44th amendment), until codified by the law of the Parliament and state legislatures respectively.

There have also been demands to codify the privileges from several quarters and the Supreme Court in many cases has also ruled in favour of codifying the privileges. However, the privileges are yet to be codified. The following are the difficulties in codifying the privileges of the legislatures:

- Though termed as privileges, they are in fact powers of the Parliament as an institution. Such privileges are essential for any member of Parliament to speak in the House without fear. Hence, it is difficult to codify the privileges in definite terms.

4 IAS MAINS (2000) What is Contempt of Parliament? Refer the Table 14.1.

- Members of the Houses enjoying the mandate of the people need to be facilitated to perform their duty without any obstruction or fear of judicial intervention. This requires the privileges to be provided in broad terms.
- When codified the parliamentary privileges may be subjected to judicial review on the ground of conflicting with fundamental rights. This would be interfering in the functioning of the legislatures.
- If the privileges are codified in definite terms it would result in challenging the penal decisions of the House in cases of breach of privileges or contempt of the House. Thus, resulting in increasing the burden of the courts and conflict between the judiciary and the legislature.

Need for Codifying Parliamentary Privileges: Though the above arguments are placed against codifying the parliamentary privileges, the need for codifying them is inevitable. The Supreme Court has also ruled in favour of codifying them in several cases. The National Commission to Review the Working of the Constitution said 'In a democratic society, any privileges for a section or class of the people are anachronistic, any undefined privileges like the privileges of Parliament are even more so.' This adds strength to the arguments on the need for codifying the privileges. The arguments placed for the codifying the privileges are as follows:

- (a) Indian Parliament is created by the constitution which defines its powers and functions. The Parliament is not sovereign unlike the English Parliament. The Houses enjoy the special privileges and immunities as they are representative bodies voted by the people. It is clear that the sovereignty is with the people and constitution. Hence, it is essential to codify the privileges.
- (b) The conduct of the members of the Legislature has become questionable. The members have taken cover behind the privileges to escape charges of corruption. The Supreme Court had taken note of this in the P. V. Narashimha Rao case. The members of Parliament belonging to Jharkhand Mukti Morchi (JMM) were bribed to vote in favour of the ruling party on the confidence vote. In the case it was held that the MPs who took money to vote cannot be punished by the judiciary on corruption charges as it was an issue of privilege of the House.
- (c) The conduct of the members in the House is also unbecoming of their stature and role envisaged by the constitution. Often members on one or the other pretext shout and gather in the Well of the House disrupting the functioning of the House. Similarly, they also indulge in the misbehaving with the Speaker or the Presiding Officer. At times the House has also been ransacked. The recent example of the behaviour of the members in the Tamil Nadu Assembly in February 2017, when the present Council of Ministers sought the confidence vote.
- (d) The power of privileges has been used against the freedom of press in several occasions. When any comment is made on the functioning of the Parliament or the Houses of the state legislature the House had overreacted and had been adversely affecting the right to freedom of expression.
- (e) In the recent times it is also noted that the Ministers attempt to give false information to the House. In 2015, the Minister for Environment and Forests, Tamil Nadu informed the House that Coca Cola Company not authorized to use river water and no land was allotted to the company. However, on the same day an affidavit was filed on behalf of the government of Tamil Nadu in the Madras High Court in which the government had accepted that the company was authorized for the same.
- (f) The privileges are conflicting with the Right to Information of the citizen. The Public Information Officer of Rajya Sabha refused to disclose the information on the questions asked by the members in the House. The PIO took the cover of Section 8 (1) (c) which exempts the information relating to the privileges of the Parliament.

Parliamentary Privileges and Judicial Review: Although the privileges of the Houses are immunized from being questioned in a court of law, the Supreme Court in several cases ruled that the scope of the privileges is subjected to judicial review and would be determined by the courts. The main reason for the judicial intervention is that the parliamentary privileges are not codified by any law in India.

The privileges of the Houses are subjected to the laws made by the appropriate legislatures and other provisions of the constitution. The powers conferred on the Houses by the Articles 105 and 194 do not include all the powers of a court. For instance, the Houses have the power to punish any person

for the breach of privileges or contempt of the House, but such power is only a quasi-judicial power. It will not constitute a complete judicial power on the House. Similarly, the House cannot decide any election dispute.

Further, the Supreme Court in the Presidential reference as a sequel to the Keshav Singh case ruled that 'the notwithstanding a general warrant issued by the Assembly, the courts could examine the legality of the committal in proper proceedings'.⁽⁵⁾ The court ruled that the scope of the privileges of the House is to be determined within Articles 32, 211 and 226. The court upheld the orders of the Allahabad High Court.

Similarly, in the Pandit M. S. M. Sharma's case the court ruled that in case there is a conflict between fundamental rights and parliamentary privileges then the fundamental rights prevail. The privileges of the Houses cannot override the fundamental rights. Hence, it is clear that the privileges of the Houses are not absolute and are subjected to judicial review with respect to their scope and operation.

OFFICERS OF PARLIAMENT

Articles 89 and 93 provide for the officers of the Parliament. Article 89 deals with the provisions relating to the Chairman and Deputy Chairman of Rajya Sabha. Article 93 provides for the Speaker and Deputy Speaker of Lok Sabha.

Chairman and Deputy Chairman of Rajya Sabha

Article 89 provides that the Vice-President⁽⁶⁾ of India shall be *ex officio* Chairman of the Council of States. One of the members of Rajya Sabha is chosen as the Deputy Chairman of Rajya Sabha. In case a vacancy in the office of Deputy Chairman occurred due to resignation, removal, or death or any other reason, then the Council shall choose another member to be Deputy Chairman.

The Deputy Chairman of Rajya Sabha will hold office until he is the member of the House and if he ceases to be a member of the House, then the office falls vacant. The Deputy Chairman may resign by writing under his hand addressed to the Chairman.

The Deputy Chairman is removed from office by a resolution of the Council passed by a 'majority of all the then members of the House'. However, when a resolution for his removal of the Deputy Chairman is being considered, he shall not preside over the meeting.

Majority of All the then Members of the House

Effective Strength of the House = Total Strength of the House – Vacancy

Majority of all the then members = Majority of the Effective Strength

The Deputy Chairman of Rajya Sabha will discharge the duties and functions of the Chairman of Rajya Sabha when the office of the Chairman is vacant or when the Vice-President is acting as President. If the office of Deputy Chairman is also vacant, the President may appoint member of the Council of States to discharge the functions of the Chairman.

5 The Allahabad High Court admitted a petition for Habeas Corpus and granted bail to Keshav Singh who was detained for the contempt of House ordered by the U.P. State Legislative Assembly. Reacting to this order by the court, the UP Assembly ordered that the two judges who granted bail to be brought to the custody of the House and explain why should they not be punished for the contempt of the House. This resulted in a constitutional crisis and the President referred the case to the opinion of the Supreme Court under Article 143.

6 For details refer Union Executive Chapter.

When the Chairman is absent from the sitting of the Council the Deputy Chairman will act as Chairman. If he is also absent any other person as determined by the rules of procedures of the House will act as Chairman. Under the rules of procedures, the Chairman will nominate one of the six members of the panel of Vice-Chairmen to preside over the House when both Chairman and the Deputy Chairman are absent.

Speaker and Deputy Speaker of Lok Sabha

Article 93 provides for the office of the Speaker and Deputy Speaker of Lok Sabha. The Speaker and Deputy Speaker of Lok Sabha are elected by the members of Lok Sabha. In case of any vacancy occurring in the office of Speaker and Deputy Speaker, then the House will elect two more members of the House as Speaker and Deputy Speaker.

Term of Office

The Speaker and Deputy Speaker of Lok Sabha hold office during when they are a member of the House. The office will fall vacant if:

- (a) The Speaker or Deputy Speaker ceases to be a member of the House.
- (b) The Speaker or the Deputy Speaker resigns from office. The Speaker may resign by writing under his hand addressed to the Deputy Speaker. The Deputy Speaker may resign by writing under his hand addressed to the Speaker.
- (c) The Speaker or Deputy Speaker is removed from office. The Speaker or Deputy Speaker may be removed from office by a resolution of the House passed by a majority of all the then members of the House. Speaker or Deputy Speaker shall not preside over the meeting in which the resolution for their removal is being considered (Article 96).

Point of Order

A Point of Order relates to the interpretation or enforcement of the *Rules of Procedure and Conduct of Business* in the House or convention or such articles of the constitution as regulate the business of the House and raises a question which is within the cognizance of the Speaker. A Point of Order may be raised only in relation to the business before the House at the moment. It may be raised by a member only if the Speaker permits.

Salaries and Allowances: The salaries and allowances of the Chairman and Deputy Chairman of Rajya Sabha, Speaker and Deputy Speaker of Lok Sabha are fixed by Parliament by law.

Article 95: The Deputy Speaker of Lok Sabha will discharge the duties and functions of the Speaker of Lok Sabha when the office of the Speaker is vacant. If the office of Deputy Chairman is also vacant, the President may appoint member of the Council of States to discharge the functions of the Chairman.

When the Speaker is absent from the sitting of the Council the Deputy Speaker will act as Chairman. If he is also absent any other person as determined by the rules of procedures of the House will act as Speaker. Under the rules of procedures, the Speaker will nominate one of the six members of the panel of Vice-Chairmen to preside over the House when both Speaker and the Deputy Speaker are absent.

Powers of the Speaker

Important questions from Previous years' on this topics are mentioned below:

Bring out the powers and responsibilities attached to the office of the Speaker of the Lok Sabha.
IAS MAINS GS POLITY (2010)

The Speaker is the Chief Officer of the Lok Sabha. There is separate secretarial staff popularly known as the Lok Sabha Secretariat, to assist him. (Article 98)

The Speaker presides over all the meetings of the House and the joint sitting of the Houses under Article 108. He is responsible for upholding the dignity and the privileges of the House.

When a point of order is raised or any question involving the interpretation of the rules and the precedents of Lok Sabha is raised the Speaker has to interpret the rule and give his ruling. The rulings given by a previous Speaker are regarded as precedents and are generally followed. The Speaker's decision is final.

With respect to any debate, resolution or bill, the Speaker does not vote in the first instance (Article 100). The Speaker is entitled to vote only when there is a tie (equality of votes).

It is the responsibility of the Speaker to ensure the presence of the quorum for any meeting of the House. The quorum to constitute a meeting of the Lok Sabha is one-tenth of the total number of members. If the quorum is not complete it is the duty of the Speaker to adjourn the House or to suspend the meeting until there is a quorum.

When a Money Bill is transmitted to Rajya Sabha after being passed by the Lok Sabha the Speaker makes an endorsement on the bill to certify that it is a Money Bill. If any question arises as to whether a bill is a Money Bill or not the Speaker's decision is final ((Article 110 (3)).

He again certifies the Money Bill when it is presented to the President for assent. On the question whether a bill is a Money Bill or not, the decision of the Speaker is final. If a bill contains an endorsement that it is a Money Bill then all those provisions which are applicable to Money Bill will apply to it.

The Speaker allocates the time for any member to speak in the House. If the Speaker declares that the time allotted for a member is closed, the member has to stop and the Speaker's decision is final. When any member does not obey the orders of the Speaker, he has the power to take disciplinary action against such member. The Speaker has the powers to suspend or expel the member from the House for the meeting or the sitting or for the whole session.

The Speaker has the power to decide on the disqualification of any member on the ground of defection under Schedule 10. The Speaker is also the Chairman of important committees of the House such as the Business Advisory Committee, Rules Committee and Privileges Committee.

The Speaker has the power to adjourn the meeting of the House. In case of any serious disturbance in the House, the Speaker has the power to adjourn the House without noting the date and time of the next meeting. It is known as adjournment sine die.

Indian Parliamentary Group (IPG)

- The Speaker is the *ex officio* President of the Indian Parliamentary Group (IPG).
- It was set-up in 1949.
- It functions as the National Group of the Inter Parliamentary Union (IPU) and the Main Branch of the Commonwealth Parliamentary Association (CPA).
- Speaker as the President of the IPG nominates the members of various Indian parliamentary delegations going abroad.
- The Speaker nominates after consulting the Chairman of the Rajya Sabha.
- Usually the Speaker leads such delegations.
- The Speaker is also the Chairman of the Conference of Presiding Officers of Legislative Bodies in India.

Pro tem Speaker: After the election to the Lok Sabha the President appoints the pro tem Speaker. The senior-most member by age among the newly elected members is appointed as the pro tem Speaker.

The powers of the pro tem Speaker are not defined in the rules of the Parliament. But he does not enjoy all the powers of the Speaker of Lok Sabha as the office is only an interregnum arrangement.

The pro tem Speaker administers the oath of office to the newly elected members and he also conducts the election to the office of the Speaker. Once the regular Speaker is elected, he enters upon office the office terminates.

When the office of the Speaker and Deputy Speaker is vacant the pro tem Speaker is appointed to preside over the meeting of the House and conduct the election to the office of the Speaker.

Similarly, according to Article 118 (4), if the Speaker of the Lok Sabha is not able to preside over a joint sitting of the two Houses to resolve a deadlock between the two Houses over an ordinary bill, then the senior-most member of the sitting is appointed as the pro tem Speaker to preside over the joint sitting.

Important questions from Previous years' on this topics are mentioned below:

- | | |
|--|----------------------------|
| (a) What is meant by 'Pro tem Speaker'? | IAS MAINS GS POLITY (1998) |
| (b) What is the role of the pro tem Speaker? | IAS MAINS GS POLITY (2002) |
| (c) What is pro tem Speaker? | IAS MAINS GS POLITY (2007) |

PARLIAMENTARY PROCEDURES

The legislative procedures include the procedures for:

- President's address
- Zero Hour
- Questions
- Legislative motions
- Bills

President's Address

The first session every year begins with the President's address under Article 87. The first session every year is the budget session and it begins with the President's Address. The President exercises the right with the aid and advice of the Council of Ministers.

President's address is a statement of policy of the government. Therefore, the address is drafted by the government and the President reads it out on the floor of the House. 'It contains a review of the activities and achievements of the government during the previous year and sets out the policies which it wishes to pursue with regard to important internal and international problems'.⁽⁷⁾

After the President's address the House debates on the points of the address. During the debates the members are permitted to ventilate their grievance that is, the members are permitted to criticize the government and its policies.

Subsequent to the discussion a Motion to Thank the President is moved. Motion of Thanks moved by a member and seconded by another member. For the discussion on Motion of Thanks, three or four days are allotted. The discussion on the Motion of Thanks is concluded by the reply of the Prime Minister or any other minister.

Amendment to the Motion: Amendments to motion may be moved after the President has delivered the address. The amendments may refer to matters contained in the address as well as to matters which, in the opinion of the member, the address has failed to mention.

Usually any amendment to the motion is avoided by the government. However, amendments to the motion have been moved and carried two successive years—2016 and 2017. In 2016, the amendment was moved as the address did not mention about black money. In 2017, the amendment was moved to as the address ‘did not commit support to rights of all citizens to contest panchayat elections in the backdrop of new laws in Rajasthan and Haryana where matriculation has been fixed as the eligibility criteria for contesting polls’.⁽⁸⁾ In the past there have been three occasions in which amendments to the motion had been moved.

Zero Hour

The second hour of the Parliament between 12 noon and 1 p.m. is known as Zero Hour. Since the time 12 noon coincides with 00.00 hours on a digital clock at midnight. The term was coined by the press. It is an innovation of Indian Parliament. It is not a practice in the English Parliament. Zero Hour is not provided in the rules of Parliament. It is practised as a convention since 1963.

The members of Parliament wanted to have a mechanism for raising a matter of urgent public importance. Although the short notice question was available it was found to be inadequate to raise matters of urgent public importance because the questions are to be submitted five days in advance. In the Zero Hour, the members are allowed to raise any matter of urgent public importance even if it is not found in the day’s agenda.

However, the mechanism suffers from certain weaknesses there is no proper procedure for raising any matter. Hence, it is used to raise matters of political importance than of public importance.

Parliamentary Questions^[9]

The first hour of Parliament every day is allotted for the members to raise questions and get the answers from the ministers. To be raised in the Parliament any member has to submit the questions 15 days in advance. There are four types of questions namely:

- (i) Starred questions
- (ii) Unstarred questions
- (iii) Short notice questions
- (iv) Questions to private members

Starred Questions: A starred question is one to which a member desires an oral answer from the Minister in the House and is required to be distinguished by the member with an asterisk. Answer to such a question may be followed by supplementary questions by members.

Important questions from Previous years’ on this topics are mentioned below:

Distinguish between a starred question and unstarred one asked in the Parliament.

IAS MAINS (2008)

8 News report Indian Express: March 10, 2017, ‘Rajya Sabha passes amendment to motion of thanks: Opposition stands up to be counted’

9 Rules of Procedure and Conduct of Business in Lok Sabha.

Unstarred Question: An unstarred question is one to which written answer is desired by the member and is deemed to be laid on the table of the House by Minister. Thus, it is not called for oral answer in the House and no supplementary question can be asked thereon.

Connect

Apart from other rules applicable to ordinary questions, the short notice questions are subjected to two additional criteria: its subject matter must be urgent. The minister concerned should agree to answer it. However, even if the minister concerned agrees to answer a short notice question, the Speaker has the power to admit the question if he is of opinion that the question is not of an urgent nature.

Source: Rules of Procedures: Lok Sabha

Short Notice Question: A member may give a notice of question on a matter of public importance and of urgent character for oral answer at a notice less than ten days. Such a question is known as 'Short Notice Question'.

Questions to Private Members: A question may also be addressed to a private member, provided that the subject matter of the question relates to some bill, Resolution or other matter connected with the business of the House for which that member is responsible. The procedure in regard to such questions is same as that followed in the case of questions addressed to a minister with such variations as the Speaker may consider necessary.

Questions: Analysis: Parliamentary questions are considered to be an effective control of the Parliament because when the matter is raised in the House it imposes an obligation on the minister. British Prime Minister Clement Atlee said, 'Questions are a powerful tool that makes the entire administration to stand on toes'. The questions are raised focussing on the failures of the government. However, questions as tool of control suffer from certain weaknesses:

- The 15 days advance notice to be given to raise a question is too long a period that the matter may lose its relevance.
- For certain questions the government has the immunity of not answering any question in the interest of the nation.
- Similarly, a minister can also refuse to answer a question. But this privilege has to be utilized rarely.
- In certain cases, the minister may ask for time to prepare answers to questions and when allotted could play delay tactics.
- The one hour time allotted for question is seriously limited that only few questions could be asked.

Legislative Motions

Calling Attention Motion: A Calling Attention Motion is moved by a member with the prior permission of the Speaker. By this the member draws the attention of a minister to a matter of urgent public importance and the minister may make a brief statement on the matter. The statement of the minister is like a white paper which may be used by the opposition to embarrass the government on a future date.

However, the minister may ask for time to make a statement on later date which might dilute the importance of the matter. Similarly, there is a possibility that the minister may be changed in case of a reshuffling of the Council of Minister.

Censure Motion: It is a motion moved by the members against an individual minister or a group of ministers or the entire Council of Ministers. The objective is to express the unhappiness of the House upon the minister(s). However, even if such a censure motion is carried it is not necessary for the concerned minister(s) need not resign or not to be dismissed. It is to provide for a moral impact and as deterrence. But it does not have any serious impact in practice.

Adjournment Motion⁽¹⁰⁾: The adjournment motion is an extraordinary procedure. If admitted, the normal business of the House is adjourned or set aside and the matter is taken for discussion.

The primary object of an adjournment motion is to draw the attention of the House to a matter of urgent public importance having serious consequences and with regard to which a motion or a resolution with proper notice will be too late. The motion is allowed only if the following conditions are fulfilled:

- The matter raised is definite. The motion is not permitted on any allegations.
- The matter must be of public importance.
- The matter must be of urgent nature.
- It should not be pointed against any individual.
- It does not raise a question of privilege.

An adjournment motion is to be carried by a majority of total membership of the House and by a majority of not less than two-thirds of the members present and voting. Therefore, if an adjournment motion is carried against the government in the Lok Sabha, it amounts to a loss of confidence of the government. It means that if subsequently, a no-confidence motion is moved the government would fail to defend itself.

No-Confidence Motion

A no-confidence motion is moved by the opposition to express the loss of confidence of the House on the Council of Ministers. It can be moved only in the Lok Sabha because Article 75 of the constitution provides that the Council of Ministers is collectively responsible to the Lok Sabha.

When permitted the motion is given precedence over other agenda of the House and taken up for consideration immediately. The members criticize the government and its functioning. The ministers reply to the points raised by the members of the opposition and the Prime Minister finally makes his statement. Then the motion is subjected to voting.

Confidence Vote	No-Confidence Motion
Moved by the government.	Moved by the opposition.
If carried the government survives.	If carried the government falls.
Practised as a convention.	Provided in the rules.
No ground is required for moving.	Can be moved only on specific grounds

The motion needs to be carried by a majority of total membership of the House and by a majority of not less than two-thirds of the total membership of the House. If the motion is carried then the Council of Ministers is said to have lost the majority support of the House and hence, must resign. In case the Council of Ministers did not resign, then the President has the power to dismiss the Council.

Once moved and not carried against the government the motion can be moved only after a time period of six months.

Confidence Vote: It is moved by the Council of Ministers unlike the no-confidence motion which is moved by the opposition. It is not provided in the rules of the Parliament but is practised as a convention. It is sometimes known as 'trust vote'.

It is a process of the Council of Ministers establishing the confidence of the majority of the Lok Sabha. The Prime Minister moves the resolution to seek the support of the House for his government.

The process is not found in the rules of procedures of the House and the rules governing the no-confidence motion is applied to the confidence vote. Similarly, it has to be carried by a special majority as the no-confidence motion. If carried, then the government survives.

Cut Motions

Cut motions are moved as part the budgetary process. The cut motions are moved when the demands for grants are discussed in order to reduce the grant. The cut motions are an expression of the disagreement or dissent with the government. It has a censure value. Whenever a member proposes to move a cut motion the government immediately takes steps to settle the grievances of the member and prevents the motion. There are three types of cut motions namely:

- (i) Disapproval of policy cut motion
- (ii) Token cut motion
- (iii) Economy cut motion

Disapproval of Policy Cut Motion: It is commonly known as policy cut. It seeks to reduce the amount of a demand to rupee one. It implies that the principle behind the expenditure is disapproved. This in turn means that the policy for which the demand is made is disapproved.

Token Cut Motion: It is a symbolic motion. It is moved to express and ventilate the grievances of a member and to draw the attention of the House and the government towards a matter. It seeks to reduce the demand by rupees one hundred. Economy Cut Motion

It aims at bringing about economy to the government expenditure. It seeks to reduce the expenditure by a specified amount so that the expenditure will not be wasteful.

Bills

There are three types of bills in the Indian Parliament namely, Ordinary Bills, Financial Bills and the Constitutional Amendment Bills. The provisions relating to the introduction of the bill is provided in Article 107.

Passage of Ordinary Bills: A bill is a statute in the draft form and cannot become law unless it has received the approval of both the Houses of Parliament and the assent of the President of India.

The process of law making begins with the introduction of a bill in either House of Parliament. A bill can be introduced either by a minister or a member other than a minister. If it is introduced by a minister it is known as a Government Bill. In case it is introduced by a member other a minister then it is known as a Private Member's Bill.

Such bills are known as Ordinary Bills. An Ordinary Bill can be introduced in either Lok Sabha or Rajya Sabha. It does not require the prior sanction of the President.

A minister who desires to introduce a bill has to give seven days' notice in writing of one's intention to move for leave to introduce the bill. The Speaker allocates time for the introduction of the bill.

First Reading: When permitted the bill is introduced and undergoes three readings in each House before it is submitted to the President for assent. The minister/member in-charge of the bill introduces a motion for leave, a motion seeking the permission of the House. When the motion is adopted the bill is introduced in the House. This is known as the first reading.

After that, the bill is referred to the 'Departmentally Related Standing Committees'. The committee considers the bill in detail and makes a report to the House.

Second Reading: The second reading of the bill consists of two stages. The first stage constitutes discussion on the principles of the bill and its provisions generally on any of the following motions, that the bill be taken into consideration.⁽¹¹⁾

The second stage of the second reading consists of clause-by-clause consideration of the bill, as introduced in Lok Sabha or as reported by Departmentally Related Standing Committee. The discussion takes place on each clause of the bill based on the report of the committee. Amendments can be moved to the bill at this stage. Each amendment and each clause is put to the vote of the House. The amendments become part of the bill if they are accepted by a majority of members present and voting, this is known as 'ordinary majority' or 'simple majority'.

Third Reading: The third reading refers to the discussion on the motion that the bill or the bill, as amended, be passed. At this stage, debate is confined to arguments either in support or rejection of the bill without referring to the details thereof further than is necessary for the purpose of arguments. Then the motion is carried by the required majority and the bill is passed. After this the bill is transmitted to the second House where the bill undergoes the same three readings and passed. Once passed by both the Houses the bill is presented to the President for his assent and upon his assent the bill becomes a law.

Deadlock Over the Bills: When a bill is passed in one House, it is transmitted to the second House. If the second House also passes the bill it will become a law after the President assents to the bill. However, the second House may:

- (a) Rejects the bill or;
- (b) Returns the bill with recommendations for amendments to the bill and the amendments are not agreeable to the first House or;
- (c) Retains the bill with itself without taking any action on the bill for a period of more than six months. If any of the above situations arises then a deadlock between the two Houses of the Parliament is said to have arisen. In order to resolve the deadlock between the two Houses over an Ordinary Bill the constitution provides for the joint sitting of the two Houses.

Joint Sitting

Important questions from Previous years' on this topics are mentioned below:

When is the device of joint sitting of both the Houses of Parliament not available?

IAS MAINS (2001)

The Indian Constitution has provisions for holding joint session of the two Houses of the Parliament. Enumerate the occasions when this would normally happen and also the occasions when it cannot, with reasons thereof.

IAS MAINS (2017)

Who presides over the joint session of the two Houses of the Indian Parliament over a non-money bill?

IAS MAINS (1999)

11 Before the practice of the Departmentally Related Standing Committee was introduced, at this stage the Bill could be referred to a Select Committee of the House or a Joint Parliamentary Committee.

Article 108 provides for the joint sitting of the two Houses to resolve the deadlock between the two Houses. The power to convene the joint sitting is vested in the President. In case of a deadlock the President summons the joint sitting.

In case the President had declared his intention to summon a joint sitting to resolve the deadlock between the Houses over a bill, then the bill shall not lapse even if the Lok Sabha is dissolved.

The joint sitting is presided over by the Speaker of the Lok Sabha. If he is absent then the Deputy Speaker shall preside over the sitting. If he is also absent the Deputy Chairman of Rajya Sabha will preside. In case he is also absent or unable to preside over, then the senior-most member by age in the sitting shall preside over.⁽¹²⁾ In the joint sitting the decision shall be taken by the majority of the members of the sitting present and voting.

Joint sitting is not permitted in case of a Money Bill and Constitution Amendment Bill.

In the joint sitting only, such points of disagreement between the Houses is discussed and no other point is permitted to be taken for discussion. Also, no amendment is to the bill is permitted. However, certain amendments may be permitted by the Presiding Officer and his decision in that regard is final.

Lapsing of Bills

- (a) According to Article 107 (3), a bill will not lapse on the prorogation of the House.
- (b) A bill that originated and is pending in the Lok Sabha will lapse if the House is dissolved.
- (c) A bill that originated in the Lok Sabha and is pending in the Rajya Sabha after being passed by the Lok Sabha, will lapse if the House is dissolved. In case a joint sitting is to be summoned then the bill will not lapse.
- (d) A bill that originated and pending in the Rajya Sabha will not lapse on the dissolution of Lok Sabha.

Financial Bills: Financial Bills are those bills which deal with financial matters. There are three types of financial bills namely:

- (i) Money Bills
- (ii) Financial Bills Class I
- (iii) Financial Bills Class II

Money Bills

Important questions from Previous years' on this topics are mentioned below:

Define Money bill. Discuss how it is passed in the Parliament.

IAS MAINS (2004)

A Money Bill is defined by Article 110. Any bill that deals with all or any of the matters in Articles 110 (1) (a) to (f) is known as a Money Bill. Such matters are:

- (a) The imposition, abolition, remission, alteration or regulation of any tax.
- (b) The regulation of the borrowing of money or the giving of any guarantee by the Government of India, or the amendment of the law with respect to any financial obligations undertaken or to be undertaken by the Government of India.
- (c) The custody of the Consolidated Fund or the Contingency Fund of India, the payment of moneys into or the withdrawal of moneys from any such fund.

12 Article 118(4) provides that in the absence of the Speaker the sitting shall be presided over by such a person as may be determined by the rules of procedures of the Parliament.

- (d) The appropriation of moneys out of the Consolidated Fund of India.
- (e) The declaring of any expenditure to be expenditure charged on the Consolidated Fund of India or the increasing of the amount of any such expenditure.
- (f) The receipt of money on account of the Consolidated Fund of India or the public account of India or the custody or issue of such money or the audit of the accounts of the Union or of a State.

Passage of Money Bills: Passage of Money Bill is governed by Articles 109 and 117. According to Article 117 (1), a Money Bill can be introduced in the Parliament only on the previous recommendation of the President.

A Money Bill can be introduced only in the Lok Sabha. It cannot be introduced in the Rajya Sabha. This is because the Rajya Sabha does not have any financial powers. Since Rajya Sabha is a federal House and is a representative House of the States the House is not conferred with any financial powers. If the House had financial powers it may hold the union government finance to ransom with political motive.

Once the Money Bill is passed in the Lok Sabha, the bill is transmitted to the Rajya Sabha. The Rajya Sabha can retain the bill for a period of 14 days. Before the expiry of 14 days Rajya Sabha has to return the bill to Lok Sabha with its views or recommendations. It is the discretion of the Lok Sabha to either accept or to reject the recommendations. Then the bill is deemed to have passed by the Parliament and presented to the President for his assent.

Similarly, if 14 days expired after the Money Bill being transmitted to Rajya Sabha and the House did not return the bill then, the bill is deemed to have been passed in the form in which it was passed by the Lok Sabha and is presented to the President for his assent.

When a Money Bill is presented to the President for his assent, he may declare that he gives his assent or reject the bill and veto the bill. But he cannot return the bill for reconsideration of the House.

Money Bill and Veto Power: The President enjoys absolute veto power in case of a Money Bill of the Union Parliament or the state legislature. But he does not enjoy suspensive veto over a Money Bill—both Union and States.

The suspensive veto power is not vested in the President with respect to a Money Bill because the bill is introduced only with his previous recommendation. Hence, in case of any clarification needed, he has to get it at the time of its introduction.

Further the bill deals with the revenue and expenditure of the government and if the bill is not assented to immediately, it could bring the government to a grinding halt for want of finance. To avoid such circumstances the President is not vested with the veto power over the bill.

However, in case of any eventuality that the government had to recall a money bill then, the Council of Ministers may advise the President to veto the bill. Otherwise it would require enacting another law to repeal or nullify the law.

Passage of Financial Bills: A bill containing the provisions of money bill but not solely dealing with those matters and contains other matters also is known as a Class I Financial Bill. A Class I Financial Bill shares two features in common with Money Bills namely:

- (a) The bill cannot be introduced in Rajya Sabha and can be introduced only in Lok Sabha.
- (b) The bill can be introduced only with the previous recommendation of the President.

For all other purposes the bill is an ordinary bill. The bill being an Ordinary Bill, both Lok Sabha and Rajya Sabha enjoy equal powers. Therefore, in case of any deadlock between the two Houses over the bill even joint sitting is permitted.

A bill which if enacted and made a law would involve expenditure from the consolidated fund of India is known as Class II Financial Bill. A Class II Financial Bill shall be taken for consideration of the House of Parliament only on the recommendation of the President Article 117 (3). Otherwise for the purpose of passage in the Parliament, the bill is an Ordinary Bill.

Passage of Constitutional Amendment Bills is dealt with in a separate chapter on amendment.

Passage of Bills: A Comparison

Important questions from Previous years' on this topics are mentioned below:

What are the main differences between the passage of a Constitution Amendment Bill and other Legislative Bills?
IAS MAINS (2001)

TABLE 14.4

Financial Bills					
Bases	Ordinary Bills	Money Bills	Class I	Class II	Constitution Amendment Bills
Introduction	Either Houses	Only in Lok Sabha	Only in Lok Sabha	Either Houses	Either Houses
Previous recommendation of President	Not needed	Needed, can be introduced only on the recommendation of the President	Needed, can be introduced only on the recommendation of the President	Not needed	Not needed
Introduction by private member	Allowed	Not allowed	Allowed	Allowed	Allowed
Majority for passage	Ordinary/ simple majority	Ordinary/simple majority	Ordinary/simple majority	Ordinary/ simple majority	Majority of total membership of the House and by a majority of not less than two-thirds of the members present and voting
Power of Houses to Pass Bills	Both have equal powers	Only Lok Sabha can pass the bill. Rajya Sabha can retain the bill for 14 days. It has to return the bill with recommendation if any within 14 days. To accept the recommendations is the discretion of Lok Sabha	Both have equal powers	Both have equal powers	Both have equal powers. The bill has to be passed in each House separately.
Deadlock between Houses	Possible	Not applicable as the Rajya Sabha has no financial powers	Possible	Possible	Not applicable as the bills have to be passed by Lok Sabha and Rajya Sabha separately
Joint sitting to resolve deadlock	Provided by Article 108.	Not available	Same as Ordinary Bills	Same as Ordinary Bills	Not available
President's veto	All vetoes are available	Only Absolute Veto available and Suspense Veto not available. i.e., the President cannot return the money bill for reconsideration of the house	All vetoes are available	All vetoes are available	No veto power is available after the Constitution (24th Amendment) Act.

Languages to be Used in Parliament (Article 120)

- According to Article 120, the business in Parliament shall be transacted in Hindi or in English.
- Any member who desires to speak in any Indian language other than Hindi has to give prior notice to the Chairman or the Speaker. In that case arrangements for translation must be made.

COMMITTEES OF PARLIAMENT

There are two types of parliamentary Committees namely 'Standing Committees and *Ad hoc* Committees'. Standing Committees are permanent committees and they are constituted periodically, say every year, in accordance with law. Standing committees function continuously. *Ad hoc* Committees are constituted for a specific purpose whenever it is deemed necessary. The Departmentally Related Standing Committees, Public Accounts Committee, Estimates Committee and Committee on Public Undertakings are Standing Committees.

Public Accounts Committee (PAC)

PAC was first set-up on the recommendations of the Montagu–Chelmsford Committee in 1921. PAC has 22 members, 15 from Lok Sabha and 7 from Rajya Sabha. The members are elected by the respective Houses from among its members. They are elected by a system of proportional representation system by means of a single transferable vote.

The Speaker appoints the Chairman of the PAC from amongst the members of the Committee from Lok Sabha. If the Speaker or Deputy Speaker is a member of the PAC, he will be the Chairman of PAC.

Functions of the Committee: The committee has the powers to scrutinize the appropriation accounts and the audit report of the CAGI. It has the power to authorize the excess grants. The committee, while scrutinizing the CAGI report, needs to satisfy itself:

- (a) Whether the moneys shown in the accounts as having been disbursed were legally available for, and applicable to, the service or purpose to which they have been applied or charged.
- (b) Whether the expenditure conforms to the authority which governs it.
- (c) Whether every re-appropriation has been made in accordance with the provisions made in this behalf under rules framed by competent authority.
- (d) Whether statement of accounts showing the income and expenditure of state corporations, trading and manufacturing schemes, concerns and projects together with the balance sheets and statements of profit and loss accounts.

Estimates Committee

The Estimates Committee was constituted for the first time in 1950. It consists of 30 members. All the members belong to Lok Sabha and are elected every year by the Lok Sabha from amongst its members. Since Rajya Sabha does not have financial powers vested by the Constitution the members of the House do not have representation in the committee.

A minister cannot be elected as a member of the committee and if a member after selection to the committee is appointed a minister, the member ceases to be a member of the committee from the date of such appointment. Chairperson of the committee is appointed by the Speaker from amongst its members.

Functions of the Committee: The functions of the Committee on Estimates are:

- (a) To report what economies, improvements in organization, efficiency or administrative reform, consistent with the policy underlying the estimates may be affected.
- (b) To suggest alternative policies in order to bring about efficiency and economy in administration.

- (c) To examine whether the money is well laid out within the limits of the policy implied in the estimates.
- (d) To suggest the form in which the estimates shall be presented to Parliament. The committee does not exercise its functions in relation to such Public Undertakings as are allotted to the Committee on Public.

Committee on Public Undertakings

The Committee on Public Undertakings is a Parliamentary Committee consists of 22 members. Fifteen members are elected by the Lok Sabha every year from amongst its members according to the principle of proportional representation by means of a single transferable vote. Seven members are nominated by Rajya Sabha for being associated with the Committee. The Chairman is appointed by the Speaker from amongst the members of the Committee.

Functions of the Committee: The functions of the committee on Public Undertakings are:

- (a) To examine the reports and accounts of Public Undertakings specified in the Fourth Schedule to the Rules of Procedure and Conduct of Business in Lok Sabha.
- (b) To examine the reports, if any, of the Comptroller and Auditor General of India on the Public Undertakings.
- (c) To examine, in the context of the autonomy and efficiency of the Public Undertakings whether the affairs of the Public Undertakings are being managed in accordance with sound business principles and prudent commercial practices.
- (d) To exercise such other functions vested in the Public Accounts Committee and the Estimates Committee in relation to the Public Undertakings as are not covered by clauses (a), (b) and (c) above and as may be allotted to the Committee by the Speaker from time-to-time.

Practice Questions

- 1.** Which one of the following statements is correct?
- Only the Rajya Sabha and not the Lok Sabha can have nominated members
 - There is a constitutional provision for nominating two members belonging to the Anglo-Indian community to the Rajya Sabha.
 - There is no constitutional bar for a nominated member to be appointed as a union minister.
 - A nominated member can vote both in the presidential and vice-presidential elections.
- 2.** The power to enlarge the jurisdiction of the Supreme Court of India with respect to any matter included in the Union List of legislative powers rests with the:
- President of India
 - Chief Justice of India
 - Parliament
 - Union Ministry of Law, Justice and Company Affairs
- 3.** Consider the following:
- The joint sitting of the two Houses of the Parliament in India is sanctioned under Article 108 of the constitution.
 - The first joint sitting of Lok Sabha and Rajya Sabha was held in the year 1961.
 - The second joint sitting of the two Houses of Indian Parliament was held to pass the Banking Service Commission (Repeal) Bill.
- Correct statement
- 1 and 2
 - 2 and 3
 - 1 and 3
 - 1, 2, 3
- 4.** Which of the following constitutional amendments are related to raising the number of members of Lok Sabha to be elected from the States?
- 6th and 22nd
 - 13th and 38th
 - 7th and 31st
 - 11th and 42nd
- 5.** The resolution for removing the Vice President of India can be moved in the:
- Lok Sabha alone
 - Either House of Parliament
- Joint sitting of Parliament
 - Rajya Sabha alone
- 6.** With reference to the Constitution of India, which one of the following pairs is NOT correctly matched?
- | LIST I | LIST II |
|------------------------------|-----------------|
| (a) Forests | Concurrent List |
| (b) Stock Exchanges | Concurrent List |
| (c) Post Office Savings Bank | Union List |
| (d) Public Health | State List |
- 7.** Which one of the following statements correctly describes the 4th Schedule of the Constitution of India?
- It contains the scheme of the distribution of powers between the union and the States.
 - It contains the languages listed in the constitution.
 - It contains the provisions regarding the administration of tribal areas.
 - It allocates seats in the Council of States.
- 8.** With reference to Indian Parliament, which one of the following is NOT correct?
- The Appropriation Bill must be passed by both the Houses of Parliament before it can be enacted into law.
 - No money shall be withdrawn from the Consolidated Fund of India except under the appropriation made by the Appropriation Act.
 - Finance Bill is required for proposing new taxes but no another bill/act is required for making changes in the rates of taxes which are already under operation.
 - No Money Bill can be introduced except on the recommendation of the President.
- 9.** Which one of the following subjects is under the Union List in the 7th Schedule of the Constitution of India?
- Regulation of labour and safety in mines and oilfields
 - Agriculture
 - Fisheries
 - Public health

- 10.** Which one of the following is the largest committee of the Parliament?
- The Committee on Public Accounts
 - The Committee on Estimates
 - The Committee on Public Undertakings
 - The Committee on Petitions
- 11.** Consider the following statements:
- A Money Bill passed annually providing for the withdrawal or appropriation from and out of the Consolidated Fund of India, of moneys, voted by Lok Sabha is known as Finance Bill.
 - Appropriation Bill can be moved and passed only once in a financial year.
- Correct statement
- 1 only
 - 2 only
 - Both 1 and 2
 - Neither 1 nor 2
- 12.** The power to increase the number of judges in the Supreme Court of India is vested in:
- The President of India
 - The Parliament
 - The Chief Justice of India
 - The Law Commission
- 13.** Consider the following statements regarding a no-confidence motion in India:
- There is no mention of a no-confidence motion in the Constitution of India.
 - A motion of no-confidence can be introduced in the Lok Sabha only.
- Which of the statements given above is/are correct?
- 1 only
 - 2 only
 - Both 1 and 2
 - Neither 1 nor 2
- 14.** The Parliament can make any law for whole or any part of India for implementing international treaties:
- With the consent of all the States
 - With the consent of the majority of States
 - With the consent of the States concerned
 - Without the consent of any State
- 15.** What will follow if a Money Bill is substantially amended by the Rajya Sabha?
- The Lok Sabha may still proceed with the bill, accepting or not accepting the recommendations of the Rajya Sabha.
- (b) The Lok Sabha cannot consider the bill further.
- The Lok Sabha may send the bill to the Rajya Sabha for reconsideration.
 - The President may call a joint sitting for passing the Bill X.
- 16.** Lame-duck session of Parliament means
- The last session of Parliament before the elections of Lok Sabha
 - The last session of Parliament before the dissolution of Lok Sabha
 - The session of Parliament in which the no-confidence motion is discussed
 - A session of Parliament which fail to pass any bill
- 17.** A deadlock between the Lok Sabha and the Rajya Sabha calls for a joint sitting of the Parliament during the passage of:
- Ordinary legislation
 - Money Bill
 - Constitution Amendment Bill
- Correct answer
- 1 only
 - 2 and 3 only
 - 1 and 3 only
 - 1, 2 and 3
- 18.** According to the Constitution of India, it is the duty of the President of India to cause to be laid before the Parliament which of the following?
- The Recommendations of the Union Finance Commission
 - The Report of the Public Accounts Committee
 - The Report of the Comptroller and Auditor General
 - The Report of the National Commission for Scheduled Castes
- Correct answer
- 1 only
 - 2 and 4 only
 - 1, 3 and 4 only
 - 1, 2, 3 and 4
- 19.** With reference to the Delimitation Commission, consider the following statements:
- The orders of the Delimitation Commission cannot be challenged in a court of law.
 - When the orders of the Delimitation Commission are laid before the Lok Sabha or State
 - Legislative Assembly, they cannot affect any modifications in the orders.

Correct statement

20. Which of the following special powers have been conferred on the Rajya Sabha by the Constitution of India?

- (a) To change the existing territory of a State and to change the name of a State.
 - (b) To pass a resolution empowering the Parliament to make laws in the State List and to create one or more All India Services.
 - (c) To amend the election procedure of the President and to determine the pension of the President after his/her retirement.
 - (d) To determine the functions of the Election Commission and to determine the number of Election Commissioners.

21. Regarding the office of the Lok Sabha Speaker, consider the following statements:

1. He/She holds the office during the pleasure of the President.
 2. He/She need not be a member of the House at the time of his/her election but has to become a member of the House within six months from the date of his/her election.
 3. If he/she intends to resign, the letter of his/her resignation has to be addressed to the Deputy Speaker.

Correct statement

- (a) 1 and 2 only (c) 1, 2 and 3
(b) 3 only (d) None of these

22. When the annual Union Budget is not passed by the Lok Sabha,

- (a) The budget is modified and presented again.
 - (b) The budget is referred to the Rajya Sabha for suggestions.
 - (c) The Union Finance Minister is asked to resign.
 - (d) The Prime Minister submits the resignation of Council of Minister.

23. Which one of the following is responsible for the preparation and presentation of Union Budget to the Parliament?

- (a) Department of Revenue
 - (b) Department of Economic Affairs

- (c) Department of Financial Services
 - (d) Department of Expenditure

24. All revenues received by the union government by way of taxes and other receipts for the conduct of government business are credited to the:

- (a) Contingency Fund of India
 - (b) Public account
 - (c) Consolidated Fund of India
 - (d) Deposits and advances Fund

25. Which among the following statements is NOT correct?

- (a) To resolve a deadlock between the two Houses, in case of an ordinary legislation, the constitution provides for the joint sitting of both Houses.
 - (b) In the case of a Money Bill, there is no provision in the constitution for a joint sitting of both Houses as Lok Sabha clearly enjoys pre-eminence over Rajya Sabha in financial matters.
 - (c) As regards a Constitution Amendment Bill, there is no provision for resolving a deadlock between the two Houses with regard to a Constitution Amendment Bill.
 - (d) All the statements are correct.

26. Which of the following powers does the Rajya Sabha NOT possess?

- It passes a vote of no-confidence in the Council of Ministers
 - To discuss the budget
 - To make recommendations on a Money Bill
 - To recommend that the Parliament should legislate in respect of matters in the State List
 - 1 only
 - 1 and 2

27. In which among the following circumstances Speaker of Lok Sabha/Chairman of Rajya Sabha can vote in the first instance itself?

- (a) Voting of Constitutional Amendment Bills
(b) Voting of demands for grants
(c) Voting of Money Bills
(d) Voting of resolution to remove them

28. Consider the following:

1. A member of either House of Parliament vacates the seat in the House when

resigns his seat by writing under his hand addressed to the Chairman or the Speaker.

2. A member of either House of Parliament vacates the seat in the House when resigns his seat by writing under his hand addressed to the Chairman or the Speaker and his resignation is accepted by the Chairman or the Speaker.

Correct statement

- | | |
|------------|---------------------|
| (a) 1 only | (c) Both 1 and 2 |
| (b) 2 only | (d) Neither 1 nor 2 |

29. A deadlock between the Lok Sabha and Rajya Sabha arises in case of:

1. A bill passed by one House is rejected by the other House.
2. The Houses finally disagreed as to the amendments to be made in the bill.
3. More than six months lapse from the date of the reception of the bill by the other House without the bill being passed by it.

4. When there arises a question as to whether a bill is a Money Bill or not.

- | | |
|------------------|---------------|
| (a) 1, 2, 3 only | (c) 1, 3 only |
| (b) 4 only | (d) 2 only |

30. Consider the following:

1. In the Lok Sabha, the Speaker and the Deputy Speaker are elected by a simple majority of members present and voting in the House

2. A member belonging to the opposition party is always elected as the Speaker and a member belonging to the ruling party is always elected as the Deputy Speaker.

- | | |
|------------|---------------------|
| (a) 1 only | (c) Both 1 and 2 |
| (b) 2 only | (d) Neither 1 nor 2 |

Answer Key

-
- | | | | | | | | | | |
|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|
| 1. (c), | 2. (c), | 3. (d), | 4. (c), | 5. (d), | 6. (b), | 7. (d), | 8. (c), | 9. (a), | 10. (d), |
| 11. (d), | 12. (b), | 13. (c), | 14. (d), | 15. (a), | 16. (b), | 17. (a), | 18. (c), | 19. (c), | 20. (b), |
| 21. (b), | 22. (d), | 23. (b), | 24. (c), | 25. (d), | 26. (a), | 27. (d), | 28. (b), | 29. (a), | 30. (a) |

Hints and Explanations

1. (C)

Nominated members:

- Lok Sabha: 2 from Anglo-Indian community (Article 331)
- Rajya Sabha: 12 from Literature, Arts, Science and Social service (Article 80)
- Nominated members can be appointed as ministers.
- Nominated members can vote in the election of Vice President but not in the election of President

Refer Page 14.2 and 14.5

2. (c)

- Refer Article 138:

Parliament has the power to enlarge the jurisdiction of Supreme Court.

3. (d)

- The first joint sitting was held in 1961 for the passage of Dowry Prohibition Bill.
- The second joint sitting of the two Houses was held to pass the Banking Service Commission (Repeal) Bill in 1978
- The third joint sitting of the two Houses was held to pass Prevention of Terrorism Act in 2002

Refer Page 14.24

4. (c)

- 7th Amendment Act, 1956 revised the allocation of seats to the Council of States under the Fourth Schedule.
- 31st Amendment Act, 1973 increased the upper limit for representation of the States from 500 to 525.

5. (d)

Article 67(b): Vice-President can be removed from his office by a resolution of the Council of States passed by a majority of all the then members of the Council and agreed to by the House of the People

Refer Chapter 11

6. (b)

Union List

- Item 48: Stock exchanges and futures market
- Item 39: Post Office Savings Bank

State List

- Item 6: Public health and sanitation; hospitals and dispensaries

Concurrent List

- Item 17A: Forests – inserted by 42nd Amendment Act, 1976

Refer Seventh Schedule

7. (d)

- Fourth Schedule: allocates seats in the Council of States
- Sixth Schedule: administration of tribal areas
- Seventh Schedule: distribution of powers between the Union and States
- Eighth Schedule: Languages

Refer Page 14.1

8. (a)

Refer Page 14.7 and Chapter 12

9. (a)

- Item 55 in Union List: Regulation of labour & safety in mines & oilfields
- Agriculture, Fisheries and Public health fall under the State List.

10. (b)

- Committee of Estimates has 30 members drawn from Lok Sabha only.
- Committee of Public Accounts and Committee of Public Undertakings have 22 members each with 15 from Lok Sabha and 7 from Rajya Sabha.
- Committee on Petitions is available for each House separately with 15 members in Lok Sabha and 10 members in Rajya Sabha.

Refer Page 14.27 and 14.28

11. (d)

- Annual Financial Statement is a Money Bill passed annually providing for the withdrawal or appropriation from and out of the Consolidated Fund of India, of moneys, voted by Lok Sabha.
- Appropriation Bill can be moved any number of times.
- It is moved whenever moneys have to be appropriated from the Consolidated Fund of India.

12. (b)

- Article 124(1) declares the power of Parliament to prescribe the number of judges in the Supreme Court.

Refer Page 17.1 and 17.2

13. (c)

- A motion of No-Confidence is mentioned in Rule 136 of the Rules of Procedure of Lok Sabha
- It can be moved only in Lok Sabha as the Council of Ministers are collectively responsible only to the House of People.

Refer Page 14.21

14. (d)

- Article 253: Union Legislation for giving effect to international agreements does not require consent of States

Refer Page 14.12

15. (a)

- Rajya Sabha, on receipt of Money Bill from the Lower House has 14 days to pass the Bill.
- Before the expiry of 14 days Rajya Sabha has to return the bill to Lok Sabha with its views or recommendations.
- It is the discretion of the Lok Sabha to either accept or to reject the recommendations.

Refer Page 14.25

16. (b)

Refer Page 14.10

17. (a)

- Joint sitting to resolve a deadlock is not available for:
- Money Bill: Rajya Sabha has no financial powers

- Constitution Amendment Bill: Constitutional obligation to pass the Bill separately by both Houses.

Refer Page 14.23 and 14.26

18. (c)

- Reports of Constitutional bodies like Finance Commission (Art. 280), Comptroller and Auditor General (Art. 151) and National Commission for Scheduled Castes (Art. 338) are caused to be laid before the Parliament by the President.
- Reports of Public Accounts Committee is presented to the Parliament directly because PAC is a parliamentary Committee.

Refer Page 14.22 and 14.23

19. (c)

- Article 329 bars the interference of courts in electoral matters.
- This includes the readjustment of seats and territorial constituencies done by the Delimitation Commission.
- The Commission was established by the Delimitation Act, 1972.

Refer Page 14.7

20. (b)

Special powers of Rajya Sabha:

- Article 249: Rajya Sabha resolution with majority of not less than two-thirds of the members present and voting to empower Parliament to legislate on any matter in State List.
- Article 312: Creation of All India Services by resolution of Rajya Sabha with majority of not less than two-thirds of the members present and voting

Refer Page 14.4 and Table 14.3 in Page 14.11

21. (b)

- Speaker is a Member of Parliament and hence, has a term of 5 years.
- He/She is eligible to be elected as Speaker only when he/she a member of the House of People. (article 93)

Refer Page 14.16

22. (d)

- The non-passage of annual Union Budget by Lok Sabha amounts to loss of confi-



dence on Government by the House of People.

- This leads to resignation of Council of Ministers headed by PM.

23. (b)

- Department of Economic Affairs prepares and presents the Union Budget to the Parliament.

24. (c)

Article 266 provides for the Consolidated Fund of India which includes:

- net proceeds of certain taxes and duties to States
- revenues received by the Government of India
- loans raised by that Government by the issue of treasury bills, loans or ways and means advances
- moneys received in repayment of loans Public Account (Art. 266)

- All other public moneys received by or on behalf of the Government of India or the Government of a State

Contingency Fund of India (Art. 267)

- Fund for the purposes of meeting unforeseen expenditure at the disposal of President.

25. (d)

Refer Page 14.26

26. (a)

- A vote of no-confidence can be moved only in Lok Sabha.
- Though Rajya Sabha cannot vote on the budget, it can discuss it.

- Rajya Sabha can make recommendations on Money Bill within 14 days of Bill being transmitted to it.

- The House has no power to vote upon it.
- By Art. 249, Rajya Sabha resolution empowers Parliament to legislate on any matter in State List in the national interest.

Refer Page 14.4 and 14.21

27. (d)

By Art. 92, Speaker of Lok Sabha votes at the first instance during the voting of resolution of his/her removal.

Refer Page 14.16

28. (b)

- By Art. 101(2)(b) provides that a member of either House of Parliament vacates the seat in the House when resigns his seat by writing under his hand addressed to the Chairman or the Speaker and his resignation is accepted by the Chairman or the Speaker

Refer Page 14.9

29. (a)

- In case of Money Bill, there is no deadlock as the Rajya Sabha has no financial powers.

Refer Page 14.23

30. (a)

- Speaker and Deputy Speaker are elected from amongst the members of Lok Sabha.

Refer Page 14.16

CHAPTER 15

State Legislature

Learning Objectives

After reading this chapter, you will be able to:

- Know the origin, composition and powers of the state legislature
- Learn about the qualification and disqualification of members, and utility of the Houses
- Understand the legislative procedures, passage of bills, etc.
- State comparison between Parliament and state legislatures

INTRODUCTION

Articles 168 to 213 in chapter 3 of Part VI of the constitution deal with state legislature. The constitution provides for parliamentary form of government in both union and states. Hence, it provides for a bicameral legislature in the states also. However, in the states, the Legislative Council can be created or abolished according to the will of the Legislative Assembly. Unlike the Rajya Sabha, the Legislative Council is not a standing house.

Article 168, provides that the state legislature shall comprises the Governor, Legislative Council and Legislative Assembly. The Governor is not a member of state legislature but he is constituent part of the state legislature. However, only in the states of Andhra Pradesh, Bihar, Madhya Pradesh, Maharashtra, Karnataka, Telangana and Uttar Pradesh there are state Legislative Council.⁽¹⁾ In rest other, states there is only one House.

CREATION OR ABOLITION OF LEGISLATIVE COUNCIL

Article 169 provides for the creation or abolition of Legislative Council of the state. The Legislative Council is created or abolished by a law of the Parliament. The law to create or abolish the Council is an ordinary legislation.

The Parliament shall create or abolish the Council if the state Legislative Assembly passes a resolution, requesting the Parliament, by a majority of the total membership of the house and by a majority of not less than two-thirds of the members present and voting.

Once created or abolished article the name of the state needs to be either inserted or deleted from Article 168. Any such change to Article 168 is not to be deemed as an amendment to the constitution and the procedure for amendment given in Article 368 need not be followed.

1 Here Jammu and Kashmir is not included because according to the special status accede to the state under Article 370, the provision of Article 168 does not apply to the state.

Composition of State Legislative Council

Article 171 provides for the composition of the Legislative Council. The total strength of the Legislative Council must not exceed one-third of the total strength of the Legislative Assembly. However, in any case the 'total number of members in the Legislative Council of a state shall in no case be less than forty'. Article 171 (3) provides for the composition of the Legislative Council as:

- (a) One-third of the member of the Council shall be elected by members of municipalities, district boards and such other local authorities in the state.
- (b) One-twelfth shall be elected by persons who have been for at least three years graduates of any university in the territory of India or have been for at least three years in possession of qualifications prescribed by or under any law made by Parliament as equivalent to that of a graduate of any such university, residing in the state
- (c) One-twelfth shall be elected by persons who have been engaged in teaching in such educational institutions within the state, not lower in standard than that of a secondary school, for at least three years
- (d) One-third shall be elected by the members of the Legislative Assembly of the state from amongst persons who are not members of the Assembly.
- (e) The remainder one-sixth shall be nominated by the Governor from persons having special knowledge or practical experience in literature, science, art, cooperative movement and social service.

The members of the Legislative Council to be elected by the members of the local bodies, graduates and teachers shall be chosen in such territorial constituencies. The members of the Legislative Council to be elected by the members of the Legislative Assembly are elected in the election held in accordance with the system of proportional representation by means of the single transferable vote. However, Article 171 (2) empowers the Parliament to determine the composition of the state Legislative Councils.

Origin of State Legislature

Regulating Act, 1773: Legislative power of the presidencies recognized.

Charter Act, 1833: Deprived provinces of independent legislative power.

Charter Act of 1853: Law member of Governor-in-Council made a full member and paved way for establishing first legislative body.

Indian Councils Act, 1861: Restored legislative power of provincial legislatures taken away by the Charter of 1833 were and made them mere advisory bodies.

Indian Councils Act, 1909: Made the legislatures an elected body but by indirect election.

Government of India Act, 1919: Introduced dyarchy in provinces and provincial legislatures made law-making body.

Legislative Council Versus Rajya Sabha

Unlike Rajya Sabha there is minimum and maximum ceiling in respect of the membership of the Legislative Council. The strength of Rajya Sabha is not based on the strength of the Lok Sabha whereas the Legislative Council strength cannot be more than one-third of the strength of Legislative Assembly.

While Rajya Sabha cannot be abolished the Legislative Council can be abolished by a law of Parliament if requested by the Legislative Assembly. The existence of the Council is dependent on the will of the Legislative Assembly whereas Rajya Sabha exists independent of the Lok Sabha. Rajya Sabha is a federal House and Legislative Council does not play any such role.

While Rajya Sabha enjoys equal powers with Lok Sabha in certain respects the Legislative Council is completely subordinated to the Legislative Assembly. Hence, Rajya Sabha is the second House and the Legislative Council is a secondary House to Legislative Assembly.



Utility of the Legislative Council

- (a) The Legislative Council acts an active link between the local bodies and the state legislature.
- (b) It acts as a revising house of the policy proposals and legislations originating in the Legislative Assembly.
- (c) The Council provides opportunity for the graduates to participate in the legislative process.
- (d) The membership of teachers in the Legislative Council enables the political socialization process.
- (e) The review of the policy proposals and legislations originating in the Legislative Assembly by the Council which is a body of senior statesmen, graduates, teachers and local body representatives adds value to them. Further the review by the House helps to get rid of person-centric politics.
- (f) The provision for nomination of members by Governor helps the Chief Ministers to include persons of eminence in his Council and their knowledge and experience is available to the state.

Political Socialization

It refers to the learning process inculcating political values, development of political beliefs and attitudes which enables people to effectively participate in politics.

It is the process by which an individual becomes acquainted with the political system and which determines his reactions to political phenomena.

It involves formal and informal learning and could be both deliberate and unplanned.

It imparts knowledge for effective political participation and incentivizes the participation.

A politically socialized individual comes forward to assume different roles.

According to Fred Greenstein, it includes not only explicitly political learning but also nominally non-political learning that affects political behaviour.

Duration of the Legislative Council

According to Article 172 (2), the Legislative Council is not subject to dissolution. The members have term of six years and one-third of the members retire on the expiry of every second year.

Qualification of Members

To be a member of state Legislative Council a person must be:

- (a) A citizen of India
- (b) Completed 30 years of age
- (c) Qualified under a law of Parliament

COMPOSITION OF LEGISLATIVE ASSEMBLY

According to Article 170, the state Legislative Assembly shall consist of not more than five hundred, and not less than sixty, members. The members of the Assembly are to be chosen by direct election from territorial constituencies in the state.

Duration of Legislative Assembly

The Legislative Assembly has a term of five years from the date appointed for the first meeting. However, the term of the Assembly can be extended by six months during a proclamation of emergency. The power to extend the term of the Assembly is vested in the Parliament. The Parliament by enacting a law extends the term.

The Legislative Assembly may be dissolved by the Governor before the expiry of the five-year term if:

- The Council of Ministers with majority support of the Assembly advises him to do so or;
- A proclamation of constitutional emergency is made under Article 356 or;
- The incumbent Council of Ministers resign and there does not exist an opportunity to form a new government or;
- After the election no party secured majority required to form the government.

Undischarged Insolvent

According to section 2(8) of the sale of goods act, 'an insolvent is defined as a person who had ceased to pay his debts in the ordinary course of business, or cannot pay his debts as they become due'.

According to section 41 of the provincial insolvency act of 1920, a person who has been adjudged as an 'insolvent', may apply to the court for an order of discharge and upon the court order would be declared as an 'undischarged insolvent'.

Qualification of Members

To be a member of state Legislative Assembly a person must be:

- (a) A citizen of India
- (b) Completed 25 years of age
- (c) Qualified under a law of Parliament

Disqualification of Member: Article 191

Disqualification of membership of state legislature is given by Articles 191 (1) and 191 (2). According to Article 191 (1), a person is disqualified for being chosen as and for being a member of state legislature if he:

1. Is of unsound mind or;
2. Holds any office of profit under any government—Union or State or;
3. Is an undischarged insolvent or;
4. Is not a citizen of India or voluntarily renounced the Indian citizenship or;
5. Disqualified under any law made by the Parliament.

If any question arises as to whether a member is subjected to disqualification on the above grounds, then the Governor has the power to decide. The Governor must obtain the opinion of the Election Commission before he makes the decision.

Article 191 (2) provides for the disqualification on ground of defection. In case of disqualification on ground of defection the Speaker or Chairman has the power to decide and the decision is final. For detail of defection refer the chapter on union legislature.

Vacation of Seats: Article 191

A seat in the state legislature falls vacant in case:

1. A person is chosen as a member of both the Houses, then the seat in one House falls vacant.
2. If a person is chosen a member of the legislatures of two or more such states, then, that person's seat in the legislatures of all such states shall become vacant, unless he has previously resigned his seat in the legislatures of all but one of the states.

TABLE 15.1 State Legislature During British Rule

British Imperial Territory	Legislative Council	Time Period
Madras Presidency	Madras Legislative Council	1861–1986
Bengal Presidency	Bengal Legislative Council	1862–1947
Eastern Bengal and Assam	Eastern Bengal and Assam Legislative Council	1906–1912
Bombay Presidency	Bombay Legislative Council	1862–1960
Punjab	Punjab Legislative Council	1919–1970
Assam	Assam Legislative Council	1912–1947
Bihar and Orissa	Bihar and Orissa Legislative Council (Bihar Legislative Council from 1936 till present)	1911–1936
Coorg	Coorg Legislative Council	1924–1950
North-West Frontier	North-West Frontier Legislative Council	1866–1947
United Provinces	United Provinces Legislative Council	1937–Till Date
Central Provinces	Central Provinces Legislative Council	1913–1947

3. If a person is disqualified under the provisions of Article 191 (1).
4. If a person is disqualified under the provisions of Schedule 10.
5. If a member resigns his seat in the legislature. A member can resign by writing under his hand addressed to the Speaker or the Chairman.
6. If a member absents from the meetings of the House continuously for sixty days, then the seat in the House will fall vacant.

Know the Facts

- Madras Legislative Council was the first Legislative Council to be set-up in 1861.
- Bengal Legislative Council set-up in 1862 was the second Legislative Council to be set-up in 1861.

LEGISLATIVE PROCEDURES

The legislative procedures in the state legislatures are similar to that in the Parliament. All the procedures in the Parliament relating to the motions, resolutions and bills are same as in the Parliament.

Passage of Bills

The procedure for the passage of the ordinary bills and money bills in the state legislatures are similar to the procedure in the Parliament.

Passage of Ordinary Bills

The ordinary bill can be introduced in either House of the legislature. An ordinary bill undergoes three readings in the Houses and become law once assented to by the Governor.

Ordinary Bills Originating in Legislative Assembly

Sikkim to have 40 Member Legislative Assembly

- The number of seats in the Sikkim legislative assembly is to be increased from the existing 32 to 40 members.
- This is to accommodate the demands of the Limboo and Tamang tribes of Sikkim who were notified as scheduled tribes in 2003.
- Although the Delimitation Act 2002, postponed the readjustment of seats in Parliament and the State Legislatures until 2026, the Act does not apply to Sikkim.
- Article 371F provides the exemption from the application of Delimitation Act to Sikkim.

A bill originating in the Legislative Assembly undergoes three readings and then it is passed. After the Assembly passes the bill, it is transmitted to the Legislative Council. In the Council, the bill undergoes the same three readings. The Council does not have the powers to reject a bill originating in the Legislative Assembly.

However, the Council can retain the bill for a maximum period of three months from the date of receipt. In case the Council had any recommendations for amendment or any disagreement, then the Council has to return the bill within the said three months. On the receipt of the bill the Assembly has to reconsider the bill with the recommendations of the Council. However, the Assembly has the discretion to either accept or reject the recommendations of the Council.

After passing the bill for the second time, the bill will be transmitted to the Council again. In the second instance the Council can retain the bill for a period of one month. Within the said one month the Council has to pass the bill or return the bill with its recommendations. In that case the Assembly has to reconsider and pass the bill. At this stage, the bill will not be transmitted to the Council but is presented to the Governor for his assent. The bill is deemed to have been passed by both Houses in the form in which it is passed by the Assembly.

When the bill presented to the Governor, he can either give his assent or veto the bill or reserve the bill for the consideration of the President. The President can give his assent or veto the bill or can direct the Governor to return the bill for reconsideration if it is not a money bill.

Bills Originating in the Legislative Council

A bill originating in the Legislative Council undergoes three readings in the Council and once passed is transmitted to the Legislative Assembly. If the bill is passed by the Legislative Assembly, the bill is presented to the Governor for his assent.

The Legislative Assembly has absolute power to reject the bill. In case the assembly rejects the bill, the bill is dead and buried. If the Assembly returns the bill with its recommendations for amendment to the Legislative Council, then the recommendations are binding on the Council and the Council has to incorporate the recommendations and pass the bill again. Once passed again the bill is transmitted to the Assembly. In the second instance also, the Assembly has the power to reject the bill.

Thus, the Assembly enjoys absolute power in respect of the ordinary bills over the Legislative Council. But the Council is only a secondary House to the Assembly.

Deadlock between the Houses

In the state legislature because of the superior position of the Legislative Assembly, there is no possibility of deadlock between the two Houses. Hence, there is no provision for joint sitting in the states.

Further, the Legislative Councils owe their existence to the Legislative Assembly and hence not all the states have two Houses. Hence there is no provision for joint sitting of the two Houses to resolve the deadlock.

Comparison between Parliament and State Legislatures with Regard to Ordinary Bills

Parliament	State Legislature
1. An ordinary bill may be introduced in either House (Lok Sabha or Rajya Sabha).	1. An ordinary bill may be introduced in either house (Legislative Assembly or Legislative Council).
2. A bill is passed by the Parliament when both the Houses agree to the bill with or without amendments.	2. A bill is passed by the state legislature when both Houses agree to the bill with or without amendments.
3. Final disagreement is said to take place where a House after receiving a bill passed by another house: <ul style="list-style-type: none"> • Rejects the bill, or; Proposes amendments which the other House does not accept, or; • Does not pass the bill within six months. 	3. Final disagreement is said to take place where a House after receiving a bill passed by the other House: <ul style="list-style-type: none"> • Rejects the bill, or; • Proposes amendments which the other House does not accept, or; • Does not pass the bill within three months.
4. In the situation described as final disagreement above, a deadlock arises. The situation is resolved by calling a joint sitting of the Lok Sabha and Rajya Sabha.	4. In the situation described above, there is no provision for joint sitting in case of state legislature.
5. The Lok Sabha cannot override the Rajya Sabha by passing a bill a second time. The only way to resolve the deadlock is a joint sitting.	5. If the Assembly passes the bill for the second time and transmits it to the Council, the Council may withhold it for the period of one month in this second journey. Even if the Council rejects the bill or proposes amendments which are not acceptable to the Assembly, the bill is deemed to have been passed by the state legislature.
6. The procedure for resolving deadlock applies to ordinary bills whether originating in the Lok Sabha or in the Rajya Sabha.	6. The above procedure of passing a bill twice applies only in the case of a bill originating in the Legislative Assembly. If a bill which has originated in the Council and was transmitted to the Assembly is rejected by the Assembly, such rejection brings the bill to a final end. The bill becomes dead.

Passage of Money Bills

The procedure for the passage of money bills is similar to that in the union Parliament. The money bill cannot be introduced in the Legislative Council. It can be introduced only in the Legislative Assembly. It

can be introduced only with the previous recommendation of the Governor. The Speaker of the Assembly has the powers to certify a money bill and his decision is final.

The money bill after being passed by the Assembly is transmitted to the Legislative Council which can retain the bill for a period of 14 days. Within the said 14 days, the Council has to return the bill with or without its recommendations. It is the discretion of the Assembly to either accept or reject the recommendations. Once passed by the Assembly, the bill is presented to the Governor for his assent.

On receiving the money bill the Governor may declare that he gives his assent to the bill or he may reject the bill or reserve the bill for the consideration of the President. But the Governor cannot return the money bill for the reconsideration of the House.

Constitution Amendment Bills

The state legislatures do not have the power to initiate any amendment to the constitution. Amendment power is centralized with the Parliament. Only in respect of certain amendments according to Article 368 (2), the state legislatures have the limited power of ratifying the amendments.

Bills to be Reserved for the Consideration of the President

According to Article 200, if a bill once becoming a law would derogate the power of the High Court and endanger the position of the High Court then the Governor has to reserve the bill for the consideration of the President.

Practice Questions

- 1.** Consider the following: The Constitution of India provides that:
1. The Legislative Assembly of each state shall consist of not more than 450 members chosen by direct election from territorial constituencies in the state.
 2. A person shall not be qualified to be chosen to fill a seat in the Legislative Assembly of a state if he/she is less than 25 years of age.
- Correct statement
- | | |
|------------|---------------------|
| (a) 1 only | (c) Both 1 and 2 |
| (b) 2 only | (d) Neither 1 nor 2 |
- 2.** A joint sitting of both houses of the state legislature is summoned when, after a bill has been passed by one House and transmitted to the other House:
- (a) The bill is rejected by the other House.
 - (b) The Houses have finally disagreed as to the amendments to be made in the bill.
 - (c) More than 6 months elapse from the date of the reception of the bill by the other House without the bill being passed by it.
 - (d) None of the above
- 3.** Consider the following regarding:
- The conditions prescribed by the constitution regarding the appointment of the Council of Ministers, to the Chief Minister includes:
1. The total number of ministers in the Council of Ministers in a state, including the Chief Minister, shall not exceed fifteen per cent of the total number of members of the Legislative Assembly of that state.
 2. A person who is disqualified under the Tenth Schedule shall also be disqualified to be appointed as a minister.
 3. A minister in-charge of tribal welfare has to be appointed in each state.
 4. The total number of ministers in the Council of Ministers in a state, excluding the Chief Minister, shall not exceed fifteen per cent of the total number of members of the Legislative Assembly of that state.
- | | |
|------------------|------------------|
| (a) 1 and 2 only | (c) 3 and 4 only |
| (b) 3 only | (d) 2 only |
- 4.** Consider the following statements:
1. The Council of Ministers of a state in India is collectively as well as individually responsible to the Legislative Assembly of the state.
 2. The Governor of a state has the power to appoint the members of the State Public Service Commission as well as the state high court judges.
- Correct statement
- | | |
|------------|---------------------|
| (a) 1 only | (c) Both 1 and 2 |
| (b) 2 only | (d) Neither 1 nor 2 |
- 5.** Consider the following statement: The Legislative Council of a state upon receiving a bill passed by the state Legislative Assembly can:
1. Only suggest amendments and return the bill to the Assembly.
 2. Reject or return the bill to the Assembly with recommendations for amendments only once.
- Correct statement
- | | |
|------------|---------------------|
| (a) 1 only | (c) Both 1 and 2 |
| (b) 2 only | (d) Neither 1 nor 2 |
- 6.** Regarding the state legislatures, which of the following is an incorrect statement?
- (a) The Legislative Assembly of the states have fixed number of seats.
 - (b) There is an upper limit for the number of members of Legislative Assembly, but no minimum is fixed.
 - (c) The size of the Legislative Councils of states cannot be more than one-third of the total number of members in the Legislative Assembly.
 - (d) There is a minimum number of members of Legislative Assembly fixed, but no upper limit is fixed.
- 7.** Consider the following statements:
1. All states in India have Legislative Assembly but only seven states have Legislative Councils.
 2. None of the union territories have Legislative Councils but only two UTs have Legislative Assembly.

Correct statement

- | | |
|------------|---------------------|
| (a) 1 only | (c) Both 1 and 2 |
| (b) 2 only | (d) Neither 1 nor 2 |

8. Which one of the following correctly reflects the position of the Upper House of the State Legislature as compared to the position of the Upper House of the Parliament?

- (a) 1/3rd members of the Rajya Sabha retire every 2nd year, 1/4th members of the Legislative Council retire every 18 months
- (b) There is no provision for a joint sitting of the Legislative Assembly & the Legislative council in the States for resolving deadlocks while there is such a provision in the case of the two Houses of Parliament
- (c) No bill other than a Money Bill can originate in the State Legislative Council, no Bill can originate in the Rajya Sabha
- (d) Rajya Sabha has twelve nominated members, the State Legislative Council has none

9. No money bills can be introduced in the Legislative Assembly without the recommendations of the

- (a) Speaker
- (b) Governor
- (c) Chief Minister
- (d) Finance Minister

10. Consider the following:

1. Indian Councils Act, 1861, was the first law to introduce modern representative institutions like Legislative Councils in India.
2. The Legislative Assemblies were formed in all states after the 1861 Act.
3. The Legislative Councils were not comprised of members directly elected by people

Correct statement

- | | |
|------------------|------------------|
| (a) 1 only | (c) 2 only |
| (b) 1 and 3 only | (d) 1 and 2 only |

11. Consider the following statements:

1. Bills for creation or abolition of Legislative Councils in the states are not deemed as Constitution Amendment Bills.
2. A Constitution Amendment Bill is not treated as a money bill even if all its provisions attract Article 110 (1).

Correct statement

- | | |
|------------|---------------------|
| (a) 1 only | (c) Both 1 and 2 |
| (b) 2 only | (d) Neither 1 nor 2 |

12. Match: List I (Articles of the Constitution)

- A. Article 54
- B. Article 75
- C. Article 155
- D. Article 164

List II (Content)

1. Election of President of India
2. Appointment of the Prime Minister and Council of Ministers
3. Appointment of the Governor of the state
4. Appointment of the Chief Minister and Council of Ministers of a state
5. Composition of Legislative Assemblies

A	B	C	D
(a) 1	2	3	4
(b) 1	2	4	5
(c) 2	1	3	5
(d) 2	1	4	3

13. The electoral college to elect the President of India consists of:

- (a) Elected members of the Council of State and House of the People.
- (b) Elected members of both the Houses of Parliament and the state Assemblies.
- (c) Members of the Council of State, state Legislative Councils and members of union territorial assemblies.
- (d) Members of Municipalities, Local Bodies and *Panchayat*, graduate of three years standing, teachers of higher educational institutions and members of state assemblies.

14. The limitations of the authority of the state legislature do NOT include:

- (a) A Parliament's authority to make laws on subjects in state list during an emergency.
- (b) Parliament's authority to make laws on State subjects if Rajya Sabha passes a resolution as required by the constitution.
- (c) The Governor's discretionary power to dissolve the legislature.
- (d) The Governor's power to reserve certain bills for the consideration of the President.



15. Which of the following is NOT correct?

- (a) A person who is a minister in the union government or state government, is not qualified to be returned to the Parliament.
- (b) A person who is declared to be of unsound mind by the competent court, cannot seek election to Parliament.
- (c) A person who is an undischarged insolvent, is disqualified from seeking election to either House of Parliament or state legislature.
- (d) A person who holds an office of profit under the Government of India or under state government is not entitled to seek election to any House of Parliament or state legislature.

16. Which of the following can be inferred from the Constitution of India?

- 1. There cannot be a deadlock between two Houses of a state legislature.
 - 2. The Legislative Council of a State is only a reviewing body.
 - 3. The Legislative Council of a State and the Council of States enjoy equal status under the constitution.
 - 4. Both Legislative Council of a State and the Council of States uphold federal principle.
- (a) 1 and 2 only
 - (b) 3 and 4 only
 - (c) 1, 2 and 4 only
 - (d) 2, 3 and 4 only

17. Which of the following can be abolished but not dissolved?

- (a) Rajya Sabha
- (b) Municipal bodies
- (c) State Legislative Council
- (d) None of the above

18. Consider the following:

- 1. The Legislative Council of any state may abolish by the resolution of the state

Legislative Assembly passed by majority of the House and by a majority of not less than two-thirds of the members present and voting.

- 2. The Legislative Council of any state may be created if the Legislative Assembly of the state passes a resolution to that effect by a majority of the total membership of the Assembly and by a majority of not less than two-thirds of the members of the Assembly present and voting.

Correct statement

- (a) 1 only
- (b) 2 only
- (c) Both 1 and 2
- (d) Neither 1 nor 2

19. Who among the following will act as the Speaker of a legislature assembly in case of vacancy of the office of Speaker and Deputy Speaker?

- (a) A member of the Assembly appointed by the Governor.
- (b) A member of the Assembly determined by the rules of procedures of the Assembly.
- (c) A member elected by the other members.
- (d) None of these

20. Consider the following:

- 1. A person shall be disqualified for being chosen as, and for being, a member of a *Panchayat* if he is so disqualified by or under any law for the time being in force for the purposes of elections to the legislature of the state.
- 2. There is no provision in the constitution prescribing the qualification for a person to be a member of a *Panchayat*.

Correct statement

- (a) 1 only
- (b) 2 only
- (c) Both 1 and 2
- (d) Neither 1 nor 2

Answer Key

- 1.** (b), **2.** (d), **3.** (a), **4.** (a), **5.** (a), **6.** (b), **7.** (c), **8.** (b), **9.** (b), **10.** (b),
- 11.** (c), **12.** (a), **13.** (b), **14.** (c), **15.** (a), **16.** (a), **17.** (c), **18.** (d), **19.** (a), **20.** (c)

Hints and Explanations

1. (b)

- According to Article 170, the state Legislative Assembly shall consist of not more than five hundred, and not less than sixty, members.

Refer Page 15.3

2. (d)

- In the state legislature because of the superior position of the Legislative Assembly, there is no possibility of deadlock between the two Houses.
- Hence, there is no provision for joint sitting in the states.

Refer Page 15.6

3. (a)

- Article 164 provides that in the States of Chhattisgarh, Jharkhand, Madhya Pradesh and Odisha, there shall be a Minister in charge of tribal welfare.
- After the Constitution (91st Amendment) Act 2003, the total number of Ministers in the Council of Ministers, including the Chief Minister, shall not exceed fifteen per cent of the total number of members of the Legislative Assembly.

Refer Chapter 15.13

4. (a)

- Article 164(2): Council of Ministers of a State in India is collectively as well as individually responsible to the Legislative Assembly of the State
- State High Court Judges are appointed by the President.

Refer Chapter 15.13 and 15.17

5. (a)

- The money bill after being passed by the Assembly is transmitted to the Legislative Council which can retain the bill for a period of 14 days.
- Within the said 14 days, the Council has to return the bill with or without its recommendations.

Refer Page 15.7

6. (b)

- State Legislative Assembly shall consist of not more than five hundred, and not less than sixty, members.
- The total strength of the Legislative Council must not exceed one-third of the total strength of the Legislative Assembly.

Refer Page 15.2 and 15.3

7. (c)

- States that have Legislative Council are Andhra Pradesh, Bihar, Madhya Pradesh, Maharashtra, Karnataka, Telangana and Uttar Pradesh.

Refer Page 15.1

8. (b)

Refer Page 15.2 and table on 15.7

9. (b)

Refer Page 15.7

10. (b)

- Legislative Council was first formed in Madras in 1861 and the second was formed in Bengal in 1862.

Refer Page 15.2

11. (c)

- Once created or abolished article the name of the state needs to be either inserted or deleted from Article 168. Any such change to Article 168 is not to be deemed as an amendment to the Constitution.
- Constitution Amendment Bill requires to be passed by each House separately as mandated by the Constitution.
- Hence, a Constitution Amendment Bill is not treated as a Money Bill even if all its provisions attract article 110(1)

Refer Page 15.1 and 15.8

12. (a)

- Article 54 – Election of President of India
- Article 75 – Appointment of the Prime Minister & Council of Ministers
- Article 155 – Appointment of the Governor of the State



- | | |
|--|---|
| <ul style="list-style-type: none"> • Article 164 – Appointment of the Chief Minister & Council of Ministers of a State • Article 170 – Composition of Legislative Assemblies <p>13. (b)</p> <p>Electoral college of President:</p> <ol style="list-style-type: none"> 1. Elected Members of Parliament 2. Elected Members of State Assemblies 3. Elected Members of Assemblies of Delhi and Puducherry <p>Refer Chapter 11</p> <p>14. (c)</p> <ul style="list-style-type: none"> • The Governor of a State does not have the discretionary power to dissolve the legislature. • He/She has to abide by the Constitution. <p>Refer Chapter 14</p> <p>15. (a)</p> <ul style="list-style-type: none"> • Office of minister in the Union or State Governments is not considered office of profit and hence, is eligible to return to the Parliament. <p>Refer Page 15.4</p> <p>16. (a)</p> <ul style="list-style-type: none"> • Council of States is a permanent body unlike Legislative Council of a State. • Legislative Council can be created or abolished by a law of Parliament. | <ul style="list-style-type: none"> • Council of States alone upholds the federal principle. <p>Refer Page 15.2 and 15.6</p> <p>17. (c)</p> <p>Refer Page 15.1</p> <p>18. (d)</p> <ul style="list-style-type: none"> • The Legislative Council is created or abolished by a law of the Parliament. • Parliament shall create or abolish the Council if the state Legislative Assembly passes a resolution, requesting the Parliament, by a majority of the total membership of the house and by a majority of not less than two-thirds of the members present and voting. <p>Refer Page 15.1</p> <p>19. (a)</p> <p>Article 180</p> <p>20. (c)</p> <ul style="list-style-type: none"> • Qualifications for person to be a member of Panchayat shall be prescribed by law of State legislature. (Article 243C) • Article 243F provides the grounds of disqualification. <p>Refer Chapter 19</p> |
|--|---|

CHAPTER 16

Amendment of The Constitution

Learning Objectives

After reading this chapter, you will be able to:

- Understand when the constitution is required to be amended and its procedure
- State the importance of various amendments and basic features of the Constitution
- Know some of the milestone judgments related to the amendments
- Learn the major provisions of the 101st Amendment Act

INTRODUCTION

An amendment to constitution means any change brought to the constitution by adding or deleting or modifying any provision of the constitution. The procedure for amendment determines whether a constitution is rigid or flexible. If the procedure for amending the constitution is simple, the constitution is flexible and in case the procedure is difficult the constitution is said to be rigid.

Need for the Procedure for Amendment

Every constitution of the world contains provisions for amending the constitution. A constitution to be living, must be growing. 'If the impediments to the growth of the constitution are not removed, the constitution will suffer a virtual atrophy. The question of amending the constitution for removing the difficulties which have arisen in achieving the objective of socio-economic revolution, which would end poverty and ignorance and

Quotes

'An unamendable constitution is the worst tyranny of time or rather the very tyranny of time'.

Mulford

The constitution cannot and should not be changed frequently. Obviously also, it can and must be changed when the situation requires it to be changed.'

Jawahar Lal Nehru

disease and inequality of opportunity, has been engaging the active attention of government and the public for some years now'.⁽¹⁾ Amendment provisions are essential for any constitution due to the following reasons:

1. The working of the constitution may bring out certain difficulties which needed to be addressed in order to make the constitution workable.
2. There is need for amendment procedure in order to prevent any one resorting to extra-constitutional means to make necessary changes for the effective functioning of the constitution.
3. A rigid constitution may become redundant and might lose its relevance to the society. Further, too much rigidity of the constitution will make it impossible to amend the constitution. Such instances would be another reason to adopting extraconstitutional methods which could adversely affect the national integrity.
4. The constitution needs to be dynamic and keep pace with the changing needs of the society. Any society as it grows requires the constitution to adapt itself to the changing needs.
5. Indian constitution being a social document has certain social objectives and is committed to promote social changes. Hence, there is a need for the constitution to adapt itself with the social changes that are an outcome of the constitution itself.
6. In the absence of a procedure for amendment, the need for change in the constitutional provisions would not be smooth. It might lead to revolutionary changes that might adversely affect the social fabric.

AMENDMENT IN INDIA

Article 368 of the constitution provides for the procedure for amendment to constitution. However, some parts of the constitution can be amended by ordinary legislation. Rest other parts can be amended only by the procedure given in Article 368. Certain other provisions can be amended by the procedure and ratified by the states. Thus, Indian Constitution is both flexible and rigid. It is known as 'progressively rigid' constitution.

Constitution Amendment: Quick Facts

- Previous recommendation of President is not needed.
- Both Houses have equal powers.
- To be passed by special majority.
- No joint sitting.
- No powers for state unitary feature.
- Basic features must not be amended.

Procedure for Amendment

There are two broad procedures for amending the Constitution of India. They are:

- (i) Amendment by the procedure given in Article 368.
- (ii) Amendment by ordinary legislations.

¹ Statement of objects and reasons: The Constitution (Forty-Second Amendment) Act, 1976.

(a) Amendment by the Procedure Given in Article 368

Important questions from Previous years' on this topics are mentioned below:

How is the Constitution of India amended? Do you think that the procedure for amendment makes the constitution a plaything in the hands of the centre?
(IAS Mains GS: 2002)

1. The power to amend the constitution is vested in the union Parliament. The state legislatures do not have the power to initiate any amendment. Hence, it is a unitary power.
2. A bill seeking to amend the constitution can be introduced in either Lok Sabha or Rajya Sabha. Both the Houses have equal powers and enjoy equal status in respect of the amending the constitution.
3. A constitution amendment bill does not require the previous recommendation of the President.
4. The constitution amendment bill has to be passed by a majority of total membership of the House and by a majority of not less than two-thirds of the members of the House present and voting.
5. The bill needs to be passed in Lok Sabha and Rajya Sabha separately. In case of any difference of opinion between the two Houses, then the amendment cannot be carried out. As a result, it is clear that the constitution does not provide for joint sitting, under Article 108, in case of constitution amendment bill.
6. After being passed by each House, the bill is to be presented to the President. After the Constitution (24th Amendment) Act, 1971, it is binding on the President to give his assent. Thus, the President does not enjoy any veto in respect of a constitution amendment bill.
7. The bill has to be ratified by the legislature of at least half the number of states, for amending the following provisions mentioned in Article 368 (2) namely:
 - (a) Article 54, Article 55, Article 73, Article 162 or Article 241, or;
 - (b) Chapter IV of Part V, Chapter V of Part VI, or Chapter I of Part XI, or; Any of the lists in the Seventh Schedule, or;
 - (c) The representation of states in Parliament, or;
 - (d) The provisions of this article.

Limitations on the Amendment Power

The power to amend the constitution is subjected to certain limitations. Though the amendment power vested in the Parliament is a constituent power, it is only to enable the constitution to keep pace with the changing circumstances. It is not a power to substitute the constitution with a new constitution. The Parliament cannot increase the amendment power by using the power conferred upon it by the Article 368.

Further, in the Keshavananda Bharti case, the Supreme Court had propounded the 'Doctrine of Basic Features', under which any amendment cannot take away or abridge the basic features of the constitution.

Amendment Needing State Legislature Approval

- Election of President: Article 54
- Manner of election of President: Article 55
- Extent of executive power of the union: Article 73
- Extent of executive power of the states: Article 162
- High Courts for Union Territories: Article 241
- Supreme Court and high courts
- Schedule 7
- Article 368

Any amendment made to the constitution is subjected to judicial review. In case the court found the amendment to be *ultra vires* the constitution, then the court can strike it down. Recently, the Supreme Court had struck down the amendment to constitution establishing the National Judicial Appointments Commission.

In view of the above, it is clear that the constitution cannot be amended without any valid reason or arbitrarily to sub-serve any political vested interest. Hence, the amendment power and the procedure do not make the constitution a plaything in the hands of the politicians.

No Joint Sessions

Since Article 368 provides that the constitution amendment bills have to be passed by the Lok Sabha and Rajya Sabha separately there cannot be joint session with respect to a constitution amendment bill. Article 368 (2) reads, 'An amendment of this constitution may be initiated only by the introduction of a bill for the purpose in either House of Parliament and when the bill is passed in each House...' So, in case a difference of opinion between the two Houses, then the bill cannot be passed but has to be discarded.

(b) Amendment by Ordinary Legislations

Some of the provisions of the constitution can be amended by ordinary legislative process. Such changes to the constitution are not to be deemed as an amendment for the purpose of Article 368. Such provisions are as follows:

1. **Article 4:** When a new State is established or admitted under the provisions of Article 2 or when a new State is created or names of any existing State is, then the Schedule I and Schedule IV need to be amended. Such changes are consequential and need not be amended by the procedure given in Article 368. The law enacted for the purpose shall itself make the required amendments to the First and the Fourth Schedules and supplemental, incidental and consequential matter.
2. **Article 4:** When a new State is created or names area or boundary of any existing State under Article 3, then the Schedule I and Schedule IV need to be amended. Such changes are consequential and need not be amended by the procedure given in Article 368. The law enacted for the purpose shall itself make the required amendments to the First and the Fourth Schedules and supplemental, incidental and consequential matter.
3. **Article 169:** Parliament is empowered to create or abolish Legislative Council of a State. When the Council is created or abolished the 'supplemental, incidental and consequential' changes required can be brought by the law creating or abolishing the Council and procedure under Article 368 need not be adopted.

Amendment by Ordinary Law

- | | | |
|------------------|------------------|-----------------|
| 1. Article 4 | 5. Article 243M | 9. Schedule V |
| 2. Article 169 | 6. Article 243ZC | 10. Schedule VI |
| 3. Article 239A | 7. Article 244A | |
| 4. Article 239AA | 8. Article 312 | |

4. **Article 239A:** Parliament is empowered to create of local legislatures or Council of Ministers or both for certain UTs by a law. In case this requires any amendment to the constitution it shall not be deemed to be an amendment for the purpose of Article 368.
5. **Article 239AA:** Any law-making provisions for giving effect to, or supplementing the provisions relating to the special provisions for National Capital Territory (NCT) of Delhi.

6. **Article 243M:** Law of the Parliament to extend the provisions of Part IX, *panchayats*, to the Scheduled Areas and the tribal areas.
7. **Article 243ZC:** Law of the Parliament to extend the provisions of Part IXA, Municipalities, to the Scheduled Areas and the tribal areas.
8. Article 244A: Any law providing for the formation of an autonomous State comprising certain tribal areas in Assam and creation of local legislature or Council of Ministers or both.
9. **Article 312:** The law providing for the creation of the All India Judicial Service contain such provisions for the amendment of Chapter VI of Part VI as may be necessary for giving effect to the provisions of that law.
10. Any law amending the provisions of the Schedule V.
11. Any law amending the provisions of the Schedule VI.

IMPORTANT AMENDMENTS

The Constitution of India has been amended hundred times till 2015, with the passage of Constitution (100th Amendment) Act, 2015. Some of the important amendments to the constitution are:

- | | |
|--|--|
| (a) Constitution (First Amendment) Act, 1951 | (g) Constitution (86th Amendment) Act, 2002 |
| (b) Constitution (24th Amendment) Act, 1971 | (h) Constitution (97th Amendment) Act, 2011 |
| (c) Constitution (42nd Amendment) Act, 1976 | (i) Constitution (98th Amendment) Act, 2012 |
| (d) Constitution (44th Amendment) Act, 1978 | (j) Constitution (100th Amendment) Act, 2015 |
| (e) Constitution (73rd Amendment) Act, 1992 | (k) Constitution (101st Amendment) Act, 2016 |
| (f) Constitution (74th Amendment) Act, 1992 | |

(a) Constitution (First Amendment) Act, 1951

The first amendment act was enacted immediately after one year the constitution coming into force. The amendment was needed to operationalize 'reservation' guaranteed by Article 16(4) in public employments in favour of backward classes. The concept of 'special protection' or 'positive discrimination' was introduced to enable reservation.

It amended Article 19 (2) and introduced seven grounds except 'sovereignty and integrity of India'⁽²⁾ on which the right to freedom of speech and expression can be restricted.

The amendment also inserted Article 31A. Article 31A provides for exempting any law for compulsory requisitioning or acquisitioning of property or taking over the management of any organization in the interest of public even if the law infringed on the rights guaranteed by Articles 14, 19 and 31.

It also inserted Article 31B and Schedule IX. Article 31B grants exemption to any law included in Schedule IX from being declared invalid on the ground of violating fundamental rights.

(b) Constitution (24th Amendment) Act, 1971

Important questions from Previous years' on this topics are mentioned below:

Highlight the significance of the 24th Amendment to the Constitution of India?

IAS Mains GS (1999)

2 Inserted by Constitution (16th Amendment) Act, 1963.

It was enacted in 1971 in order to override the judgment of the Supreme Court in the Golaknath case. It amended Articles 13 and 368.

Golaknath Case

In the Golaknath case, the Supreme Court ruled that:

- (a) The power to amend the constitution is not a constituent power but only an ordinary legislative power.
- (b) Article 368 provides only the procedure for amendment and does not confer any power on the Parliament.
- (c) Parliament derives the power to amend from Article 246.
- (d) Parliament does not have the power to amend the fundamental rights.

Meaning of 'Law'

Under Article 13, 'Law' includes any:

- | | |
|----------------|------------------|
| (a) Ordinance | (b) Order |
| (c) By-law | (d) Rule |
| (e) Regulation | (f) Notification |

(g) Custom or usage having in the territory of India the force of law.

'Laws in force' includes laws passed or made by a legislature or other competent authority in the territory of India before the commencement of this constitution and not previously repealed.

24th Amendment

In order to override the Golaknath case judgement, the 24th amendment was enacted. The main provisions of the amendment are:

- (a) The title of Article 368 was amended. Changed to 'Power of the Parliament to amend the Constitution and procedure therefore'.
- (b) Inserted Clause 3 to Article 368. It exempts the any amendment from Article 13.
- (c) Inserted Clause 4 to Article 13. It exempts the constitution amendment act from the meaning of law in Article 13 (3).
- (d) As a result, the constitution amendment act is immunized from judicial review.
- (e) Thus, the power of the Parliament to amend the constitution is a constituent power.

Keshavananda Bharti Case

The 24th Amendment was challenged in the Keshavananda Bharti case. In this case the Court overruled its judgement in the Golaknath case. The main provisions are:

- (a) The court upheld the 24th amendment to the constitution.
- (b) Article 368 does not only provide for the procedure for amendment, but also confers the power on the Parliament.
- (c) The Parliament has the power to amend any part of the constitution including Preamble and fundamental rights.
- (d) The court propounded the concept of 'Basic Features'. The Parliament can amend any part of the constitution but cannot takeaway or alter the basic features of the constitution.

- (e) Judicial review being a basic feature cannot be taken away and hence, constitution amendment is subjected to judicial review.

'Basic Features'

Important questions from Previous years' on this topics are mentioned below:

What constitutes the doctrine of the 'basic features' as introduced into the Constitution of India by the judiciary? IAS Mains GS (2000)

The concept of basic features was not part of the original constitution, but was propounded by the Supreme Court in the Keshavananda Bharti case. Basic features of the constitution are the fundamental values that reflect the philosophy of the constitution. They form the basic foundation and provide the fundamental structure of the constitution. Hence, taking away the basic features or amending them would amount to abrogating the constitution. Hence, they cannot be taken away.

'Amendment' is to enable the constitution to conform to the socio-political and socio-economic changes. It is implied that the old constitution survives without losing its identity, though certain changes are brought to it. Hence, the amendment cannot abrogate the basic structure of the original constitution.

Thus, the Supreme Court restored the constitutional supremacy. The Supreme Court ruled that the Parliament does not have unlimited law-making power and rejected parliamentary supremacy. Any law, including constitutional amendment, is subjected to judicial review and an amendment can be challenged on the ground of violating the basic features.

However, the Supreme Court ruled that an exhaustive list of what constitutes the basic structure cannot be drawn at one go. They have to be determined based on the facts involved in any case. In several cases the Supreme Court had declared the following as the basic features. Rule of Law, judicial review, democracy, which implies free and fair elections, secularism, etc., are few among them.

TABLE 16.1 Fundamental Rights and Amendment

Article 15 (4)	Inserted by 1st Amendment, 1951
Article 15 (5)	Inserted by 93rd Amendment, 2005
Article 16 (4A)	Inserted by 77th Amendment, 1995
Article 16 (4B)	Inserted by 81st Amendment, 2000
Article 19(1)(c)	Cooperatives by 97th Amendment, 2011
Article 19 (1) (f)	Repealed by 44th Amendment, 1978
Article 21A	Inserted by 86th Amendment, 2002
Article 31	Repealed by 44th Amendment, 1978
Article 31A	Inserted by First Amendment, 1951
Article 31B	Inserted by First Amendment, 1951
Article 31C	Inserted by 25th Amendment, 1971
Article 31D	Inserted by 42nd Amendment, 1976 and Repealed by 43rd Amendment, 1977

(c) Constitution (42nd Amendment) Act, 1976

Why 42nd Amendment?

- To spell out expressly the high ideals of socialism, secularism and the integrity of the nation.
- To make the directive principles more comprehensive and give them precedence over those fundamental rights. To specify the fundamental duties of the citizens.
- To make special provisions for dealing with anti-national activities, whether by individuals or associations.
- To establish Administrative Tribunals to reduce the mounting arrears in high courts and to secure speedy disposal of service matters, revenue matters and certain other matters of special importance.

42nd Amendment Act, 1976, is sometimes known as 'mini constitution' as it had left no part of the constitution. It was enacted when the proclamation of National Emergency was in operation. The statement of objectives of the 42nd Amendment Act, 1976, states that 'the democratic institutions provided in the constitution are basically sound and the path for progress does not lie in denigrating any of these institutions. However, there could be no denial that these institutions have been subjected to considerable stresses and strains and that vested interests have been trying to promote their selfish ends to the great detriment of public good. It is, therefore, proposed to amend the constitution to spell out expressly the high ideals of socialism, secularism and the integrity of the nation, to make the directive principles more comprehensive and give them precedence over those fundamental rights which have been allowed to be relied upon to frustrate socio-economic reforms for implementing the directive principles. It is also proposed to specify the fundamental duties of the citizens and make special provisions for dealing with anti-national activities, whether by individuals or associations.' Thus, the act is significant in many respects and few important among those are as follows:

- 1. Amendment to Article 31C:** Article 31C was inserted by the 25th Amendment. It exempts any law enacted to implement the DPSP provided in Articles 39 (b) and 39 (c) from being declared invalid even in case the law infringed upon the fundamental rights. Thus, it grants supremacy to the DPSP given in Articles 39 (b) and (c) over the fundamental rights. According to the Supreme Court, Articles 39 (b) and (c) represent the 'Doctrine of Distributive Justice' and are essential for achieving the socialistic goals of the constitution. Hence, they needed to be provided with such immunity.

42nd Amendment expanded the scope of Article 31C to cover all the DPSPs. Thus, Article 31C would immunize any law to implement any of the DPSPs. It was arguing that DPSPs represent the collective liberties of the society and they must be given supremacy to fundamental rights. DPSP must be implemented to enable the citizens to enjoy their fundamental rights completely. However, this amendment was declared invalid by the Supreme Court in the *Minerva Mills case*.⁽³⁾

- 2. Insertion of Article 39A:** After Article 39, a new Article 39A was inserted. This article provides for 'Equal justice and free legal aid'. 'An important impact of Article 39A read with Article 21 has been to reinforce the right of a person involved in a criminal proceeding to legal aid.'⁽³⁾ Further, the Court in the *Kishore versus state of Himachal Pradesh* case ruled that 'Legal aid may be treated as a part of the right created under Article 21'.
- 3. Insertion of Article 43A, 48A and 51A:** It is inserted Article 43A which provides for participative management of industries. Article 48A provides for 'Protection and improvement of environ-

3 Refer DPSP chapter for detailed discussion.

4 Supreme Court – *Hussainara versus Home Secretary, state of Bihar*, AIR 1979 SC 1369, *Hoskot versus state of Maharashtra*, AIR 1978 SC 1548.

ment and safeguarding of forests and wild life'. Thus, it infuses the environmental consciousness in the constitution.

Further, it also added Part IVA and inserted Article 51A to the constitution. Part IVA contains the fundamental duties prescribed to the citizens. It was borrowed from the Japanese and Soviet Constitutions. Though they are not enforceable it creates an obligation to the citizens.

- Amendment of Article 74:** Article 74 was amended and made the advice of the Council of Ministers binding on the President. This created the debate on the constitutional position of the President.

- Insertion of Part XIVA: Administrative Tribunals:** The amendment inserted Part XIVA, Article 323A and Article 323B. It empowers the Parliament to enact law to establish Administrative Tribunals. Article 323A provides for tribunals for settling 'of disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the union or of any State'.

Article 323B provide for setting up of tribunal for 'the adjudication or trial by tribunals of any disputes, complaints, or offences with respect to levy, assessment, collection and enforcement of any tax, foreign exchange, import and export across customs frontiers, industrial and labour disputes, land reforms by way of acquisition by the State of any estate, etc.'

(d) Constitution (44th Amendment) Act, 1978

The amendment is important because it along with the 43rd and 45th amendment, attempted to set right the anomalies created by the 42nd amendment. The following are the important aspects of the 44th amendment:

- Amendment of Article 74:** 44th amendment in a way restored the position of the President. 42nd amendment made the advice of the Council of Ministers binding on the President. This literally made President a mere 'rubber stamp' endorsing the decisions of the Council. But this is not the position envisaged by the founding fathers.

However, 44th amendment did not completely restore the position of the President. It inserted a proviso to Article 74 (1). The proviso reads 'that the President may require the Council of Ministers to reconsider such advice, either generally or otherwise, and the President shall act in accordance with the advice tendered after such reconsideration'. Thus, the President can effectively return the advice tendered by the Council for reconsideration once. In such a circumstance, the Council must reconsider and advise the President. In case the Council tenders the same advice after reconsideration, then it is binding on the President.

The significance of this amendment is that it had removed the discretion of the President to reject the advice tendered by the Council and act on his own. Before this amendment, it was possible for the President to get the advice form the Council to satisfy the constitution, reject it and act in his discretion. Thus, there was a possibility of the President acting alike a 'dictator'. After the 44th amendment that has been made impossible. Hence, there is a view that 'the President before the 44th amendment could have been more assertive'.⁵⁾

Do You Know?

The 44th amendment provided for a referendum of people to pass any amendment that would effect of impairing its secular or democratic character, abridging or taking away fundamental rights, prejudicing or impeding free and fair elections on the basis of adult suffrage or compromising the independence of judiciary.

2. Amendment to Article 38 and Repealing Right to Property: Article 38 in the original constitution was renumbered as Article 38 (1) and a Clause 2 was inserted. Article 38 (2) reads ‘the State shall, in particular, strive to minimize the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations’.

When looked plainly, this clause appears colourless and innocently silent. But this amendment was the reason for the repealing the right to property as a fundamental right. The amendment embodies the concept of socialism as envisaged in the Preamble. The amendment provided for the removal of right to property from Part III and made it a constitutional right.

The statement of objectives of 44th amendment declares ‘In view of the special position sought to be given to fundamental rights, the right to property, which has been the occasion for more than one amendment of the constitution, would cease to be a fundamental right and become only a legal right. Necessary amendments for this purpose are being made to Articles 19 and 31 is being deleted. It would, however, be ensured that the removal of property from the list of fundamental rights would not affect the right of minorities to establish and administer educational institutions of their choice’.

3. Insertion of Article 134A: In order to safeguard the time of the Supreme Court and to avoiding delays in disposing the cases Article 134A was inserted. It empowers the high courts to grant certificates in cases that merit an appeal to Supreme Court. This also discourages the practice of appealing to the Supreme Court as a matter of routine.

4. Amendment to Emergency Provisions: 44th amendment made elaborate changes in Article 352, in order to ensure that the provision is not misused. In 1975, the national emergency was proclaimed under Article 352 on the ground of ‘internal disturbance’. This is regarded as a dark page of Indian democracy. After 1978, proclamation of emergency has been made more stringent.

The statement of objectives of 44th amendment declares ‘A Proclamation of Emergency under Article 352 has virtually the effect of amending the constitution by converting it for the duration into that of a unitary State and enabling the rights of the citizen to move the courts for the enforcement of fundamental rights including the right to life and liberty to be suspended. Adequate safeguards are, therefore, necessary to ensure that this power is properly exercised and is not abused. It is, therefore, proposed that a Proclamation of Emergency can be issued only when the security of India or any part of its territory is threatened by war or external aggression or by armed rebellion. Internal disturbance not amounting to armed rebellion would not be a ground for the issue of a Proclamation’.

Do You Know?

- ‘Cabinet’ an extraconstitutional body was recognized by 44th amendment.
- The term ‘Internal Disturbance’ was deleted from Article 352 but continues to remain in Article 355.

5. Insertion of Article 361A: Protection of Media Freedom

Article 361A is the provision ‘guaranteeing the right of the media to report freely and without censorship the proceedings in Parliament and the state legislatures’.⁽⁶⁾ It protects any person who publishes anything related to the proceedings of the House of legislatures if the House had not restrained the publishing of the same.

6 The statement of objectives of 44th amendment.

(e) Constitution (73rd Amendment) Act, 1992

The amendment is a sequel to Article 40 which makes it an obligation for the State to 'organize village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government'. The amendment accords constitutional status to the *Panchayat Raj* Institutions (PRI).

(f) Constitution (74th Amendment) Act, 1992

In the same way, this amendment accords constitutional status to the municipalities.

(g) Constitution (86th Amendment) Act, 2002

The amendment makes the Right to Education a fundamental right. It had inserted Article 21A which confers 'on all children in the age group of 6 to 14 years the right to free and compulsory education'.

(h) Constitution (97th Amendment) Act, 2012

96th amendment inserted the term 'Cooperatives' in Article 19 (1) (c) after the association and unions. It also inserted the Article 43B in the Part IV, Directive Principles of State Policy. It inserted the Part IXB 'The Cooperative Societies' after the Part IXA municipalities. This part contains 13 articles from Article ZH to Article ZT. It was enacted 'to enhance public faith in cooperatives and insulate them from avoidable political and bureaucratic interference'.

(i) Constitution (98th Amendment) Act, 2012^[7]

The amendment inserted Article 371J, to make special provisions for the Hyderabad-Karnataka region. Article 371J empowers the Governor of Karnataka to take steps to develop the Hyderabad-Karnataka region. The districts of Gulbarga, Bidar, Raichur, Koppal, Yadgir and Bellary form the said region.

The President may allow the Governor to take the following steps for development of the region:

- Setting up a development board for the region.
- Ensure equitable allocation of funds for development of the region. Provide for reservation in educational and vocational training institutions, and State government positions in the region for persons from the region.

Connect

The 99th amendment establishing a National Judicial Appointment Commission to broad-based the appointment ensuring greater transparency, accountability and objectivity in the appointment of the judges in the Supreme Court and high courts was nullified by the Supreme Court.

(j) Constitution (100th Amendment) Act, 2015

This act provides for the acquiring of territories by India and transfer of certain territories to Bangladesh in accordance with the agreement between India and Bangladesh made in 1974.

7 From the original text of the act

(k) Constitution (101st Amendment) Act, 2016^[8]

The act inserted Articles 246A and 269A. It also amended Articles 248, 249, 250, 268 and 269. Article 268A which was inserted by the 88th amendment has been omitted by this amendment. Article 268A dealt with the power of the Parliament and state legislatures with respect to service tax.

Article 246A is the special provisions for imposing Goods and Services Tax (GST) by the union and the States. Article 246A (1) empowers the Parliament and the state legislatures to make laws with respect to goods and services tax imposed by the union or by such State. However, with respect to supply of goods and services in the course of the interstate trade and commerce, only the Parliament has the powers to make law (Article 246A (2)).

Article 269A provides that the GST in course of the interstate trade and commerce to be collected by the union government. Such tax is to be shared between the union and the States in accordance with the recommendations of the Goods and Services Tax Council. Also, it empowers the Parliament to formulate the 'principles for determining the place of supply'.

Goods and Services Tax Council

- Article 279A provides for the setting up of a GST Council. It is a constitutional obligation on the President to constitute the Council.
- The Union Finance Minister will be the chairperson of the Council.
- The Union Minister of State for Revenue and the minister in-charge of Finance or Taxation or any other minister nominated by each State government shall be the members of the Council.
- The members of the Goods and Services Tax Council will have to choose one amongst them to be the Vice-chairperson of the Council.
- The term of the Vice-chairperson shall be decided by the council.
- The quorum for conducting a meeting of the Council is 50%.
- The act provides for the compensation to States for loss of revenue on account of introduction of GST. The compensation has to be determined by the law of the Parliament on the recommendation of the GST Council. The compensation shall be made to the States for a period of five years.
- The President is empowered to make necessary orders to remove any difficulty in giving effect to the provisions of the constitution as amended by this act.

Taxes and Duties Subsumed into GST

- Central Excise Duty
- Additional Excise Duties
- Excise Duty levied under the Medicinal and Toilet Preparations (Excise Duties) Act, 1955, Service Tax
- Additional Customs Duty commonly known as 'Countervailing Duty'
- Special Additional Duty of Customs
- Central Surcharges and Cesses
- State Value Added Tax/Sales Tax
- Entertainment Tax (other than the tax levied by the local bodies)
- Central Sales Tax (levied by the Centre and collected by the States)
- Octroi and Entry Tax
- Purchase Tax
- Luxury Tax
- Taxes on lottery, betting and gambling
- State cesses and surcharges in so far as they relate to supply of goods and services

8 From the original text of the act

Decision-making in the Council

The decision of the Council shall be taken, by a majority of not less than three-fourths of the weighted votes of the members present and voting.

The decisions shall be taken in accordance with the following principles:

- (a) The vote of the Central government shall have a weightage of one-third of the total votes cast.
- (b) The votes of all the State governments taken together shall have a weightage of two-thirds of the total votes cast, in that meeting.

Adjudication of Disputes

In order to adjudicate any dispute arising out of the recommendations of the Council or implementation thereof, the GST Council shall establish a mechanism to adjudicate any dispute between:

- (a) Government of India and one or more States; or
- (b) Government of India and any State or states on one side and one or more other States on the other side; or
- (c) Two or more states.

Functions of the Council

According to the act, the Goods and Services Tax Council shall make recommendations to the union and the States on:

- (a) The taxes, cesses and surcharges levied by the union, the States and the local bodies which may be subsumed in the goods and services tax.
- (b) The goods and services that may be subjected to, or exempted from the goods and services tax.
- (c) Model Goods and Services Tax Laws, principles of levy, apportionment of Goods and Services Tax levied on supplies in the course of interstate trade or commerce under Article 269A and the principles that govern the place of supply.
- (d) The threshold limit of turnover below which goods and services may be exempted from GST.
- (e) The rates including floor rates with bands of Goods and Services Tax.
- (f) Any special rate or rates for a specified period, to raise additional resources during any natural calamity or disaster.
- (g) Special provision with respect to the states of Arunachal Pradesh, Assam, Jammu and Kashmir, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura, Himachal Pradesh and Uttarakhand.
- (h) Any other matter relating to the GST, as the Council may decide.
- (i) The Goods and Services Tax Council shall recommend the date on which the goods and services tax be levied on petroleum crude, high speed diesel, petrol, natural gas and aviation turbine fuel.

Practice Questions

1. Which one of the following bills must be passed by each House of the Indian Parliament separately, by special majority?

- (a) Ordinary bill
- (b) Money bill
- (c) Finance bill
- (d) Constitution amendment bill

2. Consider the following:

1. The Constitution of India has 20 parts.
2. There are 390 articles in the Constitution of India in all.
3. 9th, 10th, 11th and 12th Schedules were added to the Constitution of India by the Constitution (Amendment) Acts.

Correct statement

- | | |
|-------------|-------------|
| (a) 1 and 2 | (c) 3 only |
| (d) 2 only | (d) 1, 2, 3 |

3. Consider the following statements:

1. An amendment to the Constitution of India can be initiated by an introduction of a bill in the Lok Sabha only.
2. If such an amendment seeks to make changes in the federal character of the constitution, the amendment also requires to be ratified by the legislature of all the States of India.

Correct statements

- | | |
|------------|---------------------|
| (a) 1 only | (c) Both 1 and 2 |
| (b) 2 only | (d) Neither 1 nor 2 |

4. Which among the following statements is NOT correct?

- (a) To resolve a deadlock between the two Houses, in case of an ordinary legislation, the constitution provides for the joint sitting of both Houses.
- (b) In the case of a money bill, there is no provision in the constitution for a joint sitting of both Houses as Lok Sabha clearly enjoys pre-eminence over Rajya Sabha in financial matters.
- (c) As regards a constitution amendment bill, there is no provision for resolving a deadlock between the two Houses with regard to a constitution amendment bill.
- (d) All the statements are correct

5. Consider the following statements:

1. The provision that the joint sitting of the two Houses shall be convened even if the Lok Sabha is dissolved, if the President had declared his intention to summon a joint sitting of the Houses on the bill, is not given in the constitution.
2. At a joint sitting if the bill, having been passed by one House, has not been passed by the other House with amendments and returned to the House in which it originated, no amendment shall be proposed to the bill other than such amendments (if any) as are made necessary by the delay in the passage of the bill.

Correct statement

- | | |
|------------|---------------------|
| (a) 1 only | (c) Both 1 and 2 |
| (b) 2 only | (d) Neither 1 nor 2 |

6. Consider the following statements:

1. A constitution amendment bill is treated as a money bill when all its provisions attract Article 110 (1).
2. A constitution amendment bill cannot be introduced as a private member's bill.

Correct statement

- | | |
|------------|---------------------|
| (a) 1 only | (c) Both 1 and 2 |
| (b) 2 only | (d) Neither 1 nor 2 |

7. Which among the following are the provisions, the amendment of which, would require ratification by the state legislatures?

1. Election of the President
 2. The extent of the executive power of the union and the States
 3. The Supreme Court and the high courts
 4. Distribution of legislative powers between the union and States
- | | |
|------------------|----------------|
| (a) 1, 2, 3 only | (c) 1, 4 only |
| (b) 2, 3 only | (d) 1, 2, 3, 4 |

8. Bills that are not deemed as constitution amendment bills do NOT include:

- (a) Creation or abolition of legislative councils in the States.
- (b) Administration and control of Scheduled Areas and Scheduled Tribes.

(c) Administration of tribal areas in the states of Assam, Meghalaya, Tripura and Mizoram.

(d) Administration of UTs.

9. Consider the following statements:

1. Bills for creation or abolition of Legislative Councils in the States are not deemed as constitution amendment bills.
2. A constitution amendment bill is not treated as a money bill even if all its provisions attract Article 110 (1).

Correct statement

- | | |
|------------|---------------------|
| (a) 1 only | (c) Both 1 and 2 |
| (b) 2 only | (d) Neither 1 nor 2 |

10. Which of the following statements are true regarding an ordinary bill and a constitutional amendment bill?

1. In case of ordinary bill there is a provision for joint sitting. There is no such provision for joint session in the case of amendment bill.
2. In case of ordinary bill there is a provision for joint sitting. There is a provision for joint session in the case of an amendment bill also.
3. Prior sanction of the President is required for ordinary bill whereas no such sanction is required for an amendment bill.
4. Prior sanction of the President is not required for an ordinary bill whereas it is required for a constitutional amendment bill.

Correct statement

- | | |
|-------------|-------------|
| (a) 1 and 4 | (c) 2 and 4 |
| (b) 1 and 3 | (d) 2 and 3 |

11. Amendment of which one of the following provisions of the constitution requires ratification by the legislature of the states?

- (a) Article 157 relating to the qualifications for the appointment as Governor of the State.
- (b) Article 123 relating to the powers of the President to promulgate ordinances on the subjects mentioned in Concurrent List during the recess of the Parliament.
- (c) Article 56 relating to the term of the office of the President.
- (d) Article 54 relating to the election of the President.

12. With regard to the constitutional amendment bill, the President can:

- (a) Reject, but cannot return the bill
- (b) Return, but cannot reject the bill
- (c) Reject or return the bill
- (d) Neither reject nor return the bill

13. The amendment of which of the following provisions does not require a ratification by the state legislatures under Article 368?

- (a) Article 54
- (b) Article 162
- (c) Article 73
- (d) Article 154

14. The disqualification for appointment in remunerative political post which was provided in Article 361B by the Constitution 91st Amendment of 2003 states that a disqualified member of a House shall also be disqualified to hold any remunerative political post from the date of disqualification to:

- (a) Date of resignation
- (b) Date of expiry of the tenure of his office
- (c) Date of withdrawal of membership
- (d) None of these

15. Consider the following statements:

1. According to Article 371J inserted by the Constitution (98th Amendment) Act, the Governor of Karnataka must set-up a development board for the Hyderabad-Karnataka region.
2. The Constitution (98th Amendment) Act, amended Article 164, making it an obligation on the Governor to ensure that there shall be a minister in-charge of tribal welfare.

Correct statement

- | | |
|------------|---------------------|
| (a) 1 only | (c) Both 1 and 2 |
| (b) 2 only | (d) Neither 1 nor 2 |

16. Which among the following amendments to the constitution is NOT the one that gave priority to DPSR over the fundamental rights?

- (a) 17th amendment
- (b) 25th amendment
- (c) 42nd amendment
- (d) 36th amendment



- 17.** The ambit of the expression 'law', defined in Article 13 (3) (a), so as to ensure that the paramount of the constitution does not extend to:

 - Temporary laws, such as ordinances, acts as well as permanent laws.
 - Statutory instruments in the nature of subordinate legislation, specifically described as 'order, by-law, rule, regulation, notification' having in the territory of India the force of law.
 - Non-legislative sources of law, that is to say, custom or usage having in the territory of India the force of law.
 - Constitutional amendment acts.

18. Which one of the amendments was NOT challenged in the Kesavananda Bharti case?

 - 25th Amendment Act
 - 26th Amendment Act
 - 29th Amendment Act
 - 42nd Amendment Act

19. Consider the following statements:

 - According to Article 371J inserted by the Constitution (98th Amendment) Act, the Governor of Karnataka must set-up a development board for the region.

2. The Constitution (98th Amendment) Act amended Article 164, making it an obligation on the Governor to ensure that there shall be a minister in-charge of tribal welfare.

Correct statement

 - 1 only
 - 2 only
 - Both 1 and 2
 - Neither 1 nor 2

20. Identify the incorrect statement regarding constitutional amendments:

 - The Provision of joint sitting is not available.
 - They become operative from the date both Houses have passed the bills.
 - The President's assent to a constitutional amendment is obligatory.
 - Parliament may amend any part of the constitution according to the procedure laid down in Article 368.

Answer Key

1. (d), **2.** (c), **3.** (d), **4.** (d), **5.** (b), **6.** (d), **7.** (d), **8.** (d), **9.** (c), **10.** (d),
11. (d), **12.** (d), **13.** (d), **14.** (c), **15.** (d), **16.** (d), **17.** (d), **18.** (d), **19.** (d), **20.** (b)

Hints and Explanations

1. (d)

- It is constitutionally mandated to pass a Constitution Amendment Bill separately in each House.
- Ordinary Bill can also be passed by a joint sitting of both Houses.
- Money Bill and Finance Bill need to be passes exclusively by Lok Sabha.

Refer Page 16.3

2. (c)

- Indian Constitution has 12 schedules, 26 parts and about 460 articles.
- 9th Schedule was added by First Amendment Act 1951.
- 10th Schedule – 52nd Amendment Act 1985
- 11th Schedule – 73rd Amendment Act 1993
- 12th Schedule – 74th Amendment Act 1993

Refer Chapter 1

3. (d)

- An amendment to the Constitution of India can be initiated by either House of Parliament.
- Bill seeking to amend federal character of the Constitution requires it to be ratified by at least half the number of State Legislatures.

Refer Page 16.3

4. (d)

Refer Page 16.3 and 16.4

5. (b)

- Article 108(5) provides that a joint sitting may be held even after the dissolution of Lok Sabha if the President has declared his intent
- Article 108(2)(a) provides that no amendments shall be made during the joint sitting other than those necessitated by the delay of passage of the Bill.

Refer Chapter 14

6. (d)

- A Constitution Amendment Bill is not treated as a Money Bill even if all its provisions attract Article 110(1) because, such a Bill must be passed by each House separately.
- Constitution Amendment Bill can be introduced by any member of the House.

Refer Page 16.3 and Chapter 14

7. (d)

- Article 386(2) proviso mentions those subject matters that require Constitution Amendment Bill to be ratified by State Legislatures

Refer Box in Page 16.3

8. (d)

Refer Page 16.4

9. (c)

- Article 169 empowers Parliament to create or abolish Legislative Councils.
- It is not considered an amendment under Article 368.

Refer Page 16.4

10. (b)

Refer Page 16.3

11. (d)

Refer Page 16.3

12. (d)

- The President does not possess any veto power over Constitution Amendment Bill.
- He/She must provide the assent.

Refer Page 16.3

13. (d)

- Article 154 deals with the executive power of the State which is not related to the federal features that require ratification by States under Article 368.

Refer Page 16.3

14. (b)

Article 361B provides that a disqualified member of House is also disqualified to hold any remunerative political post for duration of the period commencing from the date of his disqualification till

- the date on which the term of his office as such member would expire or
- Till the date on which he contests an election to a House and is declared elected, whichever is earlier

15. (a)

- 98th Amendment Act is not associated with Article 164.
- 94th Amendment Act 2006 provided for Minister for Tribal Welfare for the states of Chhattisgarh and Jharkhand.

Refer Page 16.11

16. (d)

- 36th Amendment Act 1976 is associated with Sikkim gaining statehood.

Refer Page 16.5-12

17. (d)

- Since the 24th Amendment Act 1971, law defined under Article 13 does not include Constitutional Amendment Acts.

Refer Page 16.6

18. (d)

- 42nd Amendment Act 1976 came into being after the Kesavananda Bharati Case (1973).

Refer Page 16.7

19. (d)

Refer Page 16.3

20. (b)

- Constitutional amendments become operative after they receive the assent of the President.

Refer Page 16.3

CHAPTER 17

Judiciary

Learning Objectives

After reading this chapter, you will be able to:

- Learn about Indian judiciary, position of Supreme Court, its role and powers
- Understand the procedures and issues relating to appointment and removal of judges, and importance of All India Judicial Service
- Know the jurisdiction of the Supreme Court, concept of writs, compare the writ jurisdiction of Supreme Court and high courts
- Explain the concept of judicial review and judicial activism

INTRODUCTION

The Constitution of India provides for a unified judiciary. Unlike the American Federation, the Indian Constitution provides for a single judiciary common to the union and the States. The Supreme Court remains at the apex of the judicial hierarchy in India.

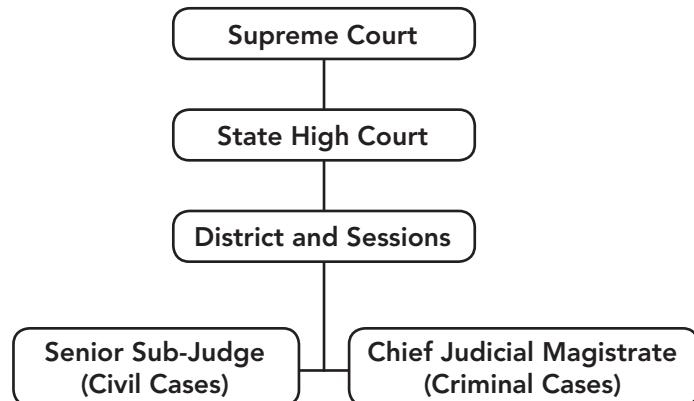


FIGURE 17.1: Indian Judiciary

THE SUPREME COURT OF INDIA

The constitution provides for Supreme Court in the Part 4, Chapter IV between Articles 124 and 147. Article 124 (1) establishes the Supreme Court of India. The Supreme Court comprises the Chief Justice of India and other judges. The constitution sanctions nine judges to the Supreme Court and confers the power to increase the

number of judges to the Parliament. Parliament may increase the number of judges from time to time. At present, after enactment of the Supreme Court (Number of Judges) Amendment Act, 2008, the number of judges in the Supreme Court excluding of the Chief Justice (CJ) is 30.

According to Article 130, the seat of the Supreme Court is in Delhi. However, the court may sit in such other place or places, as the Chief Justice of India (CJI) may from time to time, appoint, with the approval of the President.

Supreme Court: A Court of Record

Article 129 declares that the Supreme Court is a court of record. According to the Law Dictionary, 'A court of record is a court whose records are admitted to be evidentiary value and are not questioned when they are produced before the court.' The attributes of a court of record are that^[1]:

- Its judgements and proceedings are enrolled for perpetual memory and testimony. Its record has evidentiary value and cannot be questioned when produced in a court. It is conclusive evidence of what is contained in it.
- A court of record has the power to punish for contempt. Article 129 confers the power to punish for its contempt. According to Contempt of Court Act, there are two types of contempt namely civil contempt and criminal contempt.

Article 142 (2) provides that the Supreme Court has 'all and every power to make any order for the investigation or punishment of any contempt of itself, subjected to the provisions of any law made by Parliament'.

Supreme Court History

- Supreme Court in India was first established by the Regulating Act, 1773.
- It was situated in the Fort William, Calcutta. It had the Chief Justice and three other judges.
- Sir Elijah Impey was the first Chief Justice.

Contempt of Court^[2]

The Contempt of Court Act, 1971, defines 'civil contempt' as wilful disobedience to any judgement, decree, direction, order, writ or other process of a court or wilful breach of an undertaking given to a court.

Important Judgements	Chief Justice
Cooper's case	Justice M. Hidayatullah
Kesavananda Bharti case	Justice J. M. Shelat
Maneka Gandhi case	Justice M. Hameedullah Beg
Minerva Mills case	Justice Y. V. Chandrachud
Mandal Commission case	Justice M. N. Venkatachaliah
S. R. Bommai case	Justice M. N. Venkatachaliah

1 Black's Law Dictionary, Fourth Edition, 425–426.

2 Contempt of Court Act 1971, Section 2.



The law defines 'criminal contempt' as the publication (whether by words, spoken or written, or by signs, or by visible representation, or otherwise) of any matter or the doing of any other act whatsoever which:

- (i) Scandalizes or tends to scandalize, or lowers or tends to lower the authority of, any court or;
- (ii) Prejudices, or interferes or tends to interfere with the due course of any judicial proceeding or;
- (iii) Interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner.

APPOINTMENT OF JUDGES

According to Article 124 (2), the power to appoint the judges of Supreme Court is vested in the President. A judge of Supreme Court is appointed by the President by a warrant under his hand and seal. The President, in appointing the judges has to consult 'such of the judges of the Supreme Court and of the high courts in the States as the President may deem necessary'.⁽³⁾

Issues Involved in the Appointment of Judges

There are two important issues in relation to the appointment of the judges of Supreme Court namely:

1. Appointment of Chief Justice of India
2. Appointment of other judges.

Appointment of Chief Justice of India

The senior most judge of the Supreme Court by age is appointed as the Chief Justice of India. This is followed as a convention since the commencement of the constitution. However, in 1956 the Law Commission in its report was critical of this practice and recommended that seniority should not be the criterion and 'the experience of the person as a judge, his administrative competence and merit', must be considered for the appointment of the Chief Justice. However, the government rejected this recommendation and the practice of appointing the senior most judge of Supreme Court as Chief Justice was continued.

Memorandum of Procedure: Appointment of Chief Justice

- Senior most judge of Supreme Court considered fit to hold the office.
- Union Minister of Law, Justice and Company Affairs seeks recommendation of outgoing CJI.
- In case of any doubt about the fitness of the senior most judge to hold the office of the CJI other judges as envisaged in Article 124 (2) are consulted.
- On recommendation of CJI, the Union Minister of Law, Justice and Company Affairs puts up the recommendation to Prime Minister.
- Then Prime Minister advises the President for making the appointment.

In 1973, the government accepted the recommendation retrospectively and appointed Justice A. N. Ray as the Chief Justice, superseding three senior judges. However, the government justified its stand stating that Article 124 confers discretion on the President to appoint the Chief Justice. In the first 22

³ Article 124: Since the Supreme Court struck down the Constitution 99th Amendment relating to the constitution of National Judicial Appointments Commission, the condition before the amendment is restored.

years of the commencement of the constitution the President had chosen not exercise the discretion. However, this reasoning was deplored by the constitutional experts on the following grounds:

- The principle of seniority followed in the appointment of the Chief Justice, was not a mere practice but had been an established convention as it was followed for 22 years.
- The Law Commission recommended for considering the merit of the judge but the merit is not in the view of the executive. The supersession of the three senior judges was not on the reason of their merit determined by the Law Commission. They were superseded, for they had decided the Keshavananda Bharti case against the will of the government.
- It was argued the social philosophy of the judges must be taken into account while appointing the judges.⁽⁴⁾ This means the judges must be subscribing to the view of the executive. This would be a kind of spoils system which would amount to packing of judiciary.

The event of superseding the judges had been viewed as a blow on the independence and impartiality of the judiciary. It has thus, made it essential to establish the method for the appointment of the Chief Justice. After the general elections 1977, the Janata Party came to power. The Janata Party was against the supersession of the judges and once coming to power the party revived the practice of appointing the senior most judge of the Supreme Court as Chief Justice. Hence, the practice of appointing the senior most judge as Chief Justice was restored.

Appointment of Other Judges

Another important issue relating is to the appointment of other judges. Article 124 lays down that the President 'shall consult the Judges of the Supreme Court and of the high courts in the States as the President may deem necessary'. In case of the appointment of a judge other than the Chief Justice 'the Chief Justice shall always be consulted' (Article 124(2)).

The term 'consult' in Article 124 became the bone of contention between the executive and the judiciary. In 1977, in the Sankalchand Seth case, the Supreme Court ruled that the President has to consult the constitutional functionaries, but the advice was not binding on the President. The President can differ with the opinion of the constitutional functionaries and take contrary view.

Later, in 1982 in the S. P. Gupta versus Union of India case (Judges Transfer Case), the Supreme Court unanimously agreed with the Sankalchand view and ruled that the consultation is not binding on the President. It implies that the power of appointing the judges is the sole prerogative of the Union government. However, it was also observed that this view would have an adverse impact on the independence and impartiality of the judiciary.

In 1993, in the SCARA versus Union of India case, the Supreme Court overruled the Sankalchand Seth case judgement. The court held that the Chief Justice must have supremacy in matters of the appointment of judges.

Connect

Article 124

- Sankalchand Seth case, consultation is mandatory but not binding.
- S. P. Gupta versus Union of India case, consultation is not binding. SCARA versus Union of India case, supremacy of CJI in appointment of judges.
- President reference, 1998 consultation is 'concurrence'.

In 1998, the President referred to the Supreme Court, nine issues relating to the appointment of Supreme Court judges and transfer of high court Judges for its opinion exercising his power under Article 143. The President sought clarification on the consultation process relating to judge's appointment and transfer. The court ruled as follows:

1. The President has to consult the Chief Justice while appointing a judge of Supreme Court and the consultation is binding. That is, consultation means 'concurrence' of the Chief Justice.
2. The consultation process requires 'consultation of plurality of judges'. The sole opinion of the CJI does not constitute the 'consultation' process.
3. Therefore, the Chief Justice of India should consult a collegium of four senior most judges of the Supreme Court before giving his opinion. The CJI should not send the recommendation to the government, even if two judges give an adverse opinion.
4. 'The collegium should make the decision in consensus and unless the opinion of the collegium is in conformity with that of the Chief Justice of India, no recommendation is to be made'.
5. Regarding the transfer of high court judges, in addition to the collegium of four senior most judges, the Chief Justice of India was obliged to consult the Chief Justice of the two high courts (one from which the judge was transferred and the other receiving him).
6. In regard to the appointment of high court judges, the CJI was required to consult only two seniors most judges of the apex court.
7. The transfer of puisne judges of the high courts was judicially reviewable, only if the CJI had recommended the transfers without consulting four senior most judges of the apex court and two Chief Justices of the high courts concerned.
8. The requirement of consultation by the CJI with his colleagues does not exclude consultation with those judges who are conversant with the affairs of the high court concerned—either as a parent court (the high court from where the transfer is made) or who have occupied the office of a judge or Chief Justice of that court on transfer from his parent high court or any other court.
9. Strong and cogent reasons must exist regarding a person's name not being recommended. Only positive reasons may be given. The views of the other judges consulted by the CJI should be in writing and the same should be conveyed to the government, along with the recommendation by the CJI (Judgment dated 28 October 1998).⁽⁵⁾

Do You Know?

- Within the Supreme Court is the 'Judges' Library'.
- It was established in 1937.
- Then it was known as 'Federal Court Library'.
- Judges, senior advocates, officers of the registry and law clerks attached to judges are permitted to use the library.

Need for National Judicial Commission (NJC)

As a consequence of the issues discussed in respect of the appointment of judges, the demand for setting up of a National Judicial Commission was raised. The demand was made on the following grounds:

Firstly, the appointment of judges of Supreme Court and the transfer of the judges of high courts had become a bone of contention between the executive and judiciary. Both try to acquire supremacy of one over the other. This cannot be granted in a democratic welfare state.

Secondly, to uphold the constitution, its values and to guarantee good governance to the citizens, it is essential to keep the judiciary out of such controversies. Otherwise, the very purpose of the constitution will be defeated.

Thirdly, democracy requires effective participatory of both the executive and judiciary playing their respective roles rather than contending for power. Hence, the need for judicial commission arose.

Fourthly, the present system of appointments and transfer of judges is not transparent. According to Justice Krishna Iyer, the present system of collegium is 'often dilatory, arbitrary and smeared by favouritism'.

Fifthly, there is a need for independent mechanism for the ensuring the accountability of the judges and ensuring ethical conduct of the judges.

NJC, View of NCRWC

- National Commission to review the working of the constitution first recommended for the setting up of the National Judicial Commission
- The National Judicial Commission for appointment of judges of the Supreme Court shall comprise of:
 - (a) The Chief Justice of India: Chairman
 - (b) Two senior most judges of the Supreme Court: Member
 - (c) The Union Minister for Law and Justice : Member
 - (d) One eminent person nominated by the President after consulting the Chief Justice of India: Member
- A committee comprising the CJI and two senior most judges of the Supreme Court will comprise the committee of NJC to examine complaints of deviant behaviour and complaints of misbehaviour and incapacity against judges of Supreme Court and high courts.

National Judicial Appointments Commission (NJAC)

The NJAC was established by the constitution (99th Amendment) Act, 2014. The act amended Articles 124, 127, 128, 217, 222, 224 and 231. It inserted Articles 124A, 124B, 124C and 224A.

Article 124 was amended to make it mandatory for the President to consult the NJAC for the appointment of the judges of the Supreme Court. The amendment deleted the controversial phrase, 'Provided that in the case of appointment of a judge other than the Chief Justice, the Chief Justice of India shall always be consulted'.

Article 124A established the NJAC. The NJAC shall consist of:

- The Chief Justice of India as the *ex officio* Chairperson.
- Two other senior judges of the Supreme Court next to the Chief Justice of India as *ex officio* members.

Do You Know?

- Law Commission 121st Report (1987), recommended establishing National Judicial Service Commission with CJI as Chairman, three senior most judges of the Supreme Court, three senior most CJs of high courts, the Minister for Law and Justice, the Attorney General, outgoing CJI and a legal academic as members.
- Constitution (67th Amendment) Bill, 1990: First bill moved to establish a National Judicial Commission.
- National Advisory Council, recommended for a seven member NJC with Vice-President as Chairman and PM, Speaker of Lok Sabha, Law Minister, Leader of opposition in Lok Sabha and Rajya Sabha and CJI.

- The Union Minister in-charge of law and justice as *ex officio* member.
- Two eminent persons to be nominated by the committee consisting of the Prime Minister, the Chief Justice of India and the Leader of Opposition in the House of the People or where there is no such Leader of Opposition, then, the leader of single largest opposition party in the House of the People as members.

One of the eminent persons nominated for membership in NJAC must be a person belonging to the Scheduled Caste, the Scheduled Tribes, Other Backward Classes, minorities or women. Such an eminent person shall be nominated for a period of three years and shall not be eligible for re-nomination.

Article 124B laid down the duties of the National Judicial Appointments Commission to:

- (a) Recommend persons for appointment as Chief Justice of India, judges of the Supreme Court, Chief Justices of high courts and other judges of high courts.
- (b) Recommend transfer of Chief Justice and other judges of high courts from one high court to any other high court.
- (c) Ensure that the person recommended is of ability and integrity.

The constitutional validity of 99th amendment was challenged by the Supreme Court Advocates on Records Association. The Supreme Court struck down the amendment as unconstitutional and so void on the following grounds:

- Article 124A (1) does not provide an adequate representation, to the judicial component in the NJAC.
- Article 124A (1) is insufficient to preserve the primacy of the judiciary, in the matter of selection and appointment of judges, to the higher judiciary (as also transfer of Chief Justices and judges, from one high court to another).
- Judicial appointments and the primacy judiciary in judicial appointments (with executive participation) is part of the basic features of the constitution which cannot be taken away by any amendment.
- The Clause (c) of Article 124 A (1) is *ultra vires* the provisions of the constitution, because of the inclusion of the Union Minister is in-charge of Law and Justice as an *ex officio* member of the NJAC and is violative of the principle of 'independence of the judiciary'.
- According to Article 124C, empowers the Parliament to amend the powers governing the NJAC through the ordinary law-making process. This is a clear violation the theory of the separation of powers. 'It basically gives the legislative pillar massive powers, which can lead to an elected dictatorship by Parliament and ultimately the suppression of democracy.'⁽⁶⁾

NJAC Judgement: A Review

Important questions from Previous years' on this topics are mentioned below:

Critically examine the Supreme Court's judgment on 'National Judicial Appointments Commission Act, 2014' with reference to appointment of judges of higher judiciary in India.

IAS MAINS GS PAPER 2 (2017)

Although it is well in the jurisdiction of the Supreme Court to review any law and declare it unconstitutional if the law conflicts with the constitution, the judgement relating to the NJAC needs a closer and critical analysis.

The judgement has not in any way settled the issue of appointing the judges of Supreme Court and high courts. The collegium system which is presently followed was created by the court and is no way constitutional. The court has also agreed upon this. In the judgement against the NJAC the judges have expressly stated that the collegium system is not free of flaws.

6 Supreme Court: NJAC case judgment.

National Advisory Council View

- Unaccountable nature of the appointment process of judges.
- Appointment suffers from caste, communal and political considerations, especially in high courts.
- Appointment, not open to public scrutiny makes determining criteria for appointment difficult.
- Seniority is used as a proxy to merit.

The system is in complete violation of the 'separation of powers'. It has resulted in the condition of judges appointing judges. It is argued that this arrangement is needed for maintaining the independence of the judiciary. However, it is essential to ensure that no organ of the democracy possesses absolute power. The collegium system makes the judiciary absolutely powerful in the appointment of judges.

Moreover, appointment of judges by the NJAC will increase the 'public confidence' on judiciary and retains the 'checks and balances'. After all the independence of the judiciary also needs to be balanced. In this context the views expressed by Justice Chalameshwar, who gave a dissenting judgement in the case needs to be noted. The most important points of his judgement favouring the NJAC are as follows:

1. 'Transparency is a vital factor in constitutional governance.... Transparency is an aspect of rationality. The need for transparency is more in the case of appointment process. Proceedings of the collegium were absolutely opaque and inaccessible both to public and history, barring occasional leaks.'
2. Assumption that 'primacy of the judiciary' in the appointment of judges is a basic feature of Constitution 'is empirically flawed.'
3. There were cases where the apex court collegium 'retraced its steps' after rejecting recommendations of a particular name suggested by the high court collegium giving scope for a great deal of 'speculation'. 'There is no accountability in this regard. The records are absolutely beyond the reach of any person including the judges of the Supreme Court who are not lucky enough to become the Chief Justice of India. Such a state of affairs does not either enhance the credibility of the institution or good for the people of this country.'
4. 'To hold that government should be totally excluded from the process of appointing judges would be wholly illogical and inconsistent with the foundations of the theory of democracy and a doctrinal heresy,' because the exclusion of the executive branch is destructive of the basic feature of checks and balances, a fundamental principle in constitutional theory.'

From the foregoing one can clearly conclude that the judgement has instead of resolving the conflict has only aggravated. Furthermore, it is essential to note that the judiciary being dragged into such controversies would result in the loss of public confidence in the judiciary and democracy in the long run.

All India Judicial Service (AIJS): Arguments 'For' and 'Against'

Important questions from Previous years' on this topics are mentioned below:

Present your views for and against the creation of an All India Judicial Service.

IAS MAINS GS (1997)

Article 312 which provides for the procedure for creating a new All India Service, expressly mentions the need for the creation of the All India Judicial Service. It also provides that 'the All India Judicial Service shall not include any post inferior to that of a district judge as defined in Article 236'. There have been arguments 'for' and 'against' the creation of All India Judicial Service.

Arguments 'For'

The first Law Commission recommended for the creation to the All India Judicial Service on the ground of bringing efficiency to the judiciary.

According to the former Chief Justice of India Sikri, the conditions of the subordinate judiciary were poor and the creation of All India Judicial Service would improve the conditions of service of subordinate judiciary.

The Supreme Court in the Judges case (1992) observed that, 'it is in the interest of the health of the judiciary throughout the country that this should be done'. The court viewed that the presence of All India Judicial Service could resolve the contention in the appointment of judges.

The National Judicial Pay Commission, based on the opinion elicited for the high courts, recommended that the All India Judicial Service should be constituted only in the cadre of district judges.

The All India Judicial Service also will have the advantage being a unifying factor and enable the nation-building activity.

Similarly, like the other All India Judicial Services, this will also help in evolving uniformity throughout India with respect to the judicial administration.

Arguments 'Against'

There have been equally strong arguments against the creation of All India Judicial Service.

Officers recruited through the All India Judicial Service at the national level may suffer from inadequate knowledge of regional language. This would affect their ability to understand the arguments placed in the trial and would corrode judicial efficiency.

The high court may lose its control over the subordinate judiciary which would impair the independence of the judiciary.

Article 312, after the 42nd Amendment Act, the All India Judicial Service shall not include any post inferior to that of a 'district judge' as defined in Article 236. If the All India Judicial Service is to 'induct bright and young persons' to the service, then such persons have to take charge as district judges after selection and training.' District judges not only try serious criminal cases but also exercise appellate jurisdiction in both criminal and civil matters. They also exercise original jurisdiction in certain civil matters.' It might be counterproductive.

An intelligent and competent lawyer would be able to establish himself in his profession by his 35–40 years of age. Such a lawyer may not be inclined to join the service as he may be allotted to State cadres and would be transferred frequently.^[7]

When a young person selected to All India Judicial Service is appointed as a District Judge, he becomes eligible for being appointed as a judge of High Court on completion of 15 years of his service as a District Judge. For instance, if such a person enters All India Judicial Service by his 24 years, he will be considered for being appointed as a judge of High Court in about 40 years. This is too young an age for being appointed as a judge of High Court.

All India Judicial Service

- 1st, 8th and 116th reports of Law Commission recommended.
- Parliamentary Standing Committee on law and justice 15th report recommended
- First National Judicial Pay Commission (1999) recommended.
- National Advisory Council to the Centre also reiterated the recommendation.
- Supreme Court in Judges c All India Judicial Service case (1992) endorsed the creation of an AIJS.

7 The National Commission to Review the Working of the Constitution, Consultation Paper on All India Judicial Service, 200.

QUALIFICATION OF JUDGES

According to Article 124 (3), a person is qualified to be appointed as a judge of Supreme Court only if he:

- (a) Is a citizen of India
- (b) Has been for at least five years a judge of a high court or of two or more such courts in succession or;
- (c) Has been for at least ten years an advocate of a high court or two or more such courts in succession or;
- (d) Is, in the opinion of the President, a distinguished jurist.

TERM OF OFFICE

The constitution does not prescribe any fixed term of office for the judges. Once appointed, a judge holds office 'until he attains the age of 65 years'. However, a judge of Supreme Court can resign his office by writing under his hand addressed to the President.

Removal of the Judge of Supreme Court

Important questions from Previous years' on this topics are mentioned below:

How can a judge of Supreme Court be removed?

IAS MAINS GS (2004)

A judge of Supreme Court is removed by the process of impeachment. Article 124 and the Judges (Inquiry) Act, 1968, provide for the procedure:

1. A judge of Supreme Court can be removed only on the ground of 'proved misbehaviour' or 'incapacity'.
2. A motion to remove a judge, addressed to the President must be submitted to the Speaker of Lok Sabha or Chairman of Rajya Sabha. The motion has to be signed by at least 100 members of Lok Sabha or 50 members of Rajya Sabha.
3. On the receipt of the motion a three member committee comprised of two judges of Supreme Court and one distinguished jurist is constituted to investigate the charges.
4. If the report of the committee contains a finding that the judge is guilty of any misbehaviour or suffers from any incapacity, then, the motion together with the report of the committee, shall be taken up for consideration by the House or the Houses of Parliament.
5. If the motion is passed by a majority of total membership of the House and by a majority of two-thirds of the members of that House present and voting, then the motion shall be presented to the President.
6. On receipt of the resolution, the President passes the order removing the judge.

In-House Disciplinary Mechanism

The constitution provides only for the removal of the judges of Supreme Court and high courts on specific grounds of 'proved misbehaviour' and 'incapacity'. However, the removal by impeachment would be an extreme remedy if there was any other misconduct or deviant behaviour. There must be a penalty other than removal in such cases. There must also be a procedure and a mechanism to deal with such matters at an appropriate level. Such mechanism needs to be one that will not affect the independence of the judiciary. The Supreme Court evolved such a mechanism in 1997.

If the Chief Justice of a high court receives a complaint against a judge of the high court, then he initiates a probe if he is satisfied that there might be substance in the allegations placed against the judge. Then, the Chief Justice of the high court can conduct an inquiry and get the explanation from the judge. If, out of the inquiry, he is satisfied that the allegations do not contain any substance, then he closes the inquiry. However, if he is satisfied that the allegations contain substance, then he may prescribe penalty as he may think fit.

Proved Misbehaviour Uncertainty of Meaning: NCRWC View

Do the following amount to 'misbehaviour' within the meaning of Article 124 (4)?

- Whether not observing the court hours or; Whether holding the court at one's own pleasure or; Whether not delivering judgments for years together.
- Whether reserving judgments for years together and leaving them un-disposed of till their retirement or transfer.

In case, the Chief Justice is of the opinion that the allegations need a deeper probe then he can forward the complaint, the response of the judge concerned along with his opinion to the Chief Justice of India.

If the Chief Justice of India is satisfied that the matter requires further inquiry, he will constitute a three member panel to conduct the inquiry in accordance with the Judges (Inquiries) Act. The judge facing the allegations is entitled to appear before the committee and place his explanations. The inquiry will not be a formal one involving examination or cross-examination of evidences and witnesses.

After the inquiry, the committee may submit a report to the Chief Justice of India that:

- There is no substance in the allegations contained in the complaint, in that case the allegation is dropped or;
- There is sufficient substance in the allegations but the misconduct disclosed is not of serious nature to call for initiating the procedure for the removal of the judge or;
- There is sufficient substance in the allegations that the misconduct disclosed is so serious that the procedure for removing the judge must be initiated. In that case the Chief Justice of India will convey the report to the Parliament and will request the Parliament to initiate the procedure for the removal of the judge.

The same procedure is adopted in case of the judges of Supreme Court also. The in-house mechanism was instituted on the recommendation of Justice Aggarwal Committee in 1997. Since, then the debate on the judicial accountability and the independence has been alive. While the independence of the judiciary is paramount, the accountability of the judiciary is also equally important. This has resulted in the demand for a permanent mechanism to deal with this matter. In the post 1991, era of transparency and accountability the demand had gained momentum and a Judicial Accountability Bill was introduced in 2006. However, the bill was not passed and lapsed. Later, the Judicial Standards and Accountability Bill, 2010 was introduced in the Lok Sabha and passed. But the bill lapsed due to the dissolution of the House.

Judicial Standards and Accountability Bill

The bill replaces the Judges (Inquiry) Act, 1968 and provides for:

- Establishing judicial standards that can be enforced to regulate the conduct of judges of high courts and the Supreme Court.
- Replace the present in-house mechanism for investigating the allegations of misbehaviour or incapacity of judges of high courts and the Supreme Court with a statutory body.
- Amend the process for removing the judges of Supreme Court and the high courts.
- Disciplinary proceedings against judges for minor cases.
- The declaration of assets by the judges. A judge must furnish the information relating to the assets and liabilities within thirty days from the date on which he makes and subscribes an oath or affirmation.

What are 'Judicial Standards'?

1. Norms, including:
 - Punctuality and commitment to work
 - Having integrity and detachment
 - Impartial administration of justice.
2. Being conscious that he is under the public gaze. Not doing any act or omission which is unbecoming of the high office.
3. Maintaining a degree of aloofness consistent with the dignity of his office.
4. Judgments should speak for themselves.

Source: The Judicial Standards and Accountability Bill, 2012.

Ethics in judiciary is prescribed by the 'Restatement of values of Judicial Life' adopted by the Supreme Court in 1997. The Judicial Standards Bill, 2010, incorporates most of the provisions in the statement. The bill prescribes to judges 'universally accepted values of judicial life and requires them to follow certain standards of conduct. The bill prohibits a judge:

- From contesting the election to any office of a club, society or other association except one connected with law or any court.
- Having close association with individual members of the Bar particularly with those who practice in the same court in which he is a judge.
- From allowing family members who are members of the Bar to use his official residence for professional work or to appear before him or associated in any manner with a cause to be dealt with by him.
- To hear and decide a matter in which a member of his family, or his close relative or a friend is concerned.
- From entering into public debate or express his views in public on political matters or on matters which are pending or are likely to arise for judicial determination by him.
- From giving interview to the media in relation to any of his judgment delivered, or order made, or direction issued, by him, in any case adjudicated by him.
- From engaging in trade or business, either by himself or in association with any other person, directly or indirectly.

Further, to investigate complaints against judges, the bill provides for the establishment of:

- National Judicial Oversight Committee
- Scrutiny Panel
- Investigation Committee

National Judicial Oversight Committee

The committee is comprised of a retired Chief Justice of India as the Chairperson, a judge of the Supreme Court, a Chief Justice of the high court, the Attorney General for India, and an eminent person appointed by the President as members.

Any person making an allegation of misbehaviour or incapacity in respect of a judge may file a complaint with the committee. The committee is vested with supervisory powers on investigation into complaints against judges, and the power to impose minor measures.

Independent Judiciary Need

An independent judiciary is needed: To protect and preserve rule of law

- To ensure supremacy of the constitution and law
- To guarantee the rights of the individuals
- To settle disputes between individuals, groups and government
- To prevent individual or group dictatorship replacing democracy

Scrutiny Panel

The panel is to be constituted in the Supreme Court and every high court. It shall consist of a former Chief Justice and two sitting judges of that court. The panel will conduct an initial investigation on a complaint made against a judge.

Frivolous or vexatious complaints made are reported by the panel. The penalty for filing frivolous or vexatious complaints is rigorous imprisonment of upto five years and fine of upto five lakh rupees.

Investigation Committee

The investigation committee is to be set-up by Oversight Committee if the scrutiny panel recommends for an enquiry. The committee is meant for enquiring into complaints made against the judges. The qualifications of members of the investigation committee are not specified by the bill. It shall be the discretion of the Oversight Committee.

Independence of the Supreme Court

- (a) The judges are appointed by the President by a warrant under his hand and seal.
- (b) The appointment and removal of the judges is separated. While the judges are appointed by the President, they are removed only in the address of the Parliament.
- (c) The constitution prescribes the specific grounds for the removal of the judge of Supreme Court— proved misbehaviour and incapacity.
- (d) The salary, allowances, pension of judges and other administrative expenses are declared as charged expenditure.
- (e) The salary of the judge is fixed and cannot be varied to his disadvantage during his term.
- (f) The Houses of the Parliament is prohibited from discussing the conduct of a judge of Supreme Court except only if a motion for his impeachment is being considered.
- (g) The judges of Supreme Court are prohibited from practising as advocate after their retirement (Article 124(7)). Article 220, prohibits a judge of high court from practising as an advocate in the high court(s) in which he has sat as a permanent judge.
- (h) The Supreme Court and the high courts are courts of record with the power to punish for their contempt.

Position of Supreme Court

Under the Constitution of India, the Supreme Court enjoys the position as, a federal court, guardian of constitution, guarantor of fundamental rights, highest interpreter of the constitution and the apex court.

Important questions from Previous years' on this topics are mentioned below:

What is the position of Supreme Court under the Constitution of India? How far does it play its role as the guardian of the constitution? IAS MAINS GS (2002)

(a) Federal Court

The Supreme Court in its original jurisdiction under Article 131 acts as a federal court. A federal court is a court that deals with the disputes between the federating units. In India, the Supreme Court is the only court that has the power to entertain the petitions relating to the dispute between union and State governments or any dispute between the States.

Article 131 provide that the Supreme 'shall have original jurisdiction in any dispute between:

- The Government of India and one or more States or;
- The Government of India and any State or States on one side and one or more other States on the other or;
- Two or more States, if and in so far as the dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends.'

(b) Guardian of the Constitution

Important questions from Previous years' on this topics are mentioned below:

What is the position of the Supreme Court under the Constitution of India? How far does it play its role as the guardian of the constitution?

IAS MAINS (2002)

The founding fathers have entrusted the responsibility of guarding the constitution with the Supreme Court. Being the guardian of the constitution, the Supreme Court seeks to:

- Protect and preserve the constitution from undue encroachment.
- Prevent the abuse of the powers conferred on the legislature and executive.
- Uphold the values and philosophy of the constitution.
- Interpret the constitution to clarify and ensure that the objectives of the constitution are achieved.
- Guarantee the fundamental rights.

The Supreme Court in various cases, by the power of judicial review has been performing its role as the guardian of the constitution judicially. The court has prevented the undue encroachment of the constitution in several occasions by declaring such amendments to the constitution void. For instance, the court in the Keshavananda Bharti case propounded the Doctrine of Basic Structure, which has effectively prevented the legislature from making any law that may take away certain features of the constitution which would amount to substitute the constitution with a new one. Thus, the constituent power of the Parliament is limited only to enable the constitution to keep pace with the changing needs of the time but not to replace the constitution.

The court has effectively prevented the abuse of the power vested in the Parliament and the executive. For example, the court had effectively prevented the power to proclaim constitutional emergency in any State. Since 1958, when it was first used against the E. M. S. Namboodiripad Government in Kerala, the power had been subjected to misuse in several occasions. After the S. R. Bommai case judgment, this has been effectively prevented from being misused. The court has restored the State governments whenever the emergency was proclaimed on political reasons. The restoration of the Arunachal Pradesh government in 2016 is a glaring example.

The court has ensured that the philosophy of the constitution as enshrined in the Preamble is represented in all the actions of the State and its apparatus. The court's judgement regarding secularism, social justice and sovereignty are worth noting here.

Similarly, the court has in various judgements has ensured that the constitutional objectives are upheld in the State actions. The court, by interpreting the right to life guaranteed by Article 21, as the right to 'live with human dignity', has clarified that the objective of the constitution is to secure dignity of individuals. This has given way for the emergence of the concept of 'Implied Rights'.

In the Minerva Mills case, the court clarified that the fundamental rights and the DPSP together constitute the 'conscience of the constitution' and there is no inherent conflict between the two. The court

by evolving the 'Doctrine of Harmonious Construction' gave the means to resolve any apparent conflict between any two provisions of the constitution.

Further, the court also has played its role as the guarantor of the fundamental rights. Since upholding the fundamental rights is an essential function of the court, enforcement of the rights may also be included in its role as the guardian of the constitution.

(c) Guarantor of Fundamental Rights

The Constitution of India provides for enumerated and guaranteed fundamental rights. Keeping in mind the low rate of literacy and the low level of political socialization in India, the founding fathers of the constitution chose to have the guaranteed fundamental rights. The responsibility of enforcing the rights is vested in the Supreme Court by Article 32. The Supreme Court has been playing this role effectively. The following instance may be quoted as examples:

- In the Mandal Commission case, the Court had upheld reservation as constitutional and protected the right of the weaker sections.
- In the Maneka Gandhi case, the Court has clearly established the relationship between Articles 19 and 21. The Court ruled that the Articles 19 and 21 are not watertight compartments but are closely related. The right to personal liberties guaranteed by Article 21 include the rights guaranteed by Article 19. The court interpreted 'procedure established by law' as 'due process'. So, any action by the State to deprive the right to personal liberties is subjected to test of reasonableness.
- Further, the interpretation of the fundamental rights by the Court has evolved the concept of 'Implied Rights'. This has resulted in the rise of many rights such as right to shelter, right to pollution-free environment, etc.
- The court has come out with the guidelines to be followed by the Police while detaining any person in the D. K. Basu case. This has established a deterrent against the violation of Human Rights.
- With respect to Child Labour, in the M. C. Mehta case, the court directed the setting up of the Child Labour Relief Fund for the rehabilitation of the Child Labour. Thus, protecting the Child Rights.
- The court in the Reverend Father Stanislas case, the court clarified the 'freedom of conscience' and the right to propagate.
- With respect to the constitutional remedies the court has provided the guidelines for the issuing the writs. The court had ruled that the court must not refuse to grant relief on certain grounds.^[9]

Thus, the court has played its role as the guarantor of fundamental rights.

(d) Highest Interpreter of the Constitution

Article 147, vests the power to interpret the constitutional provisions involving 'any substantial question of law'. Any interpretation made by the court to any provision of the constitution is binding on all the courts within the territory of India. Only the Supreme Court or the legislature (Parliament or the state legislature) is empowered to overrule the ruling of the court. For example, the court had propounded the Doctrine of Basic Feature in the Kesavananda Bharti case, which has now come to stay since 1973.

The Supreme Court in the interpretation of provisions of the constitution has evolved various doctrines. The most notable doctrines are:

- Doctrine of Prospective Overruling
- Doctrine of Progressive Interpretation

⁹ For details refer the Fundamental Rights.

- Doctrine of Eclipse
- Doctrine of Severability
- Doctrine of Natural Justice
- Doctrine of Liberal Interpretation
- Doctrine of Public Trust
- Doctrine of Pith and Substance
- Doctrine of Territorial Nexus
- Doctrine of Harmonious Construction

Doctrine of Prospective Overruling: It means that any interpretation given to any provision of the constitution or any law declared by the Supreme Court shall not be given a retrospective application. It shall only have a prospective value and be applied only to cases arising after the ruling of the court. For instance, the concept of basic feature propounded by the Supreme Court is applicable only to cases after 1 April 1973 and will not be applicable to cases before that date.

Do You Know?

- Doctrine of Prospective overruling first originated in the USA.
- In India the doctrine was invoked in the Golaknath case by the CJI Subba Rao

Objections against the Doctrine

1. It amounts to legislation by courts.
2. It would not encourage parties to prefer appeals as they would not get any benefit.
3. Declaration for the future would only be obiter and is not a desirable change.
4. It is a brake on courts which otherwise might be tempted to be so facile in overruling.

Source: Golaknath case judgement

Doctrine of Progressive Interpretation: In case there are two interpretations to any provision of the constitution or law one progressive and the other regressive, the courts shall take the progressive meaning in to consideration and let the other go. The courts are expected to contribute to the progress of the society in a welfare state.

Doctrine of Eclipse: The doctrine is related to Article 13 (1). Article 13 (1) provides that any law enacted before the commencement and in force at the commencement of the constitution is void if it is 'inconsistent with or in derogation' of fundamental rights. 'Doctrine of Eclipse is based on the premise that fundamental rights are prospective in nature'.⁽¹⁰⁾

As a consequence, 'an existing law inconsistent with a fundamental right, though it becomes inoperative from the date of commencement of the Constitution, is not dead altogether'.⁽¹¹⁾ The law is said to be eclipsed by the fundamental rights. In case, any amendment is made to the fundamental rights then the law will come into force.

Doctrine of Severability: The doctrine is also related to Article 13. According to Article 13, any law 'inconsistent with or in derogation of the fundamental rights shall be void to the extent of such incon-

10 The Doctrine of Eclipse in constitutional law: A Critical Reappraisal of its Contemporary Scope and Relevance: Sushila Rao.

11 As given in *ibid.* (P. Ramanatha Aiyar's the Law Lexicon 585 (Justice Y. V. Chandrachud et al. eds., 2002). See the Supreme Court's discussion of the doctrine in Bhikaji Narain Dhakras versus State of Madhya Pradesh, AIR 1955 SC 781).

sistency shall be void'. If any part of a law is infringing upon the fundamental rights, then only such part shall be void. Whereas if the rest other parts of the law are consistent with the rights and can survive without the impugned part then it shall remain in force.

Natural Justice: Constitutional Provisions

- | | | |
|----------------|-----------------|-----------------|
| (a) Preamble | (d) Article 21 | (g) Article 136 |
| (b) Article 32 | (e) Article 22 | (h) Article 226 |
| (c) Article 14 | (f) Article 39A | (i) Article 311 |

Doctrine of Natural Justice⁽¹²⁾: The doctrine is termed as a synonym of fairness in the concept of justice and stands as the most accepted methodology of a governmental action. The doctrine is to check the arbitrary exercise of power by the State. It is not only to secure justice but also to prevent miscarriage of injustice because the underlying objective of the principle of natural justice is to ensure fundamental rights of the citizens are guaranteed.

Doctrine of Liberal Interpretation: The doctrine means that the court must be liberal in interpreting the provisions of the constitution. Every provision must be construed as to give meaning and relevance to every word used. The provision must be interpreted in widest possible terms that the widest meaning must be taken. The Supreme Court refused the plea in A. K. Gopalan case but has accepted in the Maneka Gandhi case.

Doctrine of Public Trust: The Supreme Court has enunciated the doctrine of 'Public Trust', M.C. Mehta versus Kamal Nath (1997) case. The idea of this theory was that certain common properties such as rivers, seashores, forests and the air were held by the government in trusteeship for the free and unimpeded use of the general public.

The resources like air, sea, waters and the forests have such a great importance to the people as a whole, that it would be totally unjustified to make them a subject of private ownership. The concept 'environment' bears a very close relationship to this doctrine. The doctrine enjoins upon the resources for the enjoyment of the general public, rather to permit their use for private ownership or commercial purposes.

Doctrine of Pith and Substance: The doctrine corresponds to Article 246. According to Article 246, the Parliament has exclusive powers to make law on matters in Union List and the state legislatures exclusive powers to make law on matters in State List, respectively. Thus, any encroachment on each other's powers is not permitted by the constitution. For example, if any law made by the Parliament is encroaching upon a matter in State List, then the court will apply this doctrine to determine the validity of the law. In case the encroachment is eventual and not intentional then the court may declare the law as valid.

In case the court finds that the encroachment was deliberate and intentional, then the court will declare the law as unconstitutional. The law is known as 'colourable legislation'. The Parliament is utilizing a matter in Union List to take the chance of legislating on the State List and hence unconstitutional.

12 Supreme Court rulings in Kumaon Mandai Vikas Nigam Limited versus Girja Shankar Pant, AIR 2001 SC 24 and other cases. Refer Constitution of India P. M. Bakshi 13th Edition Page 23.

Doctrine of Public Trust

Supreme Court applied the Doctrine of Public Trust in Spectrum 2G case and cancelled the 122 licenses allotted and observed that:

- Natural resources belong to the people but the State legally owns them on behalf of its people and from that point of view natural resources are considered as national assets, more so because the State benefits immensely from their value.
- The State is empowered to distribute natural resources. However, as they constitute public property/national asset, while distributing natural resources, the State is bound to act in consonance with the principles of equality and public trust and ensure that no action is taken which may be detrimental to public interest.
- In Article 39(b) of the Constitution it has been provided that the ownership and control of the material resources of the community should be so distributed so as to best sub-serve the common good.

Doctrine of Territorial Nexus: It is corresponding to Article 245. The doctrine limits the applicability of a State law to the territory of the State. It shall be applied only to persons within the State. However, it will be applicable persons and objects outside the State if there is a direct nexus between the State making the law and the purpose of the law. In effect the doctrine means the State laws will not have validity out of the territorial limits of the law. According to Article 245, only the law enacted by the Parliament will have extraterritorial jurisdiction.

Doctrine of Harmonious Construction: When two provisions of the constitution appear to conflict with each other, the meaning of such provisions which gives effect to both the provisions ensuring smooth and harmonious operation of both the provisions should be accepted. The doctrine was applied in the Minerva Mills case.

(e) Apex Court

The Supreme Court is the highest judicial authority in India. The Chief Justice of the Supreme Court is the Chief Justice of India. According to Article 141, 'the law declared by the Supreme Court shall be binding on all courts within the territory of India'. Thus, the Supreme Court plays the role of an apex court.

JURISDICTION OF THE SUPREME COURT

Under the Indian constitution, jurisdiction of the Supreme Court can be classified as five types namely:

- (i) Original jurisdiction
- (ii) Appellate jurisdiction
- (iii) Writ jurisdiction
- (iv) Advisory jurisdiction
- (v) Revisory jurisdiction

However, the jurisdiction of the Supreme Court can be enlarged in accordance with Article 138. Article 138 provides that the Parliament can enlarge the jurisdiction of the Supreme Court by conferring powers and jurisdiction with respect to the matters in the Union List in Schedule 7. Further, the Parliament can confer upon the Supreme Court, such powers and jurisdiction in accordance with any international or bilateral agreements to which India is signatory.

(a) Original Jurisdiction

Article 131 defines the original jurisdiction of the Supreme Court. In its original jurisdiction the Supreme Court is a federal court. In its original jurisdiction:

- The Supreme Court has 'exclusive' power to inquire into any question of law or fact relating to 'the existence or extent of a legal right' of or any dispute in that regard between:
 - (a) The Government of India and one or more States or;
 - (b) The Government of India and any State or States on one side and one or more other States on the other or;
 - (c) Two or more States.
- These are known as the 'original suits' filed in the Court.
- According to Article 32, the Supreme Court has the original jurisdiction for the enforcement of fundamental rights.
 - According to Article 139A (1), inserted by the Constitution (42nd Amendment) Act, empowers the Supreme Court to transfer certain cases pending in the Supreme Court or any high court, if the case involves 'any substantial question of general importance'. The court can withdraw case either on its own, or if the Attorney General makes an application regarding this.
 - According to Article 139A (2), inserted by the Constitution (42nd Amendment) Act, 'the Supreme Court may, if it deems it expedient so to do for the ends of justice, transfer any case, appeal or other proceedings pending before any high court to any other high court'.

Exemption to Original Jurisdiction

There are certain cases which are exempted from the original jurisdiction of the Supreme Court. Such exemptions are as follows:

1. Articles 131 and 363

The original jurisdiction of the Supreme Court will not extend over any 'dispute arising out of any treaty, agreement, covenant, engagement, sanad or other similar instrument which, having been entered into or executed before the commencement of this constitution, continues in operation after such commencement, or which provides that the said jurisdiction shall not extend to such a dispute', even the dispute is between the federating units.

2. Article 257 (4)

Any dispute relating to the sharing of 'the extra cost incurred in the construction or maintenance of any means of communication or the measures to be taken for the protection of any railway by any State on the direction by the union government'. Any default of in this regard shall be determined by an arbitrator appointed by the Chief Justice of India.

3. Article 258 (4)

Any dispute relating to the sharing of the costs with respect to the powers conferred or functions delegated to any State shall be determined by an arbitrator appointed by the Chief Justice of India.

4. Article 262

In case of any interstate river water dispute, the Parliament is empowered to establish an Interstate River Water Disputes Settlement Tribunal by a law. By the law the dispute may be excluded from jurisdiction of the Supreme Court.

5. Article 290

Any dispute relating to the adjustment in respect of certain expenses and pensions 'payable to or in respect of a person who has served before the commencement of this constitution under the Crown in India or after such commencement in connection with the affairs of the union or of a State', shall be determined by an arbitrator appointed by the Chief Justice of India.

6. Matters referred to Finance Commission

Any matter referred to the Finance Commission under Article 280, shall be excluded from the jurisdiction of the Supreme Court.

(b) Appellate Jurisdiction

The Supreme Court, being the apex court is also the highest court of appeal in India. Therefore, all appeals lie to the Supreme Court. However, under Article 134A, the certificate issued by the high court is essential for appealing to the Supreme Court. Article 134A was inserted by the 44th Amendment Act.

Article 134A empowers the high courts to issue certificate for appeal to the Supreme Court. The high court can issue the certificate either on its own or if an application is made on behalf of the aggrieved. The high court can issue the certificate if the case merits and it has the discretion to reject the application for the certificate. However, the certificate issued by the high court is not binding on the Supreme Court. The Supreme Court decides to admit the petition of appeal on the basis of the merit of the case. The court can also reject the petition in its discretion. The appellate jurisdiction of the Supreme Court is of four categories namely:

- (i) Appeal in constitutional matters
- (ii) Appeal in civil matters
- (iii) Appeal in criminal matters
- (iv) Appeal by special leave

Appeal in Constitutional Matters

Article 132 deals with the appeal in the constitutional matters. If any case ‘involves a substantial question of law as to the interpretation of this constitution’, then an appeal will lie to the Supreme Court from the orders, decree or judgement of a high court. The appeal is available in all cases—civil, criminal or other proceedings. The condition is that the case must involve a need for the interpretation of the constitution. ‘Other proceedings’ are the proceedings other than the civil or criminal proceedings such as any proceeding relating to sales tax, etc.

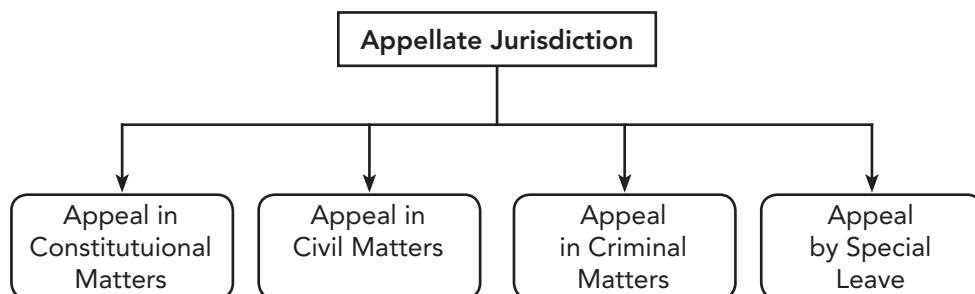


FIGURE 17.2: Appellate Jurisdiction

Appeal in Civil Matters

Article 133 deals with the appeal to Supreme Court in the civil proceedings. The appeal will lie to Supreme Court from any judgment or final order if the high court under Article 134A, certifies that:

- The case involves a substantial question of law of general importance
- In the opinion of the high court the said question needs to be decided by the Supreme Court.

Before 1972, Article 133 contained a clause prescribing a monetary value for the appeal to Supreme Court in civil matters. Article 133 provided that if only the high court certifies that the case involved the claim of an amount of ₹ 20000/- and above, the appeal will lie to Supreme Court. The Constitution (30th Amendment) 1972, removed the monetary condition.

Appeal in Criminal Matters

Article 134 deals with the appeal in criminal matters. According to Article 134, the appeal in criminal matters is of two categories namely:

(i) Without the Certificate of the High Court

In any criminal case the appeal to the Supreme Court from the final order or decree of the high court without the certificate of appeal, will be available if the high court has:

- On appeal reversed an order of acquittal of an accused person and sentenced him to death (Article 134 (a)) or;
- Withdrawn for trial before itself any case from any court subordinate to its authority and has in such trial convicted the accused person and sentenced him to death (Article 134 (b)).

(ii) With the Certificate of the High Court

In all the other cases the appeal will lie to the Supreme Court from the high court only when the certifies under Article 134A.

Thus, according to Article 134, appeals to Supreme Court is permitted in specific case. Articles 134 (a) and (b) permit appeal in case involving death sentence and Article 134(c) permits appeal in other cases. Clause (c) is much wider and if the high court certifies that the case merits the appeal then the appeal is competent.

Supreme Court Guidelines on Issuing Certificate of Appeal

- (a) In the Nar Singh versus State of UP case, the Supreme Court ruled that the power of the high court to grant the certificate of appeal is a discretionary power of the court. But the court has to exercise the power judicially on the 'well established lines'.
- (b) In the Siddheshwar Ganguly case, the Supreme Court ruled that the high court must not grant the certificate on the questions of fact and it shall be granted only in cases involving a substantial question of law. There must be an 'exceptional circumstance', for example, the case demands an appeal as substantial and grave injustice has been done.

Appeal by Special Leave

Article 136 provides for the appeal by special leave granted by the Supreme Court. It is a discretionary power of the Supreme Court. The jurisdiction is of the widest amplitude as regards:⁽¹³⁾

- The court from whose decision the appeal may be entertained. The appeal will lie from any court including Administrative Tribunals except courts martial.
- The nature of the decision that may be appealed from. The appeal will lie in any kind of decision—interim orders, final order, decree or judgment. Even in cases where no order has been passed by any tribunal, the appeal will lie if the case merits.
- The nature of the proceeding in which appeal may be entertained, it is irrespective of whether the proceeding is constitutional, civil, and criminal or other proceedings.
- The grounds that may be allowed to be raised for seeking such special leave.

From the above, it can be inferred that it is a 'plenary jurisdiction' vesting very wide powers and involves much of discretion to the Supreme Court. Thus, the Supreme Court ruled that the power must be 'exercised sparingly'.⁽¹⁴⁾

Supreme Court Guidelines on the Exercise of the Power: In various cases the Supreme Court has evolved the guidelines for the exercise of the power to grant appeal by special leave.

13 Refer Constitution of India: P. M. Bakshi, 13th Edition Page 157

14 Supreme Court: Mohd Khalil Chisti versus State of Rajasthan 2013.

TABLE 17.1 Difference between Ordinary Appeal and Appeal by Special Leave

Ordinary Appeal	Appeal Special Leave
(i) Available only against final order	Available against any order like an interim order. In certain cases, it is available even if there is no order passed by any tribunal
(ii) Available only against the final order of the high court	Available against any tribunal except military tribunals
(iii) Appeal depends on the nature of the proceedings—constitutional, civil or criminal	Nature of proceedings not a bar
(iv) Appeal lies only on the basis of high court certificate under Article 134A	Certificate of appeal from high court not essential
(v) Follows the due course as provided by law	If the appeal is granted the Supreme Court takes up the matter for immediate consideration. The appeal gets primacy over the courts regular agenda.
(vi) No conditions imposed	Available only when the case involved matters of urgent public importance.

Firstly, the power must not be exercised in circumstances when the high court has taken the reasonably possible view.

Secondly, the appeal may be granted in cases where there has been a violation of the Principle of Natural Justice.

Thirdly, in civil cases, the appeal shall be granted only if the case involves a 'substantial question of law of general importance'.

Fourthly, in criminal cases, the appeal shall be granted only when it is shown that 'exceptional circumstances exist that substantial and grave injustice has been done'.

Fifthly, with respect to the quasi-judicial tribunals, the appeal shall be granted only when they exceeded their jurisdiction.

Lastly, in general terms the appeal shall be granted only when ordinary course of appeal by other means is not applicable.

(c) Writ Jurisdiction

Article 32, confers the power to issue writs for the enforcement of the fundamental rights. Article 32 (2) reads 'the Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights'.

The Supreme Court has laid down the following conditions for the exercise of the writ jurisdiction. If there has been any violation of fundamental rights, then the Supreme Court must not refuse to grant relief on the ground that:

- The person whose right is violated can seek remedy from some other court or under the ordinary law. This is because the Article 32 guarantees the remedies as a fundamental right or;
- The facts relevant to the dispute need to be investigated and the evidences regarding the violation of rights are not adduced or;

- The writ pleaded in the case was not appropriate and corresponding to the right violated. It is the responsibility of the court to issue the proper writ because Article 32 vests the responsibility in the court or;
- The person whose right has been infringed has not approached the court. Thus, the public interest litigation is permitted.

Writs

Habeas Corpus	Produce the body
Mandamus	Command
Prohibition	Prevent
Certiorari	Quash judgement
Quo warranto	Question the authority

The constitution confers the power to issue various writs to enforce the fundamental rights on the Supreme Court. Though Article 32 mentions only five writs, the court has the powers to issue other writs⁽¹⁵⁾ if it was needed for the enforcement of the fundamental rights. Article 32 reads, 'Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate'.

Writ of Habeas Corpus: Habeas corpus literally means 'to produce the body of either alive or dead'. When the writ is issued the person needs to be produced before the court either alive or dead. The general rule is that only a person whose rights are infringed upon must only move the court for remedy. However, in case of a person on behalf of whom the writ of habeas corpus is sought is detained and remains in the custody of someone, the writ may be pleaded by any other person than the aggrieved.

The writ is meant for ascertaining whether a person detained or taken into custody has been done so in accordance with law or not. In case, the court is satisfied that the person was detained or taken in to custody unlawfully, then the court has the powers to order his release and set him free immediately. It effectively prevents the arbitrary use of the power by the executive. Thus, it is known as the 'bulwark of personal liberty'.

The writ may not be available in the cases:

- (i) In which the person is detained in a place over which the jurisdiction of the court does not extend.
- (ii) In which the person is detained for a proceeding for the contempt by a court of record or by Parliament.
- (iii) Of securing the release of a person imprisoned to serve the sentence imposed by a court of law on a criminal charge after due trial. However, the Supreme Court has relaxed this condition. The court had ruled that in case a person who is serving the sentence in a prison is subjected to torture or inhuman treatment then the writ may be applicable in such cases.

On the basis of the evidences produced before it, if the court is satisfied, that the person is subjected to such agony then, the court may issue the writ of habeas corpus. By this the court is only ordering the prison authorities to produce the person before the court, only to ascertain whether he was subjected to inhuman treatment or torture. The court need not set him free, for he is detained by the authority of law.

Wrts: Origin

- Wrts originated in the English judicial system.
- Originally the power was vested with the King in Council.
- It was considered as a royal order.
- Initially writ was issued to protect the interest of the Crown.
- Later extended to grant relief to citizens as well.
- In India power to issue wrts was vested in the Supreme Court by the Regulating Act, 1773.

The Supreme Court⁽¹⁶⁾ in various cases had held that habeas corpus is granted, only if the detention is illegal. Principal grounds for challenging the legality of detention are as under:

- The law under which the detention order has been issued, is invalid.
- The order under which detention has been ordered, is invalid.
- Detention is not in compliance with the law.
- The order of detention is *mala fide*.
- The order of detention is based on irrelevant or extraneous considerations.
- The order is passed without application of the mind.

Writ in case of 'Threatened Detention'⁽¹⁷⁾: The exceptional cases, in which threatened detention may give rise to the writ, are where the court is satisfied about one of the following circumstances:

- The order of detention is not passed under the act under which it purports to be passed
- It is passed against a wrong personIt is passed for a wrong purpose
- It is passed on vague, extraneous and irrelevant grounds
- The officer purporting to pass the order has no authority, in law, to make the order.

Writ of Mandamus: Mandamus literally means 'to command'. When the fundamental rights of any person are infringed upon due to any public authority failing to perform his lawful duties then, the writ of mandamus lies against him. By issuing the writ the court directs the public servant to perform his duties. On the other hand, it is also issued to restrain a public servant from performing any act which is unconstitutional.

Certiorari and Prohibition

The wrts of certiorari and prohibition may be issued in cases of:

- Defect of jurisdiction
- Non-observance of the rules of natural justice
- Errors of law

16 The cases for the reference of this include Emperor versus Sibnath Banerjee, (AIR 1943 FC 75), Kishore Mohan versus State of West Bengal, (AIR 1972 SC 1749), Vimlabai Deshpande versus Emperor (AIR 1945) et al.

17 Additional Secretary versus Alka Subhash Gadia, (1990).



It is to be noted that the writ of mandamus issued by a judge of Supreme Court will be binding on the Chief Justice in his administrative capacity. However, the writ is not applicable in the following cases:

- To direct the legislature to enact a law or restraining the legislature from making the law.
- Where the public servant is entrusted with the discretion of decision-making by law.
- Where the public servant is need not perform the particular function under any law.
- Involving private parties, the writ does not apply to private.
- Where it seeks to direct the President or the Governor of a State to exercise their executive powers.
- To compel a court or judicial tribunal to exercise its jurisdiction when it has refused to exercise it.

Writ of Prohibition: It is one of the writs issued by a superior court against an inferior court. The writ is issued in cases involving 'Error of Jurisdiction' of the court. This is issued even before the inferior court passes any order. The writ is issued when the inferior court acts:

- In excess of or without its jurisdiction or;
- In violation of the rules of natural justice or;
- Under any law which itself is unconstitutional or;
- In contravention to fundamental rights.

Writ of Certiorari: This is another writ issue by the superior court against the inferior court. The writ is issued in cases where a court has passed an order wrongfully. By issuing the writ of certiorari the superior court quashes (nullifies) the order made by the inferior court and withdraws the case for trial before itself.

The writ is issued in cases involving—Error of law, Error of facts, Error of procedure or Error of jurisdiction. The writ is issued when the court acts without sufficient evidence or the court misdirects itself in considering the available evidence or in case of any irregularity of procedure.

The writ is also applicable in case of administrative bodies which may not possess judicial obligations. In case the functions of the body affect the rights of the individuals by not conforming to the principle of natural justice.

Writ of Quo Warranto: It literally means 'by what authority'. It is a writ issued by the court to ascertain from which law a public servant derived the authority to perform a particular function. The writ is warranted when any authority is exercised without legal sanction. It is also available in cases involving any unreasonable act, where there is no principle to unquestionably justify the action. In such cases the State is bound to prove and explain on what authority the action was taken.

Limits of Writ Jurisdiction

The Supreme Court in various cases identified the limits of the writ jurisdiction. There must be a clear breach of fundamental right not involving disputed questions of fact. Non-justifiable and political matters cannot be dealt with under the guise of public interest litigation. Policy preferences not involving fundamental rights cannot be agitated under Article 32 because 'articles of the constitution cannot be a means to indicate policy preference'. Hence, government policy cannot be enforced by writ under Article 32. A directive principle cannot be enforced by writ under Article 32.

Article 139 and Writs

Article 139 empowers the Parliament to enact law to confer the power to issue writs for the purposes other than enforcement of the fundamental rights. According to Article 32, the Supreme Court can issue writs only for the enforcement of fundamental rights.

(d) Advisory Jurisdiction

Article 143 deals with consultative or advisory jurisdiction of the Supreme Court. Article 143 (1) states that if it appears to the President that:

- A question of law or fact has arisen or is likely to arise.
- Such question is of such nature or importance that.
- It is expedient to obtain the opinion of the Supreme Court upon then he may refer the question to the Supreme Court for its consideration.

When any matter is so referred to the President, the Supreme Court can give its opinion to the President after 'such hearing as it thinks fit'. The court has the discretion of either giving its opinion to refusing to give its opinion.

For example, the Supreme Court gave its opinion in the Judges' case in 1999, by which the collegium system for the appointment of the judges is in operation. On the other hand, the court refused to give its opinion in respect of the Ram Jahnma Bhoomi issue.

However, according to Article 143 (2), if the President notwithstanding anything in the proviso to Article 131, then it is obligatory on the court to give its opinion to the President after due consideration and such hearing as it may think fit.

(e) Revisory Jurisdiction

The judgements or orders made by the Supreme Court are binding on all courts within the territory of India (Article 141). However, according to Article 137, the Supreme Court has the powers to review and revise its own judgements. Such power to review is subjected to the law made by the Parliament and the rules made by Supreme Court under Article 145. Accordingly, any such review of the judgement of the court can be made by a bench which is larger than the original bench that delivered the judgement.

For example, the Supreme Court reviewed its judgement in A. K. Gopalan case and in the Maneka Gandhi case. The court reversed its judgement in the Golaknath case by the Kesavananda Bharti case.

In the Mandal Commission case the Court ruled that it 'would not depart from a long-settled interpretation solely depending upon the facts given case. Where, however, there has been no uniformity in previous decisions, the later court would examine the principle in the light of the scheme of the constitution and the materials placed before it.'

Enforcement of Decrees and Orders of Supreme Court

The Supreme Court is vested with the power to pass any order 'necessary for doing complete justice in any matter pending before it'.⁽¹⁸⁾ Any such order passed by the court is enforceable throughout India in accordance with the law made by the Parliament for the purpose. In the absence of such a law, the President has the power to prescribe by an order.

This is a plenary power of the Supreme Court 'for doing complete justice'. The court ruled that 'complete justice' demands granting equitable relief to eradicate injustice by this power.⁽¹⁹⁾ Doing justice between parties is a constitutional obligation under Article 142. Further, the court also 'observed that it is advisable to leave this power undefined and un-catalogued, so that it remains elastic enough, to be moulded to suit the given situation'.⁽²⁰⁾ Under Article 142, 'the Supreme Court can grant appropriate relief where:

- There is some manifest illegality or;
- There is manifest want of jurisdiction or;
- Some palpable (felt) injustice is shown to have resulted.'⁽²¹⁾

18 Article 142.

19 Manish Goel versus Rohini Goel case AIR 2010, SC 1099.

20 Delhi Development Authority versus Skipper Construction Corporation Private Limited AIR 1996 SC 2005.

21 A. R. Antulay versus R. S. Nayak, AIR 1988 SC 1831.

Do You Know?

- The term judicial review is not mentioned in the constitution.
- Judicial review is an implied power flowing from Article 13.

JUDICIAL REVIEW

It is an essential feature of a federal constitution and is drawn from the American Constitution. In the USA, the power is derived by the court by interpreting the constitution. But the Indian Constitution confers the power on the judiciary by the provisions of Articles 13 and 32.

The original and appellate jurisdiction of the Supreme Court between Articles 131 and 136 also provide for judicial review. The scheme of dividing the legislative powers between the Parliament and the state legislatures is provided in Article 246. The scheme also confers the power of judicial review on the Supreme Court.

It is the power of the judiciary to review and determine the validity of any law. It is the power of the courts to enquire whether a law conflicts with the provisions of the written constitution. If the court is satisfied that the law conflicts with the constitution, the court has the powers to declare the law as *ultra vires* the constitution and therefore, void. The power of judicial review serves the following purposes:

- It seeks to protect the private rights (fundamental rights) of the individuals.
- It legitimizes the government actions.
- It helps in upholding the Rule of Law.
- It helps to ensure that provisions of the constitution are abided by.
- It prevents arbitrary use of power or action.
- It ensures just standards of procedures.

Public Interest Litigation

- The liberal interpretation of *locus standi* resulted in the rise of the concept of PIL.
- PIL is a proceeding in which an individual or group seeks relief in the interest of general public and not for its own purpose.
- In PIL, there is no adjudication on individual rights.
- It is also known as 'Social Action Litigations'.
- In India PILs originated in the Hussainara Khatoon versus Bihar case (1979).
- Justice P. N. Bhagwati is the originator of the PIL in India.

Principles of Judicial Review

The principles of judicial review as given by jurisprudence are as follows:

- While entertaining a petition for reviewing a law, the court must presume that law is constitutionally valid and the onus of proving the unconstitutionality of the law lies with the person who challenges the law.
- In case there are two interpretations to a schedule or any provision of a law, one violating the constitution and another upholding it, then the court shall prefer the latter to the former.
- The court shall not go into the constitutional questions which are otherwise decided.
- The court shall not decide larger questions than what is required by the case before it.
- The court shall not hear an objection as to the constitutionality of the law by a person whose rights are not affected by it. This is known as the concept of *locus standi*.
- The courts cannot pronounce the validity of an act or any of its parts which is not in force.

Judicial Review and Judicial Activism

Judicial review in India has enabled the Supreme Court to effectively play its constitutional role as the guardian of constitution and guarantor of fundamental rights. However, it has also resulted in the rise of judicial activism in India. Judicial activism is the result of courts expanding the jurisprudence and liberally interpreting the concept of *locus standi*. Executive and legislative inactivism has also contributed for the rise of judicial activism.

Where the constitution has not defined the scope of judiciary's powers, the judiciary has defined them on its own and has expanded the jurisprudence. For instance, the human rights and the power of the courts to uphold them are not defined anywhere in the constitution. This has given the scope for the courts to define them and assume the powers to them.

Similarly, the concept of *locus standi* has been liberally interpreted by courts. *Locus standi* demands that only a person who is aggrieved can move the court for relief. However, to give the poor improved access to justice, the court allowed social activists and lawyers to bring the case on the behalf of the poor.

Further, the failure of the executive and the legislature to fulfil their responsibilities to the satisfaction of the people has made them move the court seeking remedy. This has given the court the opportunity to usurp certain powers of the legislature and executive. Thus, the judicial review has resulted in the rise of judicial activism.

Can Judicial Review and Judicial Activism be Distinguished?

Important questions from Previous years' on this topics are mentioned below:

Is it possible to distinguish between judicial review and judicial activism in India? Does the recent behaviour of the Indian judiciary partake more of judicial activism? Argue with suitable examples.

IAS MAINS GS (2005)

- (a) What is meant by 'Judicial Activism'? Evaluate its role in the context of the functioning of the Indian polity. IAS MAINS (2008)
- (b) Starting from inventing the 'basic structure' doctrine, the judiciary has played a highly proactive role in ensuring that India develops into a thriving democracy. In light of the statement, evaluate the role played by judicial activism in achieving the ideals of democracy.

IAS MAINS GS Paper II

It is often opined that judicial review and judicial activism are not distinguishable as it is difficult to identify where judicial review transforms to judicial activism. However, it is possible to distinguish the two by applying the principles of judicial review (please refer to the Principles of Judicial Review given above) defined by the jurisprudence. Any action of the judiciary that does not conform to the principles may become judicial activism.

Judicial Activism in India

Judicial activism means any action of the judiciary which is beyond its constitutional mandate or expanding the jurisdiction of the courts or the courts acting '*suo moto*', taking up cases on its own without being moved by any aggrieved person.

Judicial activism is not a new concept to India. The Golak Nath case and Kesavananda Bharti case are examples of judicial activism. In Golak Nath case, the Supreme Court by a majority view ruled that the fundamental rights are 'immutable and beyond the reach of the amending process'. That are the fundamental rights are not amendable and the Parliament does not have any power to amend any provision in Part-III.

In Kesavananda Bharati case, this judgment was overruled by a majority of seven against six. The Supreme Court held that by Article 368 of the Constitution the Parliament has powers amend to any part

of the constitution including the Preamble and the fundamental rights. But the power cannot be exercised in the manner to alter the ‘basic structure or framework of the constitution’. The court propounded the ‘Doctrine of Basic Features’, which was never discussed or envisaged by the founding fathers of the constitution.

Obiter Dicta

Obiter dicta is that part of the judgement which was strictly not necessary for the disposal of the cause or matter before the court.

That which was necessary to dispose of the matter and forms the crux of the decision is called *ratio decidendi*— ‘the rationale for the decision’

Later in certain other judgements, the court had broadened the scope of the environmental laws and had even gone to the extent of passing orders that amount to making policies. At a point in time, the post lunch session of the Supreme Court on every Friday was scheduled for hearing the cases relating to environmental issues. It was known as ‘Green Bench’. The Supreme Court orders relating to the Delhi CNG case, ban on plying the vehicles which were older than 15 years on the roads of Delhi and the order for removing the foundries around the Taj Mahal on the ground of curtailing pollution are worth quotable examples.

The court has also interfered in the legislative privileges while exercising the power of judicial review. In UP, Kalyan Singh headed Council of Ministers were dismissed by the then Governor on his subjective assessment of loss of confidence. The Governor, then appointed Jagdambika Pal as the Chief Minister of UP. This was a clear breach of the Bommai case guidelines and Kalyan Singh moved the Lucknow Bench of the Allahabad High Court. The court exercised the power to restore the *status quo ante* and reinstated Kalyan Singh as Chief Minister. Thus, at that time UP had two Chief Ministers, resulting in a constitutional question. Later, the high court directed the Speaker of the UP Legislative Assembly to conduct a secret ballot to determine on whom the House had confidence. This is a clear breach of the privilege of the House and is an example of judicial activism.

Though the eventuality was created by the Governor by not following the Supreme Court guideline, the experts were of the view that the high court could have restrained itself from ordering the legislative procedure.

The executive and the legislature had deplored this behaviour of the judiciary. The executive had called this as ‘judicial tyranny’ and it will result in ‘rule by judiciary’ than ‘rule of law’. At times it is criticized as the result of the ‘popular proclivities of the individual judges’. This has often made the executive to refrain from making decision fearing the judicial intervention. This has slowed down the decision-making in government which in turn has adversely affected the public welfare.

However, the view of the judiciary in this regard is different. The judiciary refuses the presence of anything called judicial activism in India. The judiciary is of the view that the founding fathers envisaged an active judiciary, for they had entrusted the responsibility of ensuring that the executive and legislature exercised their powers conforming to the constitution towards securing the welfare of the people and without infringing upon their rights. Hence, the glaring ‘inactivism’ of the executive and the legislature is construed as judicial activism.

High Courts having Jurisdiction Over More than one State and Not Over UTs

- | | |
|----------------------------------|-----------------------|
| 1. Punjab and Haryana High Court | 5. Madras High Court |
| 2. Guwahati High Court | 6. Kerala High Court |
| 3. Andhra Pradesh High Court | 7. Kolkata High court |
| 4. Bombay High Court | |

According to Justice Krishna Iyer, coining the term judicial activism is the mischief of the press. He said 'judicious use of the power of judicial review by the judiciary' is termed as judicial activism. Further, the Supreme Court also has ruled that judicial activism is an essential feature of an independent judiciary. It refers to the right of individual judges to express and record their observation and opinion as *obiter dicta* along with the judgment they deliver. This will enable the legislature and the executive to fulfil their constitutional duties better. It will also open to them a new perspective with respect to the policies of the government. This needs to be taken in right spirit. Although, the above view is accepted in one sense, judicial activism has caused several impediments.

THE HIGH COURTS

Article 214 of the constitution provides for a high court for each State. The high court is at the head of the judicial administration of a State. At present there are 25 high courts in India after the setting up of Meghalaya, Manipur and Tripura high courts in 2013 and Andhra Pradesh High Court in 2019. Of the 25 high courts:

1. High Court of Punjab and Haryana has jurisdiction over the States of Punjab, Haryana and their common capital Chandigarh.
2. Kolkata High Court has jurisdiction over the State of West Bengal and the UT of Andaman and Nicobar Islands.
3. Guwahati High Court has jurisdiction over the North-Eastern States of Assam, Arunachal Pradesh, Mizoram and Nagaland.
4. Madras High Court has jurisdiction over the State of Tamil Nadu and the UT of Puducherry.
5. Kerala High Court has jurisdiction over the State of Kerala and UT of Lakshadweep.
6. Bombay High Court has jurisdiction over the State of Maharashtra, Goa and the UT of Dadra, Nagar Haveli, Daman and Diu.

According to Article 216, every high court consists of a Chief Justice and other judges. The number of judges in the high courts is fixed by the President from time to time as he deems necessary. Article 215 declares the high courts to be Courts of Record and so the high courts also enjoy the same powers as the Supreme Court.

Article 230 empowers the Parliament to extend the jurisdiction of a high court to any Union territory, by a law. Similarly, the Parliament also has the power to exclude any UT from the jurisdiction of a high court.

In the same way, the Parliament has the powers to establish common high courts for two or more States or for two or more States and a UT (Article 231).

APPOINTMENT OF A JUDGE OF A HIGH COURT

A judge of a high court is appointed by the President by warrant under his hand and seal after consultation with the Chief Justice of India, the Governor of the State, and, in the case of appointment of a judge other than Chief Justice of the high court.⁽²²⁾

Qualification

To be appointed as a judge of a high court, a person must be a citizen of India and has for at least ten years:

- Held a judicial office in the territory of India or;
- Been an advocate of a high court or of two or more such courts in succession.

²² Article 217, Since the Supreme Court had declared the National Judicial Appointments Commission as unconstitutional, the older method of consulting the Chief Justice and the Governor of the State is restored.

Term of office

Judge of high court once appointed shall hold office until he attains the age of 62. However, a judge may resign by writing under his hand addressed to the President. A judge of high court is removed on the like grounds and in the like manner as a judge of Supreme Court is removed.

Apart from the above reasons a judge of high court may vacate if he is appointed as a judge of Supreme Court or transferred to another high court, by the President. A judge of high court is transferred from one high court to another by the President after consulting the Chief Justice of India, Chief Justices of the respective high courts from which he is transferred and the court to which he is transferred. The transfer of the judges is subjected to judicial review.⁽²³⁾

WRIT JURISDICTION OF THE HIGH COURT

The high courts also have the power to issue writs like the Supreme Court. Unlike the power of the Supreme Court, the high courts have the power to issue writs for the enforcement of fundamental rights and other legal rights. According to the Supreme Court, in the power conferred upon the high court under Article 226 is discretionary in nature which can be invoked for the enforcement of any fundamental right or legal right.⁽²⁴⁾

Writ Jurisdiction of High Courts: A Comparison with that of the Supreme Court

- Both the Supreme Court and the high court's issue the writs of remain same.

Writ Jurisdiction: A Comparison

Supreme Court	High Courts
Applicable throughout India	Applicable only within its territorial limits of the State
A fundamental right	Not a fundamental right
Only for enforcing fundamental right	Both for enforcing fundamental rights and other matters
In case fundamental right is infringed, no discretion to court	Have discretion

- While the writ issued by the Supreme Court is applicable throughout India, the writ issued by the high courts is applicable only within its territorial limits and by the existence of cause of action within the State territory.
- The writ jurisdiction of the Supreme Court flows out of the citizen's right to constitutional remedies under Article 32. But the writ jurisdiction of the high courts under Article 226 is not a fundamental right.
- Therefore, the remedy provided under Article 226 is at the discretion of the high courts. But in cases in which the infringement of fundamental rights is established, the Supreme Court has no discretion but it has to grant remedy.
- The Supreme Court can issue writs only for the enforcement of the fundamental rights whereas the high courts under Article 226 can issue writs for enforcement of both fundamental rights and any other legal rights.
- The high court can deny issuing writ in case an alternative remedy is available however, this does not bar the court from issuing the writs.
- Hence, the high court can decline to entertain writs while the Supreme Court cannot.

23 Supreme Court: Judges case, 11th Presidential Reference under Article 143.

24 State of Himachal Pradesh versus Raja Mahendra Pal, AIR 1999 SC 1786 case.

Power of Superintendence Over Subordinate Courts

The high court has the power of 'superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction' (Article 227). It is noteworthy to mention here that the Supreme Court does not have the power to superintendence, although it is the apex court. Article 222 confers upon the high courts the power to:

- Call for returns from such courts
- Make and issue general rules and prescribe
- Forms for regulating the practice and proceedings of such courts
- Prescribe forms in which books, entries and accounts shall be kept by the officers of any such courts.

However, this power does not extend over any court or tribunal constituted by or under any law relating to the Armed Forces.

Transfer of Cases: Article 228

The high court can withdraw a case from a subordinate court if the case 'involves a substantial question of law as to the interpretation of this constitution'. By this the high court can dispose of the case itself or it can return the case to the concerned subordinate court to dispose after determining the question.

Officers and Servants and the Expenses of High Courts: Article 229

All the officers and the servants of the high court are appointed by the Chief Justice of the high court. The Chief Justice may also authorize any other judge or officer of the high court to exercise this power of appointment.

The conditions of service of the officers of the high court are prescribed by the Chief Justice in accordance with the law of the legislature.

All the administrative expenses of a high court, including all salaries, allowances and pensions payable to or in respect of the officers and servants of the court, shall be charged upon the Consolidated Fund of the State.

SUBORDINATE JUDICIARY

Each district in India has civil courts hearing civil cases, criminal courts disposing of criminal cases and revenue courts.

Property disputes, breach of contract, etc., are few examples of civil cases. Civil courts settle these disputes.

Criminal cases are those which deal with an offence or crime. According to the Supreme Court, an offence is an act of violation of laws.⁽²⁵⁾ Cases relating to disputes regarding land revenue, etc., are known as revenue cases.

Qualifications and Appointment of Judges

According to Article 233, the subordinate court judges are appointed by the Governor after consulting the Chief Justice of high court exercising jurisdiction over the State. Article 233A, inserted by the Constitution 20th Amendment, prescribes the qualification for the appointment of a district judge.

Any person is eligible for appointment as a district judge only if he is already in the judicial service in a State or has been an advocate for at least seven years an advocate or a pleader.

25 Refer Chapter on Fundamental Rights, Articles 20 and 22.

TABLE 17.2 Provisions Relating to Acting Chief Justice for Supreme Court and High Courts

Bases	Supreme Court	High Courts
Acting Chief Justice	<ul style="list-style-type: none"> Appointed by the President Vacancy in the office of CJI or if the CJI unable to perform his duties (Article 126). 	<ul style="list-style-type: none"> Appointed by the President Vacancy in the office of CJ or if the CJ unable to perform his duties (Article 223).
<i>Ad hoc Judges</i>	<ul style="list-style-type: none"> Absence of quorum to hold or continue any session of the court Duly qualified HC judges requested by CJ. Previous consent of President and consultation with the CJ of the HC (Article 127). 	Not available
Additional Judges	Not available	<ul style="list-style-type: none"> Any temporary increase in the business of a high court or by reason of arrears of work. President appoints duly qualified persons. Can be appointed only for two years.
Acting Judges	Not available	<ul style="list-style-type: none"> Absence of a judge or he is appointed as acting CJ. President appoints duly qualified persons. Until the judge resumed (Article 224).
Attendance of retired Judges	<ul style="list-style-type: none"> CJI requests the retired judges with previous consent of the President. Retired judge of SC, federal court or HC, who was qualified to appointed as judge of SC before retirement. Entitled to such allowances as the President may by order determine and have all the jurisdiction, powers and privileges of judge of SC (Article 128). 	<ul style="list-style-type: none"> Not provided in the original constitution. Added by 15th amendment. CJ of HC requests the retired judges with previous consent of the President. Entitled to such allowances as the President may by order determine and have all the jurisdiction, powers and privileges of judge of SC (Article 224A).

Article 234 provides for the appointment persons other than district judges. They will be appointed by the Governor after consultation with the high court exercising jurisdiction in relation to such State and the State Public Service Commission.

According to Article 236, the expression 'district judge'⁽²⁶⁾ includes:

- Judge of a city civil court
- Additional district judge
- Joint district judge
- Assistance district judge
- Chief judge of a small cause court
- Chief presidency magistrate
- Additional chief presidency magistrate
- Sessions judge
- Additional sessions judge
- Assistant sessions judge

Practice Questions

- 1.** Which one of the following high courts has the territorial jurisdiction over Andaman and Nicobar Islands?
- Andhra Pradesh
 - Calcutta
 - Madras
 - Orissa
- 2. Match: List I (Item in the Indian Constitution)**
- Directive Principles of State Policy
 - Fundamental Rights
 - Concurrent List in Union-State relations
 - India as a Union of States with greater powers to union
- List II (Country from which it was derived)**
- Australia
 - Canada
 - Ireland
 - UK
 - USA
- | A | B | C | D |
|----------|----------|----------|----------|
| (a) 5 | 4 | 1 | 2 |
| (b) 3 | 5 | 2 | 1 |
| (c) 5 | 4 | 2 | 1 |
| (d) 3 | 5 | 1 | 2 |
- 3.** Consider the following:
- The highest criminal court of the district is the court of district and sessions judge.
 - The district judges are appointed by the Governor in consultation with the high courts.
 - A person to be eligible for appointment as a district judge should be an advocate or a pleader of seven years' standing or more, or an officer in judicial service of the Union or the State.
 - When sessions judge awards death sentence, it must be confirmed by the high court before it is carried out.
- Correct statement
- 1 and 2
 - 3 and 4
 - 2, 3, 4
 - 1, 2, 3, 4
- 4.** Which one of the following Articles of the Constitution of India says that the executive power of every State shall be so exercised as not to impede or prejudice the exercise of the executive power of the union?
- Article 257
 - Article 258
 - Article 355
 - Article 356
- 5.** Consider the following:
- There are 25 high courts in India.
 - Punjab, Haryana and the UT of Chandigarh have a common high court.
 - National Capital Territory of Delhi has a high court of its own.
- Correct statement
- 2 and 3
 - 1 and 2
 - 1, 2, 3
 - 3 only
- 6.** Consider the following:
- The Parliament cannot enlarge the jurisdiction of the Supreme Court of India as its jurisdiction is limited to that conferred by the constitution.
 - The officers and servants of the Supreme Court and high courts are appointed by the concerned Chief Justice and the administrative expense are charged on the Consolidated Fund of India.
- Correct statement
- 1 only
 - 2 only
 - Both 1 and 2
 - Neither 1 nor 2
- 7.** Consider the following:
- A person who has held office as a permanent judge of a high court cannot plead or act in any court or before any authority in India except the Supreme Court.
 - A person is not qualified for appointment as a judge of a high court in India unless he has, for at least five years, held as a judicial office in the territory of India.
- Correct statement
- 1 only
 - 2 only
 - Both 1 and 2
 - Neither 1 nor 2
- 8. Assertion (A):** In India, every State has a high court in its territory.
- Reason (R):** The Constitution of India provides for a high court in each State.
- Both A and R are true and R is the correct explanation of A

- (b) Both A and R are true but R is NOT the correct explanation of A
 (c) A is true but R is false
 (d) A is false but R is true

9. Consider the following:

1. The mode of removal of a judge of a high court in India is same as that of removal of a judge of the Supreme Court.
2. After retirement from the office, a permanent judge of a high court cannot plead or act in any court or before any authority in India.

Correct statement

- | | |
|------------|---------------------|
| (a) 1 only | (c) Both 1 and 2 |
| (b) 2 only | (d) Neither 1 nor 2 |

10. The power of the Supreme Court of India to decide disputes between the Centre and the States falls under its:

- (a) Advisory jurisdiction
- (b) Appellate jurisdiction
- (c) Original jurisdiction
- (d) Writ jurisdiction

11. Consider the following statements: Attorney General of India can:

1. Take part in the proceedings of the Lok Sabha
2. Be a member of a committee of the Lok Sabha
3. Speak in the Lok Sabha
4. Vote in the Lok Sabha

Correct statement

- | | |
|-------------|------------------|
| (a) 1 only | (c) 1, 2 and 3 |
| (b) 2 and 4 | (d) 1 and 3 only |

12. What is the provision to safeguard the autonomy of the Supreme Court of India?

1. While appointing the Supreme Court judges, the President of India has to consult the Chief Justice of India.
2. The Supreme Court judges can be removed by the Chief Justice of India only.
3. The salaries of the judges are charged on the Consolidated Fund of India to which the legislature does not have to vote.
4. All appointments of officers and staffs of the Supreme Court of India are made by the Government only after consulting the Chief Justice of India.

Correct statement

- | | |
|------------------|-------------------|
| (a) 1 and 3 only | (c) 4 only |
| (b) 3 and 4 only | (d) 1, 2, 3 and 4 |

13. Which of the following are included in the original jurisdiction of the Supreme Court?

1. A dispute between the Government of India and one or more States.
2. A dispute regarding elections to either House of the Parliament or that of legislature of a State.
3. A dispute between the government of India and a Union Territory
4. A dispute between two or more States.

Correct answer

- | | |
|-------------|-------------|
| (a) 1 and 2 | (c) 1 and 4 |
| (b) 2 and 3 | (d) 3 and 4 |

14. How many high courts in India have jurisdiction over more than one State (Union Territories not included)?

- | | |
|-------|-------|
| (a) 2 | (c) 4 |
| (b) 3 | (d) 5 |

15. Consider the following:

1. The Advocate General of a State in India is appointed by the President of India upon the recommendation of the Governor of the concerned State.
2. As provided in Civil Procedure Code, high courts have original, appellate and advisory jurisdiction at the state level.

Correct statement

- | | |
|------------|---------------------|
| (a) 1 only | (c) Both 1 and 2 |
| (b) 2 only | (d) Neither 1 nor 2 |

16. With reference to Lok Adalat, consider the following statements:

1. An award made by a Lok Adalat is deemed to be a decree of a civil court and no appeal lies against thereto before any court.
2. Matrimonial/family disputes are not covered under Lok Adalat.

Correct statement

- | | |
|------------|---------------------|
| (a) 1 only | (c) Both 1 and 2 |
| (b) 2 only | (d) Neither 1 nor 2 |

17. Consider the following statements:

The Supreme Court of India tender's advice to the President of India on matters of law or fact:

1. On its own initiative (on any matter of larger public interest).
2. If he seeks such an advice.
3. Only if the matters relate to the fundamental rights of the citizens.

Which of the statements given above is/are correct?

- | | |
|------------|-------------|
| (a) 1 only | (c) 3 only |
| (b) 2 only | (d) 1 and 2 |

- 18.** With reference to Lok Adalat, which of the following statements is correct?

- (a) Lok Adalat have the jurisdiction to settle the matters at pre-litigative stage and not those matters pending before any court.
- (b) Lok Adalat can deal with matters which are civil and not criminal in nature.
- (c) Every Lok Adalat consists of either serving or retired judicial officers only and not any another person.
- (d) None of these

- 19.** The 'Instrument of Instructions' contained in the Government of India Act, 1935, have been incorporated in the Constitution of India in the year 1950 as:

- (a) Fundamental Rights
- (b) Directive Principles of State Policy
- (c) Extent of executive power of State
- (d) Conduct of business of the Government of India

- 20.** Consider the following:

1. There is a provision for the appointment of acting Chief Justice in both Supreme Court and the high courts.
2. There is a provision for the appointment of acting judge in Supreme Court but not in the high courts.

Correct statement

- | | |
|------------|---------------------|
| (a) 1 only | (c) Both 1 and 2 |
| (b) 2 only | (d) Neither 1 nor 2 |

Answer Key

-
- | | | | | | | | | | |
|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|
| 1. (b), | 2. (d), | 3. (b), | 4. (a), | 5. (a), | 6. (b), | 7. (a), | 8. (d), | 9. (a), | 10. (c), |
| 11. (d), | 12. (a), | 13. (c), | 14. (b), | 15. (d), | 16. (a), | 17. (b), | 18. (b), | 19. (b), | 20. (a) |

Hints and Explanations

1. (b)

- Jurisdiction of HC can be extended to UTs by Article 230

Refer Page 17.30

2. (d)

Provisions adapted from constitutions of different countries

- DPSP : Ireland
- Fundamental Rights, Judicial review and independence of judiciary: USA
- Rule of Law, Parliamentary form of government, Office of Speaker: UK
- Concurrent List: Australia
- Quasi-federal nation with strong Centre, residuary powers: Canada

3. (b)

- The highest criminal court of the district is the Court of Sessions Judge.
- Court of District Judge is the highest civil court of the district.
- Art. 233A: A person to be eligible for appointment as a District Judge should be an advocate or a pleader of 7 years' standing or more, or an officer in judicial service of the Union or the State

Refer Page 17.32

4. (a)

- Art. 257: Control of the Union over States in certain cases
- Art. 258: Power of the Union to confer powers, etc., on States in certain cases
- Art. 355: Duty of the Union to protect States against external aggression and internal disturbance
- Art. 356: Provisions in case of failure of constitutional machinery in States

Refer Page 17.19

5. (c)

Recently created High Courts:

- 2013: Meghalaya, Manipur and Tripura
- 2019: Andhra Pradesh – 25th High Court

Refer Page 17.30

6. (b)

- Parliament can enlarge the jurisdiction of Supreme Court (Art. 138).
- The salary, allowances, pension of judges and other administrative expenses are declared as charged expenditure.

Refer Page 17.13 and 17.18

7. (a)

- Art. 220 restricts a person who has held office as a permanent Judge of a High Court from pleading before any authority except Supreme Court and the other High Courts.
- Art. 217(2) provides qualification for a judge of High court.

Refer Page 17.13 and 17.30

8. (d)

- Article 214 of the constitution provides for a high court for each State.
- However, it is not always present in the territory of the State. There are High Courts which have jurisdiction over two or more States.

Refer Page 17.30

9. (a)

- Art. 217(1) (b) provides that a High Court judge may be removed on the like grounds and in the like manner as SC judge given under Art. 124(4).
- Art. 220 restricts a retired judge from pleading or acting in any Court except Supreme Court and High Courts.

Refer Page 17.31

10. (c)

- Art. 131 provides for original jurisdiction of Supreme Court.
- It has original and exclusive jurisdiction over disputes between the Centre and States.

Refer Page 17.14

11. (d)

- Since the Attorney General of India is not a member of Lok Sabha, he/she does not have the right to vote.

Refer Chapter 25 – Rights of the Attorney General

12. (a)

- Judges of Supreme Court are appointed by the President who consults the Chief Justice of India. (Art. 124)
- SC Judges are removed by the procedure of impeachment. (Art. 124(4))
- The salaries and allowances are charged expenditure and Parliament does not vote upon it.
- All appointments of officers and staffs of the Supreme Court of India are made by CJI in his/her administrative capacity independent of the government.

Refer Page 17.3, 17.4 and 13

13. (c)

- Article 131 provides the original jurisdiction of SC.
- It has exclusive jurisdiction to hear disputes between:
 - Government of India and one or more States
 - Government of India and any State or States on one side and one or more other States on the other
 - Two or more States
- Decision of Government of India prevails over UT in case of any dispute
- Article 329 bars the interference of courts in electoral matters.

Refer Page 17.14

14. (b)

Refer Box in Page 17.29

15. (d)

- Advocate General of a State is appointed by the Governor.
- High Courts do not have advisory jurisdiction.

Refer Chapter 25

16. (a)

- Matrimonial/Family disputes are covered under Lok Adalat.
- An award made by a Lok Adalat is considered final and cannot be further appealed.

Also Refer Chapter 25 – Alternative Disputes Resolution Mechanisms (ADRs)

17. (b)

Article 143 provides advisory jurisdiction of SC.

Supreme Court of India tenders advice to the President of India on matters of law or fact only when he seeks such an advice.

Refer Page 17.26

18. (b)

- Lok Adalats have the jurisdiction to settle the matters at any stage pending before any court.
- Every Lok Adalat consists of either serving or retired judicial officers, a member from legal profession and/or a social worker.

Also Refer Chapter 25 – Alternative Disputes Resolution Mechanisms (ADRs)

19. (b)

- According to Dr. B R Ambedkar, the DPSPs are like an instrument of instruction to the State.

Refer Chapter 10

20. (a)

- Acting Chief Justice is available in Supreme Court under Art. 126 and in High Courts under Art. 223

CHAPTER 18

Union Territories

Learning Objectives

After reading this chapter, you will be able to:

- Understand what Union Territories (UTs) are and reasons for declaring certain regions as UTs
- Learn the administration of various UTs
- Understand the provisions related to Puducherry and National Capital Territory (NCT)
- State the anomalies of 69th amendment

INTRODUCTION

Union territories are those territories that are under the direct administrative control of the union government. As given in Article 366 (30), 'Union territory means any union territory specified in the First Schedule and includes any other territory comprised within the territory of India but not specified in that Schedule'.

The original constitution had three categories of states namely Part A, Part B and Part C states. There were 10 Part C states which were administered by the President through a Chief Commissioner. The Constitution (7th Amendment) Act, 1956, substituted the Part C states as 'Union Territories'. Later few states were made as full-fledged states while others still continue as union territories. Now there are seven Union Territories namely Delhi, the Andaman and Nicobar Islands, Lakshadweep, Dadra and Nagar Haveli, Daman and Diu, Puducherry and Chandigarh.

Associate Members

Under the Union Territories Act, 1963, the Delimitation Commission takes the assistance of the members of Parliament. Such members are known as the associate members of the Commission

Such territories are placed under the administration of the union government due to certain reasons:

1. The territories are large in size but not larger to be established as a state. Also, they may not have capability to generate enough resources for their administration.
2. Certain territories are strategically important and need to be administered by the union government. Example is Andaman and Nicobar Islands.
3. Certain territories are ecologically sensitive and so are placed under the union government. Example is Lakshadweep.

4. Some of the territories were under the rule of a colonial master other than British. For instance, Puducherry was under the French, Goa, Daman, Diu and Nagar Haveli were ruled by the Portuguese. They got integrated with India on different dates and under different legal arrangement.
5. Chandigarh is administered as a union territory as it serves the capital of both Punjab and Haryana.

Article 239 provides the President shall administer these territories by appointing an administrator. The designation of such administrator may be specified by the President. The administrators appointed for union territory of Puducherry and National Capital Territory are known as Lieutenant Governor. The Governor of Punjab concurrently holds the charge of administrator of Chandigarh also.

If the office of the administrator of a union territory falls vacant then the Governor of a state may be appointed as the administrator of an adjoining union territory. When appointed so, the Governor shall act independently and without the advice of the Council of Ministers. He has to act according to the direction of the President.

UNION TERRITORY OF PUDUCHERRY

Article 239A empowers the Parliament to create legislatures and Council of Ministers for the union territories. Article 239A was inserted by the Constitution (14th Amendment) Act, 1956. The provision enables the Parliament to create legislatures and Council of Ministers for Puducherry. When such a law is enacted it is not deemed to be an amendment for the purpose of Article 368.

Subsequently, in the year 1963, the Parliament enacted the Government of Union Territories Act and created the Legislative Assembly and Council of Ministers for Puducherry.

Ordinance Making Power

Article 239B provides for the ordinance making power with respect to Puducherry when the legislature is in recess. The power is vested in the Lieutenant Governor. The Governor shall exercise the power only upon the instruction of the President.

However, if the legislature is suspended or dissolved the Lieutenant Governor shall not promulgate any ordinance. In effect, the Lieutenant Governor can promulgate ordinances only:

- (i) With the instruction of the President.
- (ii) The legislature is in recess.

Any such ordinance promulgated will have the validity of a law enacted by the Assembly. A bill to replace the ordinance must be laid in the Assembly within six weeks from the date of reassembly of the House. Otherwise the ordinance will lapse.

TABLE 18.1 Ordinance Making Power State vs Union Territories

States	Union Territories
Available to all states.	Only to UTs with legislature.
Vested in Governor.	Vested in Lieutenant Governor.
President's direction required only under special circumstances.	President's direction required under all circumstances.



NATIONAL CAPITAL TERRITORY (NCT)

The Constitution (69th Amendment) Act inserted Article 239AA and enacted the Special Provision for Delhi. Since 1991 the union territory of Delhi is established as the National Capital Territory of Delhi. Since then the administrator appointed for Delhi under Article 239 is known as the Lieutenant Governor for Delhi.

Article 239AA also provides for the Legislative Assembly of Delhi with members elected from the territorial constituencies. The strength of the Legislative Assembly of Delhi and the number of seats reserved for the Scheduled Caste are to be regulated by the Law of the Parliament. The provisions of election under Articles 324 to 327 will apply to NCT as similar to application of the provisions to the Legislative Assemblies of the states.

However, with respect the NCT, the powers relating to the following shall be vested in the Parliament:

- To regulate the voting rights under Article 326.
- The preparation of electoral rolls, the delimitation of constituencies.
- Deciding on the jurisdiction of the courts with respect to elections.

Smallest and Largest!!!

- Lakshadweep which is of 32 sq. km area is the smallest UT.
- Mahe, a district in Puducherry is the smallest district in India.
- Andaman and Nicobar Islands is the largest UT.

The Legislative Assembly of NCT has the power to enact laws with respect to the region on all matters in the State List of Schedule VII. But the Assembly does not have the powers to legislate on the following matters namely:

1. Public order (but not including the use of any naval, military or air force or any other armed force of the Union or of any other force subjected to the control of the Union or of any contingent or unit thereof in aid of the civil power).
2. Police (including railway and village police) subjected to the provisions of entry 2A of List I.
3. Land, that is to say, rights in or over land, land tenures including the relation of landlord and tenant, and the collection of rents; transfer and alienation of agricultural land; land improvement and agricultural loans; colonization.

Do You Know?

- Manipur was made a UT in 1956 and later in 1972 it was made a state.
- Arunachal Pradesh was made a UT in 1972 and was upgraded as a state in 1987.
- Mizoram was a district in Assam until 1972. In 1972 it was made a UT and was upgraded to a state in 1987.

Similarly, the Assembly does not have the power to legislate with respect to the following if such law is relating to the above-mentioned three subjects:

1. Offences against laws with respect to any of the matters in this list.
2. Jurisdiction and powers of all courts, except the Supreme Court, with respect to any of the matters in this list.
3. Fees in respect of any of the matters in this list, but not including fees taken in any court.

However, if a law made by the Legislative Assembly of NCT conflicts with a law made by the Parliament on that matter, then the law of the Parliament shall prevail over the law made by the Legislative Assembly of NCT. In case the President had granted his assent to a law made by the Delhi Assembly on being reserved for his consideration, then the law shall prevail over the law made by the Parliament. However, the Parliament has the power to override this and make law for the NCT.

The power to maintain law and order is a state subject, but with respect to NCT it is vested in the union government. In pursuance of this the Delhi Police is established under the Special Police Establishment Act, 1944. The reason behind this are:

- It is a usual practice around the world to vest the power to maintain the law and order in the central Government. Delhi being the capital of India the power is vested in the Union government.
- All important institutions like the Parliament, diplomatic enclaves and the residences of all dignitaries like the President are located in Delhi. Thus, the security of Delhi is strategically important. It cannot be left to the mercy of any state government.
- Since the union government is not granted with its own forces, Delhi Police is established as a special force. Pressing the Central Armed Reserved Police Force or the Armed Forces would be disproportionate to the task.

Council of Ministers of Delhi

Article 239AA (4) provides for a Council of Ministers for Delhi. The strength of the Council shall be ten per cent of the total membership of the Legislative Assembly of Delhi. The Chief Minister of NCT is appointed by the President. Other Ministers are appointed by the President on the advice of the Chief Minister. The Chief Minister has the discretion in this regard. The Council of Ministers is collectively responsible to the Legislative Assembly.

The Council of Ministers will 'aid and advice' the Lieutenant Governor in exercise of his functions in all matters except in the exercise of his discretionary powers. In case of a difference of opinion between the Lieutenant Governor and the Council, he shall refer the matter to the President and act according to the direction of the President. When the direction from the President is pending, the Lieutenant Governor can take any action in his discretion if any 'urgency' circumstance occurred.

Consolidated Fund

- The Consolidated Fund of the UTs is established by the notification of the Central Government under the Government of UTs Act, 1963.
- Custody of Consolidated Fund, payment of moneys into the fund, withdrawal of moneys and all other matters shall be regulated by rules made by the administrator with the approval of the President.

Breakdown of Constitutional Machinery: Article 239 AB

The President has the power to suspend the operation of the provisions of Article 239AA and all or any law made under the article if:

- He is satisfied that the administration of NCT cannot be carried in accordance with the constitution or;
- For the proper administration of NCT.

The presidential satisfaction is subjected to the 'report of the Lieutenant Governor' or 'otherwise'. Similar to Article 356, this provision is also subjected to judicial review.

TABLE 18.2 UT Funds

UT: FUNDS			
	Consolidated Fund	Public Accounts of UTs	Contingency Fund
Established by	Notification of Central government	Notification of Central government	Law of the Legislative Assembly of the UT
Regulated by	Rules made by the administrator	Rules made by the administrator	Rules made by the administrator
Borrowing	UT can borrow on the security of Consolidated Fund	NA	NA

(Source: Government of UT Act, 1963)

Anomalies of 69th Amendment

The Constitution (69th Amendment) Act suffers from certain anomalies which are as follows:

- (a) Article 239AA expressly mentions that the administrator of the NCT be known as Lieutenant Governor. But, any special reason for the status is not provided.
- (b) The difference between the administrators of other UTs and the Lieutenant Governor in respect of their status and powers are also not defined.
- (c) Similarly, like the Governor of any state, the Lieutenant Governor also has his Council of Ministers to 'aid and advice' him. But his powers are not defined.
- (d) Article 239AA mentions that the Lieutenant Governor has discretionary powers but those powers are not defined and remain ambiguous.
- (e) With respect to the ordinance making powers the Lieutenant Governor must act according to the direction of the President. However, this potentially can be a point of dispute if there was a difference of opinion between the Council of Ministers and the President in this regard. The President is to act according to the advice of the union Council of Ministers.

ADMINISTRATION OF OTHER UNION TERRITORIES

Article 240 provides for the administration of the union territories of the Andaman and Nicobar Islands, Lakshadweep, Dadra and Nagar Haveli, and Daman and Diu. The President has the power to 'make regulations for the peace, progress and good government' of these union territory.

With respect to Puducherry, the President does not have the power to 'make regulations for the peace, progress and good government' during when the legislature of the Puducherry remains alive. He shall have the power only when the legislature is suspended or dissolved. If the President makes any such resolution it may repeal or amend any act made by the Parliament.

HIGH COURTS FOR UNION TERRITORIES

According to Article 241, the Parliament has the power to constitute a high court for a union territory by enacting a law. Similarly, it can also extend the jurisdiction of any high court over the union territory.

ALTERING THE NAMES, AREAS OR BOUNDARIES

The procedure for the altering the names, areas or boundaries of a union territory is same for the states. According to the explanation given in Article 3, same procedure is applicable to the union territories also.

TABLE 18.3 UT Funds

Union Territories	Population Density
Andaman and Nicobar Islands	43
Dadra and Nagar Haveli	449
Daman and Diu	1,413
Lakshadweep	1,895
Puducherry	2,034
Chandigarh	7,900
Delhi	9,340

(Source: Government of UT Act, 1963)



Practice Questions

- 1.** Which among the following statements is correct?
 - (a) Union Territories are not represented in the Rajya Sabha.
 - (b) It is within the purview of the Chief Election Commissioner to adjudicate the election disputes.
 - (c) According to the Constitution of India, the Parliament consists of the Lok Sabha and the Rajya Sabha only.
 - (d) None of these

- 2.** How many High Courts in India have jurisdiction over more than one State (Union Territories not included)?
 - (a) 2
 - (b) 3
 - (c) 4
 - (d) 5

- 3.** Consider the following
 1. The Legislative Assembly of Delhi shall have exclusive power to make laws for the National Capital Territory with respect to any of the matters enumerated in the State List or in the Concurrent List.
 2. The Parliament does not have any power to make law in respect of the National Capital Territory.

Correct Statements

 - (a) 1 only
 - (b) 2 only
 - (c) Both 1 and 2
 - (d) Neither 1 nor 2

- 4.** Consider the following with respect to NCT of Delhi
 1. The Chief Minister is appointed by the President
 2. There shall be a Council of Ministers consisting of not more than ten percent of the total number of members in the Legislative Assembly

Correct statement

 - (a) 1 only
 - (b) 2 only
 - (c) Both 1 and 2
 - (d) Neither 1 nor 2

- 5.** Consider the following
 1. While all the States in India are represented in the Rajya Sabha, no Union territory is represented in the Rajya Sabha

2. Out of the seven Union Territories, only two Delhi and Puducherry are represented in the Rajya Sabha
3. President of India is empowered to nominate members to Rajya Sabha for representing the Union Territories

Correct Statements

- (a) 1, 2, 3
- (b) 2 only
- (c) 1 only
- (d) 1, 3 only

- 6.** Consider the following

1. The Consolidated Fund of the UTs is established by the notification of the Central Government under the Government of UTs Act, 1963
2. Manipur was made a UT in 1956 and later in 1972 it was made a state

Correct Statements

- (a) 1 only
- (b) 2 only
- (c) Both 1 and 2
- (d) Neither 1 nor 2

- 7.** The President of India has legislative powers to even override the legislative power of the Parliament in respect of certain Union Territories. Which of the following is NOT one of them?

- (a) Daman and Diu
- (b) Andaman and Nicobar
- (c) Puducherry
- (d) Chandigarh

- 8.** Consider the following statements regarding the High Court of India

1. There are 25 High courts in the country
2. Three of them have jurisdiction over more than one state
3. No Union Territory has a High Court of its own
4. Judges of the High Court hold office till the age of 62

Correct statement(s)

- (a) 1, 2, 3
- (b) 2 and 3
- (c) 1, 2, 4
- (d) 1, 2, 3, 4

- 9.** Consider the following

1. The total number of Council of Ministers in Legislature of Delhi shall not exceed 15 %.



2. The Chief Minister of Delhi is appointed by President of India and all other Ministers are appointed on the advice of Chief Minister

Which of the above statements is correct?

10. Consider the following

- When a Bill is passed by the legislative assembly of a Union Territory it shall be presented to the administrator and the administrator shall reserve the Bill for the consideration of the President
 - When a Bill is reserved by an administrator for the consideration of the President the President shall declare either that he assents to the Bill or that he withholds assent therefore

Which of the above statements is correct?

11. Consider the following statements

1. All States in India have Legislative Assembly but only seven States have Legislative Councils
 2. None of the Union Territories have Legislative Councils but only two UTs have Legislative Assembly

Correct Statements

- (a) 1 only
 - (b) 2 only
 - (c) Both 1 and 2
 - (d) Neither 1 nor 2

- 12.** With respect to the NCT, the powers relating to which of the following are vested in the Parliament?

- (a) To regulate the voting rights under Article 326.
 - (b) The preparation of electoral rolls, the delimitation of constituencies.
 - (c) Deciding on the jurisdiction of the courts with respect to elections
 - (d) All the above

- 13.** The Legislative Assembly of the National Capital Territory does NOT have the power to legislate on

- (a) Public order
 - (b) Police
 - (c) Land
 - (d) All the above

- 14.** The Consolidated Fund of the UTs is established by

- (a) Constitution
 - (b) Law of the Parliament
 - (c) President by order
 - (d) Government notification under the UT Act 1963

- 15.** The President has the power to suspend the operation of the provisions of Article 239AA and all or any law

- (a) Only in case of breakdown of constitutional machinery
 - (b) Only for the proper administration of NCT
 - (c) Both a and b
 - (d) There is no such provision in the Constitution

Answer Key

1. (d), **2.** (b), **3.** (d), **4.** (c), **5.** (b), **6.** (c), **7.** (c), **8.** (c), **9.** (d), **10.** (d),
11. (c), **12.** (d), **13.** (d), **14.** (d), **15.** (c)



Hints and Explanations

1. (d)

- Fourth Schedule provides the allocation of seats in Council of States.
- Union Territories, Delhi and Puducherry have 3 and 1 seats respectively in Rajya Sabha.
- Adjudication of election disputes lies with the High Courts.
- Parliament consists of the President, Lok Sabha and Rajya Sabha.

Refer Chapter 14

2. (b)

Refer Box in Page 18.29

3. (d)

- Legislative Assembly of Delhi has power to make laws with respect to any matters in the State List except land, police, public order, offences against laws, Jurisdiction and powers of all courts, except the Supreme Court and fees excluding that of the courts.
- The exempted subjects can be legislated upon by the Parliament.

Refer Page 18.3

4. (c)

Refer Page 18.4 – Council of Ministers - Delhi

5. (b)

- President can nominate 12 members to Rajya Sabha who have special knowledge or practical experience in literature, science, art and social service.

Refer Chapter 14

6. (c)

Refer Box 18.3 and 18.4

7. (c)

- The President has the power to 'make regulations for the peace, progress and good government' of these union territory.

Refer Page 18.5 – Administration of other union territories

8. (c)

- Delhi has a High Court of its own.

Refer Page 18.5 and Chapter 17 – Box 17.20

9. (d)

- The total number of Council of Ministers in Legislature of Delhi shall not exceed 10%.
- The Chief Minister of NCT is appointed by the President. Other Ministers are appointed by the President on the advice of the Chief Minister.

Refer Page 18.4

10. (d)

- Union territories are those territories that are under the direct administrative control of the union government.

Refer Page 18.1

11. (c)

Refer Page 18.2 and 18.3

12. (d)

Refer Page 18.3

13. (d)

Refer Page 18.3

14. (d)

Refer Page 18.4

15. (c)

Refer Page 18.4

CHAPTER 19

Local Self-Government

Learning Objectives

After reading this chapter, you will be able to:

- Understand evolution and growth of local self-governments in India
- State the constitutional provisions of PRIs compared with those of municipalities
- Analyse the functioning of the PRIs
- Understand the weaknesses and recommendations of various committees
- Know the steps taken for improving the PRIs

EVOLUTION AND GROWTH

The concept of local self-government has been evolving in India ever since the *Vedic* period. In the age of *Janapadas*, the administration was conducted by an assembly consisting of local chieftains. In the post Mauryan republics of Malavas and the Kshudrakas, the decisions were taken by *sabhas*. In the Chola dynasty, the village council, together with its subcommittees and wards, played an important part in administration like tax assessment and revenue collection, arbitrated disputes and managed social affairs. They had virtual ownership of village wasteland and took part in public development works like irrigation.

The present structure of local self-government institutions has been moulded since 1688, when the British established Municipal Corporation at Madras for the first time. In 1872, Lord Mayo introduced elected representatives for these municipalities. The Minto–Morley Reforms, 1909 and the Montagu–Chelmsford Reforms, 1919 widened the participation of people in the governing process. Also, the Montagu–Chelmsford Reforms listed local self-government as a transferred subject and provincial governments were entrusted with the responsibility of enabling local self-government at all levels. This arrangement continued till the country's independence in 1947 and thereafter till the late 1950s.

Local Self-government in Independent India

In the independent Constitution of India, the *Panchayat i Raj* Institutions (PRI) have found place in the Directive Principles of State Policy (DPSP). Article 40 provides that, the State shall take steps to organize village *Panchayats* and endow them with such powers and authority as may be necessary to enable them to function as units of self-government.

In compliance with Article 40, the Community Development Programme was launched in 1952 to secure socio-economic transformation of village life through people's own democratic and cooperative organizations with the government providing technical services, supply and credit.

Do You Know?

In the original constitution *Panchayats* were not given importance because:

- Fully decentralized local self-government was considered a threat to national unity.
- Casteism in rural areas would kill the purpose of local self-government.

In 1956, the Second Five-Year Plan recommended that the village *Panchayats* should be organically linked with popular organizations at higher levels and in stages the democratic body should take over the entire general administration and development of the district.

In 1957, Government of India appointed a committee under the Chairmanship of Shri Balwantrai Mehta which recommended that:

- Administrative decentralization for effective implementation of the development programmes and the decentralized administrative system to be placed under the control of local bodies.
- The *Panchayat samiti* has to be equipped with sources of income.
- Reservation for SC/ST and women through co-option.
- In order to ensure coordination, a *Zila Parishad* has to be formed at the district level as an advisory body.

Is 73rd Amendment an Encroachment on State List?

- No. It is not. 73rd amendment provides only for the enabling provisions.
- It does not create a complete PRI structure in the States.
- It just provides for uniformity throughout the country.
- It is an attempt to stop political playing with PRI institutions.

By the 1960s, *Gram Panchayats* covered 90% of the rural population of India. Although a number of *Panchayat* structures were set-up in different States at all the three tiers, they had limited powers and resources. However, the essential idea that all developmental activity should flow only through the block *Panchayat samitis* lost ground. *Panchayati Raj* elections were postponed indefinitely and flow of funds for block development was reduced to a trickle.

In 1977, government formed a committee under the Chairmanship of Shri Asoka Mehta to go into the working of PRI. The Asoka Mehta Committee was of the view that the democratic process could not stop at the state level.

Although a number of committees were formed between 1978 and 1986 to look into various aspects of strengthening the local self-government institutions such as the committees under Shri C. H. Hanumantha Rao, Shri G. V. K. Rao and Shri L. M. Singhvi, only minor suggestions were made for any change in the ideas/structures proposed by the Asoka Mehta Committee.

The next landmark in decentralized governance occurred with the 64th and 65th Constitutional Amendment Bills introduced in July 1989. The basic provisions of the bills were:

- It should be mandatory for all States to set-up PRIs/ULBs.
- The elections to be conducted by the Election Commission.

- Tenure of *Panchayats*/ULBs to be five years and, if dissolved before time, fresh elections should be held within six months.
- Planning and budgeting systems be introduced at the *Panchayat* level.
- The state legislature to authorize *Panchayats*/ULBs to levy taxes/tolls and fees.

Article 40 Rationale

Article 40

Organization of village Panchayats The State shall take steps to organize village *Panchayats* and endow them with such powers and authority as may be necessary to enable them to function as units of self-government.

'What is attempted to do here is to give a definite and unequivocal direction that the state shall take steps to organize *Panchayats* and shall endow them with necessary powers and authority to enable them to function as units of self-government. That the entire structure of self-government, of independence in this country should be based on organized village community life is the common factor of all the amendments tabled and that factor has been made the principle basis of this amendment.'

K. Santhanam, CAD, Volume VII

Rashtriya Gaurav Gram Sabha Puraskar

- National Award instituted to incentivize to encourage *Gram Panchayats* for outstanding performance, through effective *Gram Sabhas*.
- Main objective is to strengthen the institution of *Gram Sabha* and highlight it as the institution for decision and social audit.
- *Gram Sabha* is a vibrant forum for promoting planned economic and social development of the villages in a transparent way.
- *Gram Sabha* ensures direct participative democracy and offers equal opportunity to all citizens—poor, women, marginalized sections, to discuss, critically evaluate, various serious issues that affect the socio-economic development of the village.

The bill could however not be passed in the Rajya Sabha.

In 1992, after synthesizing important features of the earlier exercises on this subject, government drafted and introduced the 73rd and 74th Amendment Bills in Parliament which were passed in 1993. These introduced new Parts IX and IXA in the Indian Constitution containing Articles 243 to 243ZG. The 73rd and 74th Amendments to the constitution constitute a new chapter in the process of democratic decentralization in India.

The main provisions of the constitution relating to the *Panchayats* and the municipalities are presented in the following table in order to enable understanding in a comparative mode. The table also includes the main recommendations of the Second Administrative Reforms Commission under the relevant provisions.

	Panchayats Part IX(Articles 243–243O)	Municipalities Part IXA(Articles 243P–243ZG)
Definitions	<p>Article 243</p> <ul style="list-style-type: none"> ‘Gram Sabha’ means a body consisting of persons registered in the electoral rolls relating to a village comprised within the area of <i>Panchayat</i> at the village level. ‘Population’ means the population as ascertained at the last preceding census of which the relevant figures have been published. ‘Village’ means a village specified by the Governor by public notification to be a village for the purposes of this Part and includes a group of villages so specified. 	<p>Article 243P</p> <ul style="list-style-type: none"> ‘Metropolitan area’ means an area having a population of ten lakhs or more, comprised in one or more districts and consisting of two or more municipalities or <i>Panchayats</i> or other contiguous areas, specified by the Governor through public notification.
Recommendations of the Second ARC	<p>Strengthening the Voice of Local Bodies</p> <ul style="list-style-type: none"> Parliament may, by law provide for constitution of a Legislative Council in each State, consisting of members elected by the local governments. <p>Framework Law for Local Bodies</p> <ul style="list-style-type: none"> Government of India should draft and place before Parliament, a framework law for local governments. The framework law could be enacted under Article 252 of the Constitution on the lines of the South African Act, for the States to adopt. This law should lay down the broad principles of devolution of powers, responsibilities and functions to the local governments and communities, based on the following: <ul style="list-style-type: none"> Principle of subsidiary Democratic decentralization Delineation of functions Devolution in real terms Convergence Citizen centricity <p>Size of the Gram Panchayat</p> <ul style="list-style-type: none"> States should ensure that as far as possible <i>Gram Panchayats</i> should be of an appropriate size which would make them viable units of self-governance and also enable effective popular participation. This exercise will need to take into account local geographical and demographic conditions. 	
Constitution	<p>Article 243B</p> <ul style="list-style-type: none"> <i>Panchayats</i> at the village: Village <i>Panchayat</i>. <i>Panchayats</i> at intermediate levels: <i>Panchayat samiti</i>. <i>Panchayats</i> at district level: <i>Zila Parishad</i> 	<p>Article 243Q</p> <ul style="list-style-type: none"> <i>Nagar Panchayat</i> (by whatever name called) for a transitional area (an area in transition from a rural area to an urban area). Municipal council for a smaller urban area. Municipal corporation for a larger urban area. The power to notify an area as ‘a transitional area’, ‘a smaller urban area’ or ‘a larger urban area’ is vested in the Governor.

		Panchayats Part IX(Articles 243–243O)	Municipalities Part IXA(Articles 243P–243ZG)
Exemption		<p>Article 243B (2)</p> <ul style="list-style-type: none"> • <i>Panchayats</i> at the intermediate level may not be constituted in a state having a population not exceeding twenty lakhs. 	<ul style="list-style-type: none"> • This means such area as the Governor may, having regard to: <ul style="list-style-type: none"> (a) The population of the area. (b) The density of the population therein. (c) The percentage of employment in non-agricultural activities. (d) The economic importance. (e) Such other factors as he may deem fit, specify by public notification. • Municipality under this clause may not be constituted in such urban area for which municipal services being provided or proposed to be provided by an industrial establishment.
Recommendations of the Second ARC		<p>Article 243B (2) should be substituted by:</p> <ul style="list-style-type: none"> • ‘These shall be constituted in every district, a District Council representing all rural and urban areas in the district and exercising powers and functions in accordance with the provisions of Articles 243G and 243W of the Constitution.’ 	
Composition		<p>Article 243C</p> <ul style="list-style-type: none"> • To be regulated by a law of the state legislature. • All the seats in a <i>Panchayat</i> shall be filled by persons chosen by direct election. • ‘Persons chosen by direct election means the person must be chosen by direct election to any level, for example, at the village level as a member of village <i>Panchayat</i> or village <i>Panchayat</i> president but can become a member of any level <i>ex officio</i>’. • The legislature of a State may, by law, provide for the representation of: <ul style="list-style-type: none"> (a) Members of the House of the People. (b) Members of the Legislative Assembly of the State. (c) Members of the Council of State. (d) Members of the Legislative Council of the State. 	<p>Article 243R</p> <ul style="list-style-type: none"> • To be regulated by a law of the state legislature. • All the seats in a municipality shall be filled by persons chosen by direct election. • ‘Persons chosen by direct election means the person must be chosen by direct election to any level for example as a member of a municipality or municipal president but can become a member of any level <i>ex officio</i>’. • The legislature of a State may, by law, provide for the representation of: <ul style="list-style-type: none"> (a) Persons having special knowledge or experience in municipal administration (Such persons are known as Aldermen). (b) Members of the House of the People. (c) Members of the Legislative Assembly of the State. (d) Members of the Legislative Council of the State. (e) Chairpersons of the Ward Committees.

	Panchayats Part IX(Articles 243–243O)	Municipalities Part IXA(Articles 243P–243ZG)
Recommendations of the Second ARC	<ul style="list-style-type: none"> Members of Parliament and state legislatures should not become members of local bodies. Articles 243C (2 and 3) should be repealed and supplanted by Article 243C (2) as follows: <ul style="list-style-type: none"> Article 243C (2): Subjected to the provisions of this part, the legislature of a State may, by law, make provisions with respect to composition of <i>Panchayats</i> and the manner of elections provided that in any tier there shall be direct election of at least one of the two offices of Chairperson or members. Provided that in case of direct elections of members in any tier, the ratio between the population of the territorial area of a <i>Panchayat</i> at any level and the number of seats in such <i>Panchayat</i> to be filled by election shall, so far as practicable, be the same throughout the State. Also, each <i>Panchayat</i> area shall be divided into territorial constituencies in such manner that the ratio between the population of each constituency and the number of seats allotted to it shall, so far as practicable, be the same throughout the <i>Panchayat</i> area. 	
Constitution and Composition of Wards Committees	No provision	<p>Article 243S</p> <ul style="list-style-type: none"> To be constituted for one or more wards, within the territorial area of a municipality having a population of three lakhs or more. Composition, area and manner of election of members to be regulated by the law of the state legislature. A member of a municipality representing a ward within the territorial area of the Wards Committee shall be a member of that committee. Only a member of municipality can be the Chairperson of the Wards Committee although the committee may consist of other members.
Reservation of seats (Articles 243D and 243T)	Seats shall be reserved for: <ul style="list-style-type: none"> (a) Scheduled Castes (b) Scheduled Tribes (c) One-third of the total number of seats reserved for women (d) There shall be given reservation for women belonging to SC and ST within the reservation for SC and ST. <ul style="list-style-type: none"> Reservation is applicable both in case of membership and also to the office of the Chairpersons on the <i>Panchayats</i>. 	Seats shall be reserved for: <ul style="list-style-type: none"> (a) Scheduled Castes (b) Scheduled Tribes (c) One-third of the total number of seats reserved for women (d) There shall be given reservation for women belonging to SC and ST within the reservation for SC and ST. <ul style="list-style-type: none"> Reservation is applicable both in case of membership and also to the office of the Chairpersons on the municipalities.
Enhancement of Reservation	The Constitution (110th Amendment) Bill, 2009 to amend Article 243D to enhance the quantum of reservation for women from one-third to one-half of the total seats in the <i>Panchayats</i> .	The Constitution (110th Amendment) Bill, 2009 to amend Article 243D to enhance the quantum of reservation for women from one-third to one-half of the total seats in the municipalities.

		Panchayats Part IX(Articles 243–243O)	Municipalities Part IXA(Articles 243P–243ZG)
Recommendations of the Second ARC		Reservation of seats should follow any one of the two principles mentioned below:	<ul style="list-style-type: none"> In case of single-member constituencies, the rotation can be after at least two terms of five years each so that there is possibility of longevity of leadership and nurturing of constituencies. Instead of single-member constituencies, elections can be held to multi-member constituencies by the List System, ensuring the reservation of seats. This will obviate the need for rotation thus, guaranteeing allocation of seats for the reserved categories.
Duration		<p>Article 243E</p> <ul style="list-style-type: none"> Five years from the date appointed for its first meeting and no longer. <p>Note: The term of PRIs cannot be extended beyond. Conducting elections becomes mandatory.</p> <ul style="list-style-type: none"> Can be dissolved before the term expires. 	<p>Article 243U</p> <ul style="list-style-type: none"> Five years from the date appointed for its first meeting and no longer. <p>Note: The term of municipalities cannot be extended beyond. Conducting elections becomes mandatory.</p> <ul style="list-style-type: none"> Can be dissolved before the term expires.
Election		<p>Article 243E (3)</p> <ul style="list-style-type: none"> An election to constitute a <i>Panchayat</i> shall be completed: <ul style="list-style-type: none"> Before the expiry of its duration. Before the expiration of a period of six months from the date of its dissolution. <i>Panchayat</i> constituted upon the dissolution of a <i>Panchayat</i> before the expiration of its duration shall continue only for the remainder of the period. It will not have a full term. 	<p>Articles 243U (3)</p> <ul style="list-style-type: none"> An election to constitute a municipality shall be completed: <ul style="list-style-type: none"> Before the expiry of its duration Before the expiration of a period of six months from the date of its dissolution. Municipality constituted upon the dissolution of a <i>Panchayat</i> before the expiration of its duration shall continue only for the remainder of the period. It will not have a full term.
Disqualifications for membership		<p>Article 243F</p> <ul style="list-style-type: none"> If he is so disqualified by or under any law made legislature of the State concerned. <p>Note: Constitution does not provide for the qualification of the members of PRIs.</p>	<p>Article 243V</p> <ul style="list-style-type: none"> If he is so disqualified by or under any law made legislature of the State concerned. <p>Note: Constitution does not provide for the qualification of the members of municipalities.</p>
Decision of disqualification		<ul style="list-style-type: none"> Decision of such authority and in such manner as the legislature of a State may, by law, provide. <p>Note: Here one has to be clear that the power is not with Governor. The constitution does not mention about the specific authority.</p>	<ul style="list-style-type: none"> Decision of such authority and in such manner as the legislature of a State may, by law, provide. <p>Note: Here one has to be clear that the power is not with Governor. The constitution does not mention about the specific authority.</p>

	Panchayats Part IX(Articles 243–243O)	Municipalities Part IXA(Articles 243P–243ZG)
Powers, authority and responsibilities	<p>Article 243G</p> <p>Legislature of a State may, by law endow powers and authority <i>Panchayats</i> are responsible for:</p> <ul style="list-style-type: none"> (a) Preparation of plans for economic development and social justice. (b) The implementation of schemes for economic development and social justice. (c) The matters listed in the Eleventh Schedule. 	<p>Article 243W</p> <p>Legislature of a State may, by law endow powers and authority municipalities are responsible for:</p> <ul style="list-style-type: none"> (a) Preparation of plans for economic development and social justice. (b) Performance of functions and the implementation of schemes as may be entrusted to them. (c) The matters listed in the Twelfth Schedule.
Recommendations of the Second ARC	<p>The Principle of Subsidiarity</p> <p>Article 243G should be amended as follows:</p> <p>'Subjected to the provisions of this constitution, the legislature of a State shall, by law, vest a <i>Panchayat</i> at the appropriate level with such powers and authority as are necessary to enable them to function as institutions of self-government in respect of all functions which can be performed at the local level including the functions in respect of the matters listed in the Eleventh Schedule'.</p>	<p>The Principle of Subsidiarity</p> <p>Article 243W should be amended as follows:</p> <p>'Subjected to the provisions of this constitution, the legislature of a State shall, by law, vest a municipality at the appropriate level with such powers and authority as are necessary to enable them to function as institutions of self-government in respect of all functions which can be performed at the local level including the functions in respect of the matters listed in the 'Twelfth Schedule'.</p>
Power to impose taxes	<p>Article 243H</p> <p>Legislature of a State may, by law:</p> <ul style="list-style-type: none"> (a) Authorize a <i>Panchayat</i> to levy, collect and appropriate such taxes, duties, tolls and fees in accordance with such procedure and subjected to such limits. (b) Assign to a <i>Panchayat</i> such taxes, duties, tolls and fees levied and collected by the State government for such purposes and subjected to such conditions and limits. (c) Provide for making such grants-in-aid to the <i>Panchayats</i> from the Consolidated Fund of the State. (d) Provide for constitution of such funds for crediting all moneys received, respectively, by or on behalf of the <i>Panchayats</i> and also for the withdrawal of such moneys therefrom. 	<p>Article 243X</p> <p>Legislature of a State may, by law:</p> <ul style="list-style-type: none"> (a) Authorize a municipality to levy, collect and appropriate such taxes, duties, tolls and fees in accordance with such procedure and subjected to such limits. (b) Assign to a municipality such taxes, duties, tolls and fees levied and collected by the State government for such purposes and subjected to such conditions and limits. (c) Provide for making such grants-in-aid to the municipalities from the Consolidated Fund of the State. (d) Provide for constitution of such funds for crediting all moneys received, respectively, by or on behalf of the municipalities and also for the withdrawal of such moneys therefrom.

	Panchayats Part IX(Articles 243–243O)	Municipalities Part IXA(Articles 243P–243ZG)
Recommendations of the Second ARC	Devolution of Powers and Responsibilities <p>(a) There should be clear delineation of functions for each level of local government in the case of each subject matter law. This is not a one-time exercise and has to be done continuously while working out locally relevant socio-economic programmes, restructuring organizations and framing subject matter laws.</p> <p>(b) Each subject matter law, which has functional elements that are best attended to at local levels, should have provision for appropriate devolution to such levels—either in the law or in subordinate legislation. All the relevant Union and State laws have to be reviewed urgently and suitably amended.</p> <p>(c) In the case of new laws, it will be advisable to add a ‘local government memorandum’ (on the analogy of financial memorandum and memorandum of subordinate legislation) indicating whether any functions to be attended to by local governments are involved and if so, whether this has been provided for in the law.</p> <p>(d) In case of urban local bodies, in addition to the functions listed in the Twelfth Schedule, the following should be devolved to urban local bodies:</p> <ul style="list-style-type: none"> • School education • Public health, including community health centers/area hospitals • Traffic management and civic policing activities • Urban environment management and heritage • Land management, including registration. <p>These, however, are only illustrative additional functions and more such functions could be devolved to urban local bodies by the respective States.</p>	
State Finance Commission (Article 243 I and Article 243Y)	<ul style="list-style-type: none"> • Constitutional obligation on the Governor to constitute State Finance Commission <p>Functions</p> <ul style="list-style-type: none"> • To review the financial position of the <i>Panchayats</i> and to make recommendations to the Governor as to: <ul style="list-style-type: none"> (a) The principles which should govern: <ul style="list-style-type: none"> (i) The distribution between the State and the <i>Panchayats</i> of the net proceeds of the taxes, duties, tolls and fees leviable by the State, which may be divided between them under this Part and the allocation between the <i>Panchayats</i> at all levels of their respective shares of such proceeds. (ii) The determination of the taxes, duties, tolls and fees which may be assigned to, or appropriated by, the <i>Panchayats</i>. (iii) The grants-in-aid to the <i>Panchayats</i> from the Consolidated Fund of the State. (b) The measures needed to improve the financial position of the <i>Panchayats</i>. (c) Any other matter referred to the Finance Commission by the Governor in the interests of sound finance of the <i>Panchayats</i>. 	Article 243Y: Same as for PRIs.

	Panchayats Part IX(Articles 243–243O)	Municipalities Part IXA(Articles 243P–243ZG)
Recommendations of the Second ARC	<p>State Finance Commission</p> <p>(a) Each State should prescribe through an act, the qualifications of persons eligible to be appointed as members of the State Finance Commission.</p> <p>(b) SFCs should evolve objective and transparent norms for devolution and distribution of funds.</p> <p>(c) The norms should:</p> <ul style="list-style-type: none"> • Include area-wise indices for backwardness. • Link the devolution of funds to the level/quality of civic amenities that the citizens could expect. This could then form the basis of an impact evaluation. <p>(d) The Action Taken Report on the recommendations of the SFC must compulsorily be placed in the concerned State legislature within six months of submission.</p> <p>(e) It should be followed with an annual statement on the devolution made and grants given to individual local bodies and the implementation of other recommendations through an appendix to the State budget documents.</p> <p>(f) Incentives can be built into devolution from the Union to the States, to take care of the need to improve devolution from the States to the third tier of governments.</p> <p>(g) Common formats, as recommended by the Twelfth Finance Commission (TFC) must be adopted, and annual accounts and other data must be compiled and updated for use by the SFCs.</p> <p>(h) SFCs should carry out a more thorough analysis of the finances of local bodies and make concrete recommendations for improvements in their working.</p> <p>(i) In case of smaller local bodies such recommendations could be broad in nature, but in case of larger local bodies, recommendations should be more specific.</p> <p>(j) The special needs of large urban agglomerations particularly the metropolitan cities should be specially addressed by the SFC.</p> <p>(k) SFCs should evolve norms for staffing of local bodies.</p> <p>(l) It is necessary that a mechanism be put in place which reviews the implementation of all the recommendations of the SFCs.</p> <p>(m) Devolution of funds could be made conditional to local bodies agreeing to implement the recommendations of the SFCs.</p>	
Article 243Z: Composition of State Finance Commission and Qualifications	<ul style="list-style-type: none"> • Legislature of a State to by law determine. • Legislature of a State to by law determine. 	
Recommendations of the Second ARC	<p>Each State should prescribe through an act, the qualifications of persons eligible to be appointed as members of the State Finance Commission.</p>	
Audit of Accounts	<p>Article 243J</p> <p>To be provided by law. Local Fund Examination Departments in States are created.</p>	<p>Article 243Z</p> <p>To be provided by law. Local Fund Examination Departments in States are created.</p>

Panchayats Part IX(Articles 243–243O)	Municipalities Part IXA(Articles 243P–243ZG)
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Recommendations Accounting and Audit

of the Second ARC

- (a) The accounting system for the Urban Local Bodies (ULBs) as provided in the National Municipal Accounts Manual (NMAM) should be adopted by the State Governments.
- (b) The financial statements and balance sheet of the urban local bodies should be audited by an auditor in the manner prescribed for audit of Government Companies under the Companies Act, 1956 with the difference that in the case of audit of these local bodies, the CAG should prescribe guidelines for empanelment of the Chartered Accountants and the selection can be made by the State governments within these guidelines.
- (c) The audit to be done by the Local Fund Audit or the CAG in discharge of their responsibilities would be in addition to such an audit.
- (d) The existing arrangement between the Comptroller and Auditor General (CAG) of India and the State governments with regard to providing Technical Guidance and Supervision (TGS) over maintenance of accounts and audit of PRIs and ULBs should be institutionalized by making provisions in the State laws governing local bodies.
- (e) It should be ensured that the audit and accounting standards and formats for *Panchayats* are prepared in a way which is simple and comprehensible to the elected representatives of the PRIs.
- (f) The independence of the Director Local Fund Audit (DLFA) or any other agency responsible for audit of accounts of local bodies should be institutionalized by making the office independent of the State administration.
- (g) The head of this body should be appointed by the State government from a panel vetted by the CAG.
- (h) Release of Finance Commission Grants to the local bodies may be made conditional on acceptance of arrangements regarding technical supervision of the CAG over audit of accounts of local bodies.
- (i) Audit reports on local bodies should be placed before the state legislature and these reports should be discussed by a separate committee of the state legislature on the same lines as the Public Accounts Committee (PAC).
- (j) Access to relevant information/records to DLFA/designated authority for conducting audit or the CAG should be ensured by incorporating suitable provisions in the state laws governing local bodies.
- (k) The system of outcome auditing should be gradually introduced. For this purpose, the key indicators of performance in respect of a government.
- (l) To complement institutional audit arrangements, adoption and monitoring of prudent financial management practices in the local bodies should be institutionalized by the State governments by legislating an appropriate law on fiscal responsibility for local bodies.

	Panchayats Part IX(Articles 243–243O)	Municipalities Part IXA(Articles 243P–243ZG)
State Election Commission	<p>Article 243K</p> <ul style="list-style-type: none"> State Election Commission consisting of a State Election Commissioner to be appointed by the Governor. Conditions of service and tenure of office of the State Election Commissioner shall be such as the Governor may by rule determine subject to the law made by the state legislature. <p>Independence of the Commission</p> <ul style="list-style-type: none"> (a) State Election Commissioner shall not be removed from his office except in like manner and on the like grounds as a judge of a high court. (b) The conditions of service of the State Election Commissioner shall not be varied to his disadvantage after his appointment. <p>Functions</p> <ul style="list-style-type: none"> Delimitation of constituencies. Allotment of seats to such constituencies. Superintendence, direction and control of the preparation of electoral rolls. Conduct of all elections to the <i>Panchayats</i>. 	<p>Article 243ZA</p> <p>Elections to the municipalities: Same as applicable for the <i>Panchayats</i>.</p>
Recommendations of the Second ARC on State Election Commission	<ul style="list-style-type: none"> The State Election Commissioner should be appointed by the Governor on the recommendation of a collegium, comprising the Chief Minister, the Speaker of the State Legislative Assembly and the Leader of Opposition in the Legislative Assembly. An institutional mechanism should be created to bring the Election Commission of India and the SECs on a common platform for coordination, learning from each other's experiences and sharing of resources. 	
Recommendations of the Second ARC	<p>The Electoral Process</p> <ul style="list-style-type: none"> (a) The task of delimitation and reservation of constituencies should be entrusted to the State Election Commissions (SECs). Local government laws in all States should provide for adoption of the Assembly electoral rolls for local governments without any revision of names by SECs. For such a process to be effective it is necessary to ensure that the voter registration and preparation of electoral rolls by Election Commission of India is based on geographic contiguity. Similarly, the electoral divisions for elections to local bodies should follow the building blocks approach. The Registration of Electors Rules, 1960, should be amended to define a 'Part' as a compact geographical unit. (b) In order to achieve convergence between census data and electoral rolls, the boundaries of a 'Part' and an 'Enumeration Block' should coincide. (c) Reservation of seats should follow any one of the two principles mentioned below: <ul style="list-style-type: none"> In case of single-member constituencies, the rotation can be after at least two terms of five years each so that there is possibility of longevity of leadership and nurturing of constituencies. Instead of single-member constituencies, elections can be held to multi-member constituencies by the list system, ensuring the reservation of seats. This will obviate the need for rotation thus, guaranteeing allocation of seats for the reserved categories. (d) The conduct of elections for the elected members of District and Metropolitan Planning Committees should be entrusted to the State Election Commission. 	

	Panchayats Part IX(Articles 243–243O)	Municipalities Part IXA(Articles 243P–243ZG)
Application to Union Territories (UT)	<p>Article 243L</p> <ul style="list-style-type: none"> • References to the Governor of a State will mean the Administrator of the UT. • References to the legislature will mean the legislature of the UT for the one which has a legislature. • President may, by public notification, direct that the provisions of this Part shall apply to any UT or part thereof subjected to such exceptions and modifications. 	<p>Article 243ZB</p> <ul style="list-style-type: none"> • References to the Governor of a State will mean the Administrator of the UT. • References to the legislature will mean the legislature of the UT for the one which has a legislature. • President may, by public notification, direct that the provisions of this Part shall apply to any UT or part thereof subjected to such exceptions and modifications.
Part not to apply to certain areas	<p>Article 243M</p> <ul style="list-style-type: none"> • Not applicable to the Scheduled Areas referred to Article 244(1) and Article 244 (2). • Not applicable to the States of Nagaland, Meghalaya and Mizoram. • Not applicable to the hill areas in the State of Manipur for which District Councils exist. • Part relating to <i>Panchayats</i> at the district level not applicable to the hill areas of the District of Darjeeling in the State of West Bengal for which Darjeeling Gorkha Hill Council. • Article 243D, relating to reservation of seats for the Scheduled Castes not applicable to the State of Arunachal Pradesh. 	<p>Article 243ZC</p> <ul style="list-style-type: none"> • Not applicable to the Scheduled Areas referred to Article 244(1) and Article 244 (2). • Will not affect the functions and powers of the Darjeeling Gorkha Hill Council.
Applicability of the Exempted Parts	<p>ARTICLE 243M(4)(a)</p> <ul style="list-style-type: none"> • The legislature of States of Nagaland, Meghalaya and Mizoram can extend this part to whole of the State except the Scheduled Areas referred to Article 244 (1) by law. <p>Conditions for Legislation</p> <ul style="list-style-type: none"> • This law can enact if the Legislative Assembly of that State passes a resolution to that effect by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting <p>Article 243M(4)(b)</p> <ul style="list-style-type: none"> • Parliament may, by law, extend the provisions of this Part to the Scheduled Areas and the tribal areas in States of Nagaland, Meghalaya and Mizoram subjected to such exceptions and modifications as • no such law shall be deemed to be an amendment of this constitution for the purposes of Article 368. 	<p>ARTICLE 243ZC (3)</p> <ul style="list-style-type: none"> • Parliament may, by law, extend the provisions of this Part to the Scheduled Areas and the tribal areas referred to in Article 244 (1) subjected to such exceptions and modifications.No such law shall be deemed to be an amendment of this constitution for the purposes of Article 368.

	Panchayats Part IX(Articles 243–243O)	Municipalities Part IXA(Articles 243P–243ZG)
Recommendations of the Second ARC	<p>Local Government in the Fifth Schedule Areas</p> <p>(a) The Union and State legislations that impinge on provisions of PESA should be immediately modified so as to bring them in conformity with the act.</p> <p>(b) If any State exhibits reluctance in implementing the provisions of PESA, Government of India may consider issuing specific directions to it in accordance with the powers given to it under Proviso 3 of Part A of the Fifth Schedule.</p> <p>Effective Implementation of PESA</p> <p>(a) Regular annual reports from the Governor of every State as stipulated under the Fifth Schedule, Part A (3) of the constitution must be given due importance.</p> <p>(b) Such reports should be published immediately and placed in the public domain.</p> <p>(c) In order to ensure that women are not marginalized in meetings of the <i>Gram Sabha</i>, there should be a provision in the PESA Rules and Guidelines that the quorum of a <i>Gram Sabha</i> meeting will be acceptable only when out of the total members present, at least thirty-three per cent are women.</p> <p>(d) Each State should constitute a group to look into strengthening of the administrative machinery in Fifth Schedule Areas. This group will need to go into the issues of:</p> <ul style="list-style-type: none"> • Special administrative arrangements • Provision of hardship pay • Other incentives • Preferential treatment in accommodation and education. <p>(e) All expenditure in this regard should be treated as charged expenditure under Article 275 of the Constitution.</p>	
Courts barred to interfere	<p>Article 243O</p> <ul style="list-style-type: none"> • Courts cannot question the validity of any law relating to: <ul style="list-style-type: none"> (a) Delimitation of constituencies (b) The allotment of seats to such constituencies. • Election to any <i>Panchayat</i> shall be called in question an election petition presented to such authority and in such manner as is provided for by or under the law made by the state legislature. 	<p>Article 243ZG</p> <ul style="list-style-type: none"> • Courts cannot question the validity of any law relating to: <ul style="list-style-type: none"> (a) Delimitation of constituencies (b) The allotment of seats to such constituencies. • Election to any municipality shall be called in question an election petition presented to such authority and in such manner as is provided for by or under the law made by the state legislature.

	Panchayats Part IX(Articles 243–243O)	Municipalities Part IXA(Articles 243P–243ZG)
District Planning Committee	<p>Article 243O No provision. As applicable to municipalities.</p>	<p>Article 243ZD</p> <ul style="list-style-type: none"> • Constitutional obligation. States must constitute DPC. <p>Purpose</p> <ul style="list-style-type: none"> • To consolidates the plans prepared by the <i>Panchayats</i> and the municipalities in the district. To prepares a draft development plan for the district as a whole. <p>Composition and Manner of Filling Seats</p> <ul style="list-style-type: none"> • As regulated by the law of the state legislature <p>Condition</p> <ul style="list-style-type: none"> • Not less than four-fifth of the total number of members of DPC shall be elected by, and from amongst, the elected members of the <i>Panchayat</i> at the district level and of the municipalities in the district. • Membership must be in proportion to the ratio between the population of the rural areas and of the urban areas in the district. <p>Functions</p> <ul style="list-style-type: none"> • DPC, while preparing the draft development plan shall have regard to: <ul style="list-style-type: none"> (a) Matters of common interest between the <i>Panchayats</i> and the municipalities. (b) Matters of common interest include: <ul style="list-style-type: none"> • Spatial planning • Sharing of water • Sharing of other physical and natural resources • Integrated development of infrastructure and environmental conservation. (c) The extent and type of available resources whether financial or otherwise. (d) DPC shall consult such institutions and organizations as the Governor may, by order, specify.

	Panchayats Part IX(Articles 243–243O)	Municipalities Part IXA(Articles 243P–243ZG)
Recommendations of the Second ARC	<p>Decentralized Planning</p> <p>(a) A District Council should be constituted in all districts with representation from rural and urban areas.</p> <p>(b) It should be empowered to exercise the powers and functions in accordance with Articles 243G and 243W of the Constitution.</p> <p>(c) The District Planning Councils will either not exist or become, at best, an advisory arm of the District Council. Article 243ZD of the Constitution should be amended to facilitate this.</p> <p>(d) In the interim and in accordance with the present constitutional scheme, DPCs should be constituted in all States within three months of completion of elections to local bodies and should become the sole planning body for the district.</p> <p>(e) The DPC should be assisted by a planning office with a full time District Planning Officer.</p> <p>(f) For urban districts where town planning functions are being done by Development Authorities, these authorities should become the technical/planning arms of the DPCs and ultimately of the District Council.</p> <p>(g) A dedicated centre in every district should be set-up to provide inputs to the local bodies for preparations of plans. A two-way flow of information between different levels of government may also be ensured.</p> <p>(h) The guidelines issued by the Planning Commission pertaining to the preparation of the plan for the district and the recommendations of the expert group regarding the planning process at the district level should be strictly implemented.</p> <p>(i) Each State Government should develop the methodology of participatory local level planning and provide such support as is necessary to institutionalize a regime of decentralized planning.</p> <p>(j) States may design a planning calendar prescribing the time limits within which each local body has to finalize its plan and send it to the next higher level, to facilitate the preparation of a comprehensive plan for the district.</p> <p>(k) State Planning Boards should ensure that the district plans are integrated with the State plans that are prepared by them. It should be made mandatory for the States to prepare their development plans only after consolidating the plans of the local bodies. The National Planning Commission has to take the initiative in institutionalizing this process.</p>	
Metropolitan Planning Committee	No provision. As applicable to municipalities	<p>Article 243ZE</p> <ul style="list-style-type: none"> • A constitutional obligation. States must constitute MPC. <p>Purpose</p> <ul style="list-style-type: none"> • To prepare a draft development plan for the metropolitan area as a whole. <p>Composition and Manner of Filling Seats</p> <ul style="list-style-type: none"> • As regulated by the law of the state legislature. <p>Condition</p> <ul style="list-style-type: none"> • Not less than two-thirds of the members of such committee shall be elected by, and from amongst, the elected members of the municipalities and Chairpersons of the <i>Panchayats</i> in the metropolitan area.

Panchayats Part IX(Articles 243–243O)	Municipalities Part IXA(Articles 243P–243ZG)
	<ul style="list-style-type: none"> • Membership must be in proportion to the ratio between the population of the municipalities and of the <i>Panchayats</i> in that area. • Such committees of the Government of India and the Government of the State and of such organizations and institutions may be represented in the MPC, if it is deemed necessary for carrying out the functions assigned to such committees. <p>Functions</p> <ul style="list-style-type: none"> • MPC, while preparing the draft development plan shall have regard to: <ul style="list-style-type: none"> (a) Plans prepared by the municipalities and the <i>Panchayats</i> in the metropolitan area. (b) Matters of common interest between the municipalities and the <i>Panchayats</i>. (c) Matters of common interest include: <ul style="list-style-type: none"> (i) Coordinated spatial planning of the area. (ii) Sharing of water (iii) Sharing of other physical and natural resources (iv) Integrated development of infrastructure and environmental conservation (d) The overall objectives and priorities set by the Government of India and the Government of the State. (e) The extent and nature of investments likely to be made in the metropolitan area by agencies of the Government of India and of the Government of the State and other available resources whether financial or otherwise.

	Panchayats Part IX(Articles 243–243O)	Municipalities Part IXA(Articles 243P–243ZG)
Recommendations of the Second ARC	Planning for urban areas <ul style="list-style-type: none"> (a) The function of planning for urban areas have to be clearly demarcated among the local bodies and planning committees. The local bodies should be responsible for plans at the layout level. (b) The DPCs/District Councils, when constituted and MPCs should be responsible for preparation of regional and zonal plans. The level of public consultation should be enhanced at each level. (c) For metropolitan areas, the total area likely to be urbanized (the extended metropolitan region) should be assessed by the State Government and an MPC constituted for the same which may be deemed to be a DPC for such areas. (d) As such an area will usually cover more than one district, DPCs for those districts should not be constituted (or their jurisdictions may be limited to the rural portion of the revenue district concerned). (e) The MPCs should be asked to draw up a Master Plan/CDP for the entire metropolitan area including the peri-urban areas. (f) The planning departments of the Development Authorities (DAs) should be merged with the DPCs and MPCs who will prepare the master plans and zonal plans. (g) The task of enforcement and regulation of the master plans/CDPs drawn up by the MPCs should be the specific statutory responsibility of all the local bodies falling within the extended metropolitan region concerned. (h) The monopoly role of Development Authorities (DAs) in development of land for urban uses, wherever it exists, should be done away with. (i) However, public agencies should continue to play a major role in development of critical city level infrastructure as well as low cost housing for the poor. For this purpose, the engineering and land management departments of the DAs should be merged with the concerned municipality/corporation. 	

PANCHAYATI RAJ INSTITUTIONS: A REVIEW

Over the years, Panchayati Raj Institutions (PRIs) have developed certain critical strengths, in spite of several systemic weaknesses and constraints. Post the 73rd Constitutional Amendment, the PRIs have acquired substantial legitimacy and have created participatory structures of grass roots democracy for the rural people. Consequent to the 73rd Constitutional Amendment as well as the Supreme Court's rulings, the three tier PRIs—district, block and village Panchayat are also treated as 'Government or State'. Creation of constitutional bodies like the State Election Commissions and the State Finance Commissions have also given permanency and stability to these institutions.

PRIs: An Analysis

Important questions from Previous years' on this topics are mentioned below:

- (a) In absence of a well-educated and organized local level government system, 'Panchayats' and 'Samitis' have remained mainly political institutions and not effective instruments of governance. Critically discuss. IAS MAINS (GS) (2015)
- (b) 'The local self-government system in India has not proved to be effective instrument of governance'. Critically examine the statement and give your views to improve the situation. IAS MAINS (GS) 2017

- It took years, and in some cases a decade, to even constitute local governments and hold elections, despite the constitutional mandate.
- Even when local governments are constituted and elections are held; States often postponed the subsequent elections on some pretext or other.
- There has been no linear development or evolution in respect of democratic decentralization.
- States are reluctant to effectively empower local governments. Only the bare minimum required to implement the strict letter of the constitution prevails in many States and the spirit of the constitution and principles of democracy is often ignored.
- Even mandatory provisions like the constitution of District Planning Committees and Metropolitan Planning Committees have been ignored in many States.
- Where the *Panchayats* have been constituted and elections held regularly, there is no effective devolution of powers, leading to further centralization.
- Some legislators at times tend to act as 'executives', intervening in transfers and postings, sanctioning of local bodies' contracts and tenders, crime investigation and prosecution, all of which are, therefore, often at the mercy of the local legislator. Given the compulsions of survival, the State government which depends on the goodwill and support of legislators does not usually intervene except where the constitution specifically and unambiguously directs it.

Voluntary Provisions Under 73rd Amendment

1. Voting rights to the MPs and MLAs in PRIs.
2. Reservation to Backward Classes.
3. Financial powers: Taxes, levy, fees, etc.
4. Devolution of powers under Schedule XI.
5. Providing autonomy to PRIs.

Report of the Task Force on the Panchayati Raj Jurisprudence

To build a consistent body of jurisprudence, based on more or less uniform pattern of statutes, Ministry of Panchayati Raj appointed the task force with Dr V. S. Ramadevi, Former Governor, HP and Karnataka as the Chairperson. The task force made the following recommendations:

- The five yearly patterns of the *Panchayat* elections should be regularized.
- The procedure with similar officials having similar powers with regard to the conduct of the elections, throughout the country, should be uniform.
- An election tribunal for dealing with the disputes arising out of or in connection with the election to local governments must be set-up. The election tribunal's powers should be as close to that of a 'court' under the CPC as possible, in order to avoid any litigation on the jurisdiction of the tribunal.
- The state legislature should make it clear how the majority is to be calculated. The law should define whether only the valid votes would be considered or otherwise for deciding quorum.
- Updating the electoral roll for *Panchayat* elections shall be the sole responsibility of the SEC. It has to be carefully done and the people must be educated about the importance of enrolling their names in the electoral roll.
- *Panchayats* may be given the power to suspend and remove an elected functionary by a resolution. The collector or similar official may suspend/remove a functionary, but only after a resolution has been passed by the *Panchayat*.
- Specific provisions have to be given for removal and no-confidence motion. But these two should not be bundled up.
- The executive's hold over *Panchayat* resolution and motions has to be reduced. In the alternative, the Assam model which provides for a hierarchical *Panchayat* supervision pattern may be resorted to if the State government finds it more conducive.

- Once a no-confidence motion is rejected, the next such motion can be permitted only after six months.
- Non-Party Elections: Though party politics has become institutionalized at the *Panchayat* level, the task force recommends *Panchayat* elections at all the three tiers not to be held on party basis.
 - (a) Non-party elections would be conducive to stability and development in the *Panchayat* framework.
 - (b) It would also avoid the rift between the State government and the *Panchayat* administrations, especially if different parties are in power.
- Notification of villages/delimitation of constituencies should be done during the tenure of the *Panchayat* should be announced much earlier to the elections. The power to delimit should be vested in the SEC.
- The resolutions passed by the *Panchayats* should be made non-reversible by executive authorities.
- An efficient social auditing mechanism will help to make the *Panchayats* more accountable to the people. This will also make the State government a lot more relaxed while devolving funds and functions to the *Panchayats*.
- Parallel bodies like Villages/Rural Development Committees, etc., should be abolished and every development work should be undertaken by and through *Panchayats*.
- All the welfare projects should be executed through *Panchayats*.

Urban Local Bodies: Challenges

The specific capacity gaps identified, though varying widely across Urban Local Bodies (ULBs), can be grouped under three heads:

- (a) Inadequate skills and capacity of the present personnel at all levels.
- (b) Limited availability of personnel with adequate skill sets to execute projects in a sustainable manner. Absence of suitable institutional framework for supporting continuous skill up gradation, etc.

Steps to be taken

1. Creating enabling framework for ULBs to hire persons from market and to provide funds for the purpose.
2. Consolidating information on available training modules, identifying individual trainers and institutions and conducting training programmes.
3. Induction training for key policy makers and administrators on Urban Management be encouraged at all levels.

Source: A Study to Qualitatively Assess the Capacity Building Needs of Urban Local Bodies: NITI Aayog

FIFTEENTH ANNIVERSARY CHARTER ON PANCHAYAT RAJ

Though States have enacted *Panchayati Raj* legislation, real devolution of powers and responsibilities so as to empower *Panchayats* as institutions of self-government is yet to happen. Progress in this respect has been uneven across states. The major aspects include:

Functional Empowerment of Panchayats

1. The district, intermediate and village *Panchayats* have experience of working and are competent enough to shoulder the responsibility. Hence, all 29 matters listed must be fully devolved along with funds and functionaries upon the *Panchayats* in all States.

2. Activity mapping should not merely give powers of 'promotion' of programmes, but also substantive powers in local planning and implementation.
3. **Wider domain:** The domain of the *Panchayat* has to be widened. Revenue, regulation and development functions must be devolved upon *Panchayats*. Devolution of judicial powers and Police may also be considered.
4. **Organic link:** To establish organic linkages between *Panchayats* at all levels and District Planning Committees (DPCs), elected representatives of village and intermediate tiers should also be given representation in the DPCs, in addition to the representation given to members of the *Zila Panchayats*.
5. **Procedural Simplicity:** Administrative and financial procedures of the State and Central governments must be simplified and redesigned to facilitate planning and implementation by PRI.
6. **Self-Reliance:** In the era of globalization and liberalization, the spirit of self-help must be inculcated in the local levels and motivated to take up locally driven initiatives which need not necessarily be funded by the Central and State governments.

Rashtriya Gram Swaraj Abhiyan

- Rajiv Gandhi Panchayat Sashaktikaran Abhiyan (RGPSA) has been restructured as Rashtriya Gram Swaraj Abhiyan.
- A committee headed by Dr Rajiv Kumar, Vice Chairperson NITI Aayog recommended the restructuring.
- RGSA will help more than 2.55 lakh *Panchayati Raj* Institutions (PRIs) to develop governance capabilities to deliver on SDGs through inclusive local governance with focus on optimum utilization of available resources.
- RGSA will have central component, national level activities including 'National Plan of Technical Assistance', 'Mission Mode Project on e-Panchayat', 'Incentivization of *Panchayats*' and State component—Capacity Building of PRIs, in the ratio of 60:40
- For North-eastern States it is in 90:10 and in UTs 100% central funding.

Financial Empowerment of *Panchayats*

1. There must be regularity and clarity in the flow of funds to *Panchayats*. A *Panchayat* sector window should be opened in the budgets of all line departments (both in Centre and State) to ensure the flow of funds to each tier of the *Panchayats* to finance the functions devolved on them.
2. Similarly, activity mapping for functions and finances is required for Centrally Sponsored Schemes (CSSs) and other Central government funding streams such as Additional Central Assistance to enable local planning and implementation by *Panchayats*.
3. Funds should reach each *Panchayat* promptly after it has submitted its utilization reports.
4. *Panchayats* have to take earnest steps to mobilize our own revenue by undertaking systematic and timely assessments to fully survey our tax base and enforce tax collection, through a campaign mode approach. There must be no conditionality imposed by States on the expenditure and investments by *Panchayats* from their own revenues.
5. *Panchayats* should have access to bank credit to take up development projects such as universal housing for the poor, support to SHGs and their federations and construction of remunerative infrastructure assets, etc. The Government of India should frame a policy framework in this regard.

Gram Panchayat Development Plan (GPDP)

- GPDP is the plan for economic development and social justice utilizing available resources.
- Gram Panchayats have been mandated for preparation of GPDP.
- GPDP process has to be comprehensive and based on participatory process.
- It involves full convergence with schemes of all related Central Ministries/line departments related to 29 subjects in Eleventh Schedule.
- It was undertaken in campaign mode in the period 2 October to 31 December 2018.

Capacity Improvement of Panchayats

1. Provision of staff for the Panchayats:

Progressively, staff for performing functions devolved should be recruited by *Panchayats*. Clear powers of management and control must be given to the Chairpersons of all levels of *Panchayats*.

2. Provision of adequate remuneration for elected Panchayat representatives at the District, Intermediate and Village levels

Important questions from Previous years' on this topics are mentioned below:

When 'cooperative federalism' is being institutionalized in the Centre-State financial relations, the task of percolating this spirit to the grass root level becomes a major challenge for us too... Accountability, Transparency and strong 'administrative will' together build the desired 'eco-system' where it is possible to translate political decentralization into financial decentralization.

Dr Jyoti Kiran Chairperson, Fifth State Finance Commission, Rajasthan

With increasing responsibilities being given to *Panchayats* at all three levels, there is a need to make adequate provision for Travelling Allowances, Daily Allowances and provide adequate remuneration to the *Panchayat* representatives at all three levels in the same manner as is provided for MPs and MLAs. This matter should be addressed by State and Central governments.

3. Training for Panchayat elected representatives and officials

Panchayat elected representatives and officials should be provided sustained and high quality training through a system that fulfils their own training needs.

Training must also be flexible enough to meet specific requirements of *Panchayats*. Training materials should be easily accessible electronically and through help lines, call centres, interactive broadcasts and other modes of distance learning and replies to frequently asked questions, prepared in the local language based on the recommendations of the Gairola Committee Report.

There must be specialized training programmes for different groups, such as for women *Panchayat* representatives, SC/ST members.

4. Provision of Physical infrastructure and Information Technology for Panchayats

All *Panchayats* must be provided adequate physical infrastructure in the form of adequate office space, meeting and waiting rooms, toilets, recreational facilities, IT, telephone and road connectivity.⁽¹⁾

5. Extending the reservation cycle to three terms

In order to build and retain capacity and leadership among categories for whom seats are reserved in *Panchayats*, States shall consider favourably extending the reservation cycle to three five-year terms. The minimum term of Chairpersons of *Panchayats* should be five years.

1 Refer NeGP

Internship Program as a Part of Scheme of RGSA

- To allow short-term exposure of 'selected candidates' with different Programme Divisions of Ministry of Panchayat Raj (MoPR), as 'Interns'
- To allow young academic talent to be associated with the MoPR for mutual benefit.
- The 'Interns' shall have an opportunity to know about government functioning and policies relating to governance at local level particularly in the rural, social and economic.
- They will have to provide the inputs for preparing the briefs and analysis, based on the empirical evidence.

Constitution of District Planning Committees by States in Conformity with the Provisions of Article 243ZD of the Constitution

Article 243ZD of the Constitution provides that every State shall constitute at the district level a District Planning Committee to consolidate the plans prepared by the *Panchayats* and the municipalities in the district and to prepare a draft development plan for the district as a whole.

High allocations to and implementation of MP and MLA Local Area Development Scheme, kills the spirit of participatory planning. Implementation of these programmes must be in convergence with the programmes taken up at the *Panchayat* levels.

Panchayats conduct *Gram Sabhas* not only prepare to a list of works, but also to fix priorities in implementation, as funds at them *Panchayats* level are limited. Line departments should not prepare their own priority lists for schemes such as MP and MLA Local Area Grants and take up works without the knowledge of the *Panchayats*. It must comply with the priority lists prepared by the *Gram Sabhas*.

Why DPC Important?

- It reflects the degree of inclusion of marginalized sections in the district planning process.
- It reflects the degree to which the DPC is actually a body independent of state control and interference

Source: National Resource Cell for Decentralized District Planning (NRCDDP).

Panchayat Raj in Areas Covered by the Fifth Schedule of the Constitution

- The *Panchayats* (Extension to Scheduled Areas) Act, 1996 (PESA) is a central legislation that extends the constitutional provisions of *Panchayati Raj* to Fifth Schedule Areas, subjected to certain exceptions and modifications. Nine States, namely, Andhra Pradesh, Chhattisgarh, Gujarat, Himachal Pradesh, Jharkhand, Madhya Pradesh, Maharashtra, Orissa and Rajasthan have Fifth Schedule Areas.
- PESA provides that in *Panchayats* in 5th Schedule areas, there must be a minimum of fifty per cent reservation of the total number of seats for the Scheduled Tribes. All Chairpersons' seats in *Panchayats* are also to be reserved for the Scheduled Tribes.
- PESA lays down that every village will have a *Gram Sabha* which will be competent to safeguard and preserve the traditions and customs of the people, their cultural identity, community resources and customary mode of dispute resolution.

- *Gram Sabhas and Panchayats* at the appropriate level have been specifically given the powers and authority to enforce prohibition or to regulate or extract the sale and consumption of any intoxicant, ownership of minor forest produce, power to prevent alienation of land, powers to manage village markets, power to exercise control over moneylending, power to exercise control over institutions and functionaries in all social sectors.

Connect

PESA exclusively empowers Gram Sabha to;

- Safeguard and preserve the:
 - (a) Traditions and customs of the people, and their cultural identity.
 - (b) Community resources
 - (c) Customary mode of dispute resolution
- Carry out executive functions to
 - (a) Approve plans, programmes and projects for social and economic development.
 - (b) Identify persons as beneficiaries under the poverty alleviation and other programmes.
 - (c) Issue a certificate of utilization of funds by the *Panchayat* for the plans; programmes and projects.

Source: <http://pesadarpan.gov.in>

Review of PESA, 1996

- PESA provides that the recommendation of the *Gram Sabha* or the *Panchayats* at the appropriate level is mandatory prior to grant of prospecting license or mining lease for minor minerals. This provision should be amended to make it mandatory for obtaining the permission of the *Gram Sabha*, before granting prospecting license or mining lease.
- In PESA areas, the *Gram Sabhas* have been given executive powers and they can elect their traditional heads as the heads of the *Gram Sabhas*. There is a need to work out a harmonious relationship between the *Gram Sabhas* in PESA areas with the *Gram Panchayats*.
- While all States have enacted requisite compliance legislations by amending the respective *Panchayat Raj Acts*, certain gaps continue to exist. Most States are yet to amend the subject laws, like those relating to moneylending, forest, excise, etc., to bring these into conformity with PESA.
- Central legislations such as the Indian Land Acquisition Act, the Forest Conservation Act, and the Indian Registration Act will also need to be harmonized with the provisions of PESA. States and relevant central ministries must take concrete steps to harmonize the provisions of the laws and policies concerned with the aims and objectives of PESA.
- Powers statutorily devolved upon the *Gram Sabha* and the *Panchayats* are not being matched by concomitant transfer of funds and functionaries resulting in the no exercise of such powers.
- More than 11 years after its enactment there is little or no awareness about the provisions of PESA. Therefore, it is imperative that all persons in PESA areas are given in-depth training on the provisions of PESA through awareness campaigns. Officials concerned with the implementation of PESA should also be properly sensitized.
- Physical infrastructure in interior areas should be strengthened in order to protect the life and property of tribals. Special attention should be paid to the construction of culverts, bridges, check dams, compound walls for schools, etc.
- As of now, ownership of Minor Forest Produce does not vest with tribals. Steps should be taken to ensure that they get the best remunerative price for their Minor Forest Produce.

Definition of Village and *Gram Sabha*

A village shall ordinarily consist of a habitation or a group of habitations or a hamlet or a group of hamlets comprising a community and managing its affairs in accordance with traditions and customs.

Every village shall have a *Gram Sabha* consisting of persons whose names are included in the electoral rolls for the *Panchayat* at the village level.

Source: PESA Act, [Section 4 (b)].

Consequently, compliance with PESA remains incomplete and perfunctory in virtually all States. Vital issues like the ownership of minor forest produce, planning and management of minor water bodies, prevention of alienation of tribal lands, etc., which have been duly recognized in PESA as the traditional rights of tribals living in the Scheduled Areas have still not received the warranted attention and the necessary correctives remain unapplied.

Decentralization in Areas Not Covered by the Provisions of Parts IX and IXA of the Constitution

The entire philosophy of the Sixth Schedule of the constitution is aimed at protection of tribal areas and interests, by constitutionally mandating regional or district local self-government institutions for them. These institutions are entrusted with the twin task of protecting tribal culture and customs and undertake development tasks for them. The provisions of the Sixth Schedule of the constitution should be operationalized in letter and spirit.

Areas that fall outside the purview of both *Panchayati Raj* and the Sixth Schedule must also provide for regular elections to local autonomous councils, so that the tribal people concerned can meet their aspirations for local democracy and decentralized and inclusive growth.

There is a significant degree of variation in the functions devolved to one autonomous district as compared to another. The minimum extent of powers given to a District Council ought to be at least that enunciated in the Eleventh Schedule of the constitution, which can be considered as an indicative list in this case also.

To make district planning in Sixth Schedule areas both inclusive and representative, autonomous councils will need to live harmoniously with traditional arrangements. For this reason, these bodies should be given clear development functions, in addition to the regulatory, legislative and judicial powers bestowed upon them.

Importance and Benefits of PESA

- (a) It will enhance people's participation in decision-making.
- (b) PESA will reduce alienation in tribal areas as they will have better control over the utilization of public resources.
- (c) PESA will reduce poverty and out-migration among tribal population as they will have control and management of natural resources will improve their livelihoods and incomes.
- (d) PESA will minimize exploitation of tribal population as they will be able to control and manage moneylending, consumption and sale of liquor and also village markets.
- (e) Effective implementation of PESA will check illegal land alienation and also restore unlawfully alienated tribal land.
- (f) And most importantly PESA will promote cultural heritage through preservation of traditions, customs and cultural identity of tribal population.

Source: <http://pesadarpan.gov.in/en>.

Activating Community Participation at the Grass Roots

- The constitution defines *Gram Sabha* as a body consisting of voters relating to a village comprised within a *Panchayat*. The peoples' right to participate in local democracy must be interpreted in its widest sense. Therefore, the term *Gram Sabha* must be understood in its holistic sense and not in a restrictive sense as an occasional meeting of voters. Since participation of people is most important, members of the *Gram Sabha* should be consulted even at their doorstep through surveys and ward and neighbourhood level meetings.
- The legal framework and the practice of holding two levels of *Gram Sabha* meetings in some States, at the ward or habitation level and at the GP level should be implemented in all States, except in those States where the sizes of *Gram Panchayats* are very small.
- Good *Panchayat* level practices such as the Kudumbashree programme of Kerala, which has fostered a vibrant participation between poor and marginalized members of the *Gram Sabha*, with the *Gram Panchayats*, should be promoted in all States.
- There must be universal endowment of the Ward/*Gram Sabha* with meaningful empowerment through such measures as giving them powers to approve before implementation commences, plans and programmes (including budgets) for economic development and social justice prepared by the *Gram Panchayat*, to authorize the issuance *Panchayat* and to undertake the identification of beneficiaries.
- Social audit is an important complement to formal audit and for the sound and healthy development of *Panchayati Raj*, it is essential to establish a symbiotic relationship between social and formal audit. For social audit to be effective and based on the best practices available in different States.

Rural Business Hubs

- Panchayats* need to be aware of the opportunities that exist for them to plan for economic development of their area and could promote rural non-farm enterprises, which utilize local skills and/or resources and generate/promote rural employment through Public Private *Panchayat* Partnership.
- Artisan based clusters established under different schemes of the Central or State Governments and organizations such as the Khadi and Village Industries Commission, the NABARD and the Development Commissioner, Handicrafts must enable a clear role for *Panchayats* to be proactive in enabling convergence with existing schemes.
- The *Panchayats* could also actively promote local entrepreneurship through external facilitation, capacity building, access to credit, etc., and thus, play the lead role for rural development and economic empowerment, by acting as the gateway for Central/State schemes and interventions of bank and other institutions.

Incentives for Panchayat Performance

- To motivate and assist *Panchayats* to use their newly enlarged responsibilities in a focused and productive fashion and ensure that *Panchayats* achieve standards that meet norms set out for public accountability.
- Panchayats* at all levels should be awarded for their annual improvement over the previous year in the achievement of the goals of transparency and accountability to their respective *Gram Sabhas* and efficiency in performing their roles and responsibilities.

Creating a National Network of Panchayat Representatives

In order to gain strength from each other, share experiences and best practices and gain a collective voice, a national network of *Panchayat* elected representatives can be created. The other functions can be as follows:

- Organize training programmes, field visits and study tours,
- Undertake peer reviews and benchmark performances of member *Panchayats* at all levels. Network with similar institutions nationally and internationally.

Federation from the Grass Roots Level

- There shall be an intermediate level association at each intermediate *Panchayat* level. The general body of the association shall be comprised of three members selected from each *Gram Panchayats*.
- There shall be a district level association for each district. The general body of the association shall be comprised of three members selected from each intermediate level association. The district level association will also provide adequate representation for elected representatives of District *Panchayats*.
- There shall be a national level federation of elected *Panchayats* representatives, the general body of which shall be comprised of three members elected from each state level association. Each of the three members selected from each State shall represent one level of *Panchayat*. Representation from States may be increased depending on the rural population of the State.

ACTIONS TAKEN TOWARDS REFORM PRIS

Bharat Broadband Project

- It is a company incorporated under Indian Companies Act 1956, fully owned by Central Government, with equity participation from Government, Bharat Sanchar Nigam Limited (BSNL), RailTel and Power Grid. BBNL is the Special Purpose Vehicle (SPV) set-up for the implementation of National Optical Fibre Network (NOFN) scheme.
- NOFN is for providing broadband connectivity to all *Gram Panchayats* through optical fibre cable. The connectivity to *Gram Panchayats* will be provided through this network for establishing e-governance.
- The project, based on a unique PPP or Public Private *Panchayats* Model, aims to connect 2.5 lakh villages and last mile connectivity will be given through mobile-wireless broadband.
- A majority of the funding for this network is being sourced from the Universal Service Obligation Fund (USOF), to which consumers contribute a small percentage every month through their monthly telephone bills.

e-Panchayat Mission Mode Project

It is to introduce and strengthen e-Governance in PRIs and build their associated capacities for effective adoption of e-Governance initiative.

Under this project, *Panchayat Enterprise Suite* (PES) has been conceptualized which comprises 11 core common applications.

The operational modules include Local Government Directory (LGD), Area Profiler (socio-economic and general details), Plan Plus (to strengthen decentralized and participatory planning), PRIASoft (*Panchayati Raj Accounting Software*), Action Soft (Works/scheme implementation Monitoring System), NAD (National Asset Directory), Service Plus (to facilitate service delivery), Social Audit, Training and National *Panchayat* Portal (Dynamic website).

Features of Application

- 1. Social Audit:** It involves auditing of various schemes by social auditor and social audit facilitator and submission of audit report. SAMM aims to understand measure, verify work under different schemes done by the *Panchayat* and further to improve social performance of respective *Panchayats*.
- 2. Meeting Management:** Management of meetings at *Panchayat* level to enable transparent and user-friendly flow of system.

Source: Social Audit Website: Government of India.

Barriers

The barriers to reaping the full benefits of this massive investment are at three levels.

- The first is affordable devices, preferably wireless and ready for early use.
- The second challenge relates to relevant, local content. The movement of content from Anglo-centric, text-based availability to multilingual access would assist immensely in deepening internet usage.
- The third is by way of successful introduction of telemedicine, e-governance, e-learning and e-commerce applications that form the fulcrum of the nation's e-infrastructure.

Advantages

- A World Bank study revealed that a 10 per cent increase in broadband connectivity helps in pushing the GDP growth by 1.4 per cent. The optic fibre network will help bring various electronic and internet-based initiatives of the government to the people living in the remotest corner of the country.
- NOFN will enable effective and faster implementation of various mission mode e-governance projects amounting to ₹50,000 crore initiated by the Department of Information Technology.
- It will also enable the delivery of a whole range of electronic services by the private sector to citizens in rural areas.

States with 50% Reservation for Women

1. Assam	8. Kerala	15. Tamil Nadu
2. Andhra Pradesh	9. Karnataka	16. Telangana
3. Bihar	10. Madhya Pradesh	17. Tripura
4. Chhattisgarh	11. Maharashtra	18. Uttarakhand
5. Gujarat	12. Odisha	19. West Bengal
6. Himachal Pradesh	13. Rajasthan	
7. Jharkhand	14. Sikkim	

Source: Ministry of Panchayati Raj

Plan Plus

- Plan Plus is software developed by NIC, under guidance and direction from Ministry of Panchayati Raj, in order to demystify and strengthen the decentralized planning process.
- The software is web-based software and captures the entire planning workflow starting from identification of needs, the plan approval process till the final approval by the District Planning Committee.
- The software is highly generic and can be extended to capture the plans prepared by line departments at the State and Central level to generate the National Plan.
- The objective of Plan Plus is to facilitate the decentralized planning process in local language by:
 - Supporting need/activity-based planning rather than scheme-driven.
 - Converging the flow of funds from different Central and State sponsored schemes.
 - Capturing the planning workflow.
 - Converging the rural and urban plans to generate an integrated district plan.

Reservation of Seats for Women: Constitution versus Customary Law Nagaland Issue

The matter of reserving one-third of the seats in the municipalities for women has triggered violent protests in Nagaland. Joint Action Committee of Women Reservation (JACWR) has been demanding for the equality and parity of treatment of women with men. JACWR had filed many cases and had taken a long legal course towards achieving this objective. The Constitution (74th Amendment) Act 1992, inserted Article 243T which makes it an obligation to the reserve one-third of the seats in the municipalities for women.

However, Article 243M exempts the application of the provisions of *Panchayats* to the State of Nagaland. Article 243ZC exempts the application of the provisions relating to municipalities to tribal areas, which includes the State also. Further, Article 371A provides that any law enacted by the Parliament in respect of:

- Religious or social practices of the Nagas
- Naga customary law and procedure
- Administration of civil and criminal justice involving decisions according to Naga customary law

Ownership and transfer of land and its resources shall be applicable to Nagaland only when the State Legislative Assembly declares by a resolution. As a sequel to 74th amendment, the Nagaland Municipal Act, 2001 did not contain the provision for reservation.

The elections to the municipalities were conducted without reserving the seats for women in 2004. The JACWR challenged this in the Guwahati High Court in 2005. The high court directed the Nagaland government to take appropriate steps to provide reservation for women. However, no such step was taken by the government and election to the local bodies could not be conducted in 2009 as per the schedule due to the opposition from the tribal groups against reservation.

This was further challenged and in 2011 a single member bench of the Guwahati High Court directed the State government to conduct election with reservation. The government appealed against this order to a division bench which set aside the order. Subsequently in 2012, the Nagaland Assembly passed a resolution that reservation under Article 243T does not apply to the State as it infringes on Article 371A.

Annoyed by this the JACWR filed a Special Leave Petition (SLP under Article 136) against the order of the Division Bench of the Guwahati High Court and the Assembly resolution. The Supreme Court held that the provision for reservation supersedes Article 371A and so reserving seats for women in municipal bodies was mandatory and binding.

As a sequel, the Nagaland Municipal Act, 2001 was amended and the elections were scheduled to be conducted in February 2017.

The Naga Tribal bodies representing 16 main tribal groups (Locally called as *HoHos*) opposed this move on the ground that any policy to provide for reservation to women will be conflicting with the tribal customary laws. The tribal bodies are of the view that it would be a premature move to introduce reservation without taking certain preparatory steps. They are of the view that the role women were fully and adequately recognized at the family level in the private spheres. But to give an equal role to women on par with men would conflict with the established cultural practices.

At surface the issue appears to be a conflict between the customary law and the constitution. However, one must clearly understand the fact that the constitution does not permit any regressive practice or customary law to sustain. The constitutional protection is granted only to preserve the culture with its uniqueness. But it does not guarantee the right to preserve the regressive cultural practices. The constitution clearly empowers the State to undertake reform measures towards social development and progress. In case, such measures conflict with the cultural and religious values or practices then the constitutional values and objectives are to given primacy over them.

Any culture has to be dynamic and evolve with time. In the garb of upholding traditions, a society must not live in the past, for it will reduce the society to a static entity. The traditional societies have not provided any role for women in decision-making or in political spheres. When an unbiased environment is created women have proved their effectiveness. It becomes essential to remove the social barriers that prevent women and correct the historical error. Hence, the reservation for women in local body elections is inevitable to enable women participate positively.

Practice Questions

- 1.** Which one of the following is NOT correct for the local government?
- A constitutional obligation for the village *Panchayats* to function as units of self-government.
 - The constitution places the subject of local self-government as a responsibility of the States.
 - A constitutional obligation for the States to constitute Finance Commission to ensure financial viability of municipalities.
 - A constitutional obligation for the municipalities to carry out schemes related to public distribution system.
- 2.** Consider the following:
- Part IX of the Constitution of India contains provisions for *Panchayats* and was inserted by the Constitution (73rd Amendment) Act, 1992.
 - Part IX A of the Constitution of India contains Provisions for Municipalities and the Article 243Q envisages two types of municipalities—a Municipal Council and a Municipal Corporation for every State.
- Correct statement
- 1 only
 - Both 1 and 2
 - 2 only
 - Neither 1 nor 2
- 3.** The government enacted the *Panchayat Extension to Scheduled Areas (PESA)* Act in 1996. Which one of the following is NOT identified as its objective?
- To provide self-governance
 - To recognize traditional rights
 - To create autonomous regions in tribal areas
 - To free tribal people from exploitation
- 4.** In the areas covered under the *Panchayat (Extension to the Scheduled Areas) Act, 1996*, what is the role/power of *Gram Sabha*?
- Gram Sabha* has the power to prevent alienation of land in the Scheduled Areas.
 - Gram Sabha* has ownership of minor produce.
 - Recommendation of *Gram Sabha* is required for granting prospecting licence or mining lease for any mineral in the Scheduled Areas.
- Which of the statements given above is/are correct?
- 1 only
 - 2 and 3 only
 - 1 and 2 only
 - 1, 2 and 3
- 5.** If a *Panchayat* is dissolved, elections are to be held within:
- 1 month
 - 3 months
 - 6 months
 - 1 year
- 6.** In India, the first Municipal Corporation was set-up in which one among the following?
- Calcutta
 - Madras
 - Bombay
 - Delhi
- 7.** Which one of the following authorities makes recommendation to the Governor of a State as to the principles for determining the taxes and duties which may be appropriated by the *Panchayats* in that particular State?
- District Planning Committees
 - State Finance Commission
 - Finance Ministry of that State
 - Ministry of Panchayati Raj of that State
- 8.** Consider the following statement:
In India, a Metropolitan Planning Committee:
- Is constituted under the provisions of the Constitution of India.
 - Prepares the draft development plans for metropolitan area.
 - Has the sole responsibility for implementing government sponsored schemes in the metropolitan area.
- Which of the statements given above is/are correct?
- 1 and 2 only
 - 1 and 3 only
 - 2 only
 - 1, 2, 3
- 9.** The Constitution (73rd Amendment) Act, 1992, which aims at promoting the Panchayati Raj Institutions in the country, provides for which of the following?
- Constitution of District Planning Committees
 - State Election Commissions to conduct all *Panchayat* elections

- | | |
|---|---|
| 3. Establishment of State Finance Commissions | 2. It is obligatory to constitute Ward Committees for one or more wards within the territorial area of a municipality having a population of 3 lakhs or more. |
| Correct answer | Correct statement |
| (a) 1 only (c) 2 and 3 only | (a) 1 only (c) Both 1 and 2 |
| (b) 1 and 2 only (d) 1, 2 and 3 | (b) 2 only (d) Neither 1 nor 2 |
| 10. A new Panchayat constituted upon the dissolution of a previous Panchayat before the expiration of its term shall continue: | 15. Which of the following functions have been laid down in the 12th Schedule of the Constitution of India for the municipalities? |
| (a) For next 5 years from the date of its first meeting and no longer. | 1. Urban poverty alleviation |
| (b) For the remainder of the period for which the dissolved <i>Panchayat</i> would have continued had it not been so dissolved. | 2. Planning for economic and social development |
| (c) Till it enjoys the pleasure of the Governor. | 3. Regulation for tanneries |
| (d) Till State Legislative Assembly allows it to continue. | 4. Urban forestry |
| 11. Which one of the following provisions has been left to the will of the State governments in the 73rd Constitution Amendment Act? | (a) 1, 2, 3 (b) 1 and 4 |
| (a) Providing reservation to the Backward Classes. | (b) 2, 3, 4 (d) 1, 2, 3, 4 |
| (b) All posts at all levels to be filled by direct elections. | 16. In the post 73rd Amendment eras, there has to be decentralization of: |
| (c) Reservation of seats for SC/ST in proportion to their population. | 1. Decision-making powers |
| (d) Reservation up to three seats for women in <i>Panchayats</i> . | 2. System as a whole |
| 12. Under which of the following Articles of the Constitution of India, the State legislatures delegate powers and functions to the Panchayats? | 3. Judicial powers |
| (a) 243 and 243A | 4. Administrative powers |
| (b) 243A and 243B | 5. Reporting requirements |
| (c) 243G and 243H | (a) 1, 2, 3 (c) 2, 3, 5 |
| (d) 243D and 243F | (b) 1, 2, 4 (d) 3, 4, 5 |
| 13. As per Article 243-H of 73rd Constitutional Amendment Act, the Legislature of a State, may by law, provide for making grants-in-aid to the Panchayats from: | 17. Consider the following: |
| (a) Contingency Fund of the President | 1. The minimum prescribed age for any person to be a member of <i>Panchayat</i> is 25 years. |
| (b) Contingency Fund of the Governor | 2. A <i>Panchayat</i> reconstituted after premature dissolution continues only for the remainder period. |
| (c) Consolidated Fund of the State | 3. The 73rd and 74th amendments to the Constitution of India do not apply to Sikkim, Andhra Pradesh, Jammu and Kashmir, and Delhi. |
| (d) Consolidated Fund of India | Correct statement |
| 14. Consider the following: | (a) 2 only (c) 1 and 3 |
| 1. In an urban area where municipal services are being provided by an industrial establishment, it is still mandatory to constitute a municipality under the 74th Constitution Amendment Act. | (b) 2 and 3 (d) 1, 2, 3 |
| | 18. Who recommends to the Governor the principles which should govern the distribution between the State and the Panchayats of the net proceeds of the taxes, tolls and fees leviable by the State which may be divided between them? |
| | (a) <i>Zila Parishad</i> |
| | (b) Chief Minister |
| | (c) Finance Minister of the State |
| | (d) State Finance Commission |



19. Consider the following:

1. Local government including self-government institutions in both urban and rural areas is a subject under the Concurrent List of 7th Schedule of Constitution of India.
 2. Provisions inserted in the Constitution of India by Articles 243-243ZG are in the nature of basic provisions
 3. These provisions have to be supplemented by laws made by the respective state legislatures.

Correct statement

- (a) 1 and 2 (c) 3 only
 (b) 2 and 3 (d) 1, 2, 3

20. Which of the following statements is NOT correct?

- (a) A metropolitan area is specified by the Governor by a public notification.
 - (b) Metropolitan area means an area having a population of 8 lakhs or more.
 - (c) Metropolitan area may be comprised in more than one district.
 - (d) Metropolitan area may consist of more than two municipalities or *Panchayats* or other contiguous areas.

21. Which of the following are the common compulsory provisions of the 73rd and 74th Constitution Amendment Act?

1. Five yearly elections
 2. Reservation for Backward Classes
 3. Reservation for women
 4. *Nagar Panchayats*

Correct answers

22. Consider the following:

1. The Constitution (74th Amendment) Act, introduced a new part IX A in the Constitution of India.
 2. The provisions of the Constitution (74th Amendment) Act also apply to the Scheduled Areas and Tribal Areas governed by Articles 244 (1) and (2) of the Constitution of India.

3. The Constitution (74th Amendment) Act specifies the manner and procedure of election of the Chairperson of a Municipal Corporation.

Correct statement

23. Which of the following are provided for by the Constitution (74th Amendment) Act in respect of planning of urban and rural local governments?

1. Constitution of the District Planning Committee.
 2. Not less than two-third of the total members of the District Planning Committee should be elected by, from amongst, the elected members of district *Panchayats* and municipalities.
 3. All other details regarding the composition of the District Planning Committee are left to the state legislatures.
 4. Constitution of the Metropolitan Planning Committee.

Committee.
Correct answers

24. According to the Article 243 S of the Constitution of India, it is obligatory to constitute 'Ward Committees' in the area of municipality. The population of such municipality should be:

- (a) One lakh or more
 - (b) Two lakhs or more
 - (c) Three lakhs or more
 - (d) Five lakhs or more

25. Under which of the following Articles of the Constitution of India, the State legislatures delegate powers and functions to the *Panchayats*?

- (a) 243 and 243 A
 - (b) 243 A and 243 B
 - (c) 243 G and 243 H
 - (d) 243 D and 243 F

Answer Key

- 1.** (d), **2.** (a), **3.** (c), **4.** (d), **5.** (c), **6.** (b), **7.** (b), **8.** (a), **9.** (c), **10.** (b),
11. (a), **12.** (c), **13.** (c), **14.** (b), **15.** (d), **16.** (b), **17.** (a), **18.** (d), **19.** (b), **20.** (b),
21. (d), **22.** (a), **23.** (c), **24.** (c), **25.** (d)

Hints and Explanations

1. (d)

- Article 40 mentions that it is the duty of State to organize village panchayats as units of self-government.
- By Article 243C, States have the responsibility to regulate local self-governments.
- Article 243I and Y makes it an obligation on States to constitute Finance Commission.
- Public distribution system falls under subject matter of Panchayats in Eleventh Schedule and not for Municipalities.

Refer Page 19.3, 19.5 and 19.9

2. (a)

- Part IXA of the Constitution is related to Municipalities and was inserted by 74th Constitution Amendment Act, 1992.
- Article 243Q provides for 3 types of Municipalities: Nagar Panchayat, Municipal Council and Municipal Corporation.

Refer Page 19.4

3. (c)

- Creation of autonomous councils falls under Sixth Schedule.

Refer Boxes on Pages 19.24 and 19.25, respectively.

4. (d)

Refer Box on Page 19.24

5. (c)

- Tenure of Panchayats/ULBs to be five years and, if dissolved before time, fresh elections should be held within six months.

Refer Page 19.3

6. (b)

- Madras Municipal Corporation was constituted in 1688.

Refer Page 19.1 – Evolution and growth

7. (b)

- Article 243I provides for State Finance Commission for Panchayats.

Refer Page 19.9

8. (a)

- Article 243ZE provides for Metropolitan Planning Committee to be constituted by States.

Refer Page 16 and 17

9. (c)

- District Planning Committee is available only for Urban Local Bodies/Municipalities under Article 243ZD.

Refer Page 19.15

10. (b)

- Article 243E reads that the Panchayat constituted after dissolution would continue only for the remainder period.

Refer Page 19.7

11. (a)

- Article 243D provides for compulsory reservation of seats for:
 - Scheduled Castes
 - Scheduled Tribes
 - Women
- State, by law, can provide for reservation to backward classes but it is not mandatory.

Refer Page 19.6

12. (c)

Refer Page 19.8

13. (c)

- Article 243H relates to the power of Panchayats to impose taxes.
- State, by law, provide for making such grants-in-aid to the Panchayats from the Consolidated Fund of the State.

Refer Page 19.8

14. (b)

- Article 243Q states that a municipality need not be constituted if the municipal services being provided or proposed to be provided by an industrial establishment in that area.
- Ward Committees are constituted under Article 243S.

Refer Page 19.5 and 19.6

15. (d)

Also refer Page 19.8

16. (b)

- Integrated judiciary is a basic structure of Indian Constitution.

- 73rd Constitution Amendment Act 1992 provides for decentralization of mainly executive functions.

Refer Page 19.2

17. (a)

- Article 243F provides that no person shall be disqualified on the ground that he is less than twenty-five years of age, if he has attained the age of twenty-one years
- Panchayat exempted States include Nagaland, Meghalaya and Mizoram.
- 73rd and 74th amendments are not applicable to the Scheduled Areas referred to Article 244(1) and Article 244 (2).

Refer Page 19.7 and 19.13

18. (d)

- Article 243I provides for State Finance Commission for Panchayats.

Refer Page 19.9

19. (b)

- Local government is a subject under State List of seventh schedule of Indian Constitution.
- 73rd and 74th Amendment Acts introduced new Parts IX and IXA in the Indian Constitution containing Articles 243 to 243ZG.

Refer Page 19.3

20. (b)

- Article 243P: 'Metropolitan area' means an area having a population of ten lakhs or more, comprised in one or more districts and consisting of two or more municipali-

ties or Panchayats or other contiguous areas, specified by the Governor through public notification.

Refer Page 19.4

21. (d)

- Reservation for backward classes is not a compulsory provision.
- Nagar Panchayats is constituted for an area in transition from a rural area to an urban area.
- It is not common to 73rd and 74th amendments.

Refer Page 19.5 and 19.7

22. (a)

- The provisions of 74th amendment does not apply to areas under Article 244 (1) and (2) as mentioned under Article 243ZC.
- The State legislature, by law, would specify the manner and procedure of election of Chairperson of a Municipal Corporation.

Refer Page 19.6

23. (c)

- Not less than four-fifth of the total number of members of DPC shall be elected by, and from amongst, the elected members of the Panchayat at the district level and of the municipalities in the district. (Article 2443ZD)

Refer Page 19.15 and 19.16

24. (c)

Refer Page 19.6

25. (d)

Refer Page 19.13

CHAPTER 20

Union–State Relations

Learning Objectives

After reading this chapter, you will be able to:

- Understand the relationship between the union and the State governments
- Learn how the union government exercises control over the states
- Explain and understand the complexity of the problem of the interstate river water disputes
- Analyse the adequacy of the mechanisms for settling the interstate river water disputes

INTRODUCTION

Coordination between the units of the federation is fundamental for the success and strength of the federal polity. But in view of the peculiar conditions of this country and, especially the developments at the time of independence, the union control over state governments has been provided. The reasons have already been explained in Chapter 2. Thus, the relationship between the Centre and the States is tilted in favour of the Centre. However, without the cooperation between the Centre and the States ‘cooperative federalism’ cannot operate. The concept of ‘cooperative federalism’ envisaged by the founding fathers of the Indian Constitution vindicates this. The relationship between the Centre and the States can be studied as that in:

- Legislative sphere
- Administrative sphere
- Financial sphere

Of these in the executive and legislative spheres the relations are federal in nature, whereas there is no federal relation in the financial sphere.

Instruments of Cooperative Federalism

- Interstate council
- Zonal council
- Statutory bodies to coordinate in specific areas like education: UGC
- Joint venture by Central and State governments: Damodar Valley Corporation
- Central and State governments mutually granting tax immunity

(A) LEGISLATIVE RELATIONS (ARTICLES 245–254)

According to Article 245, the Parliament has the power to make law for the whole of the territory of India and the State legislatures have the power to make law only for the State. However, the laws made by the Parliament have an extraterritorial jurisdiction that is the laws are valid even out of the territory of India wherever relevant.

Article 246, provide for the subject matters on which the Parliament and the State legislatures have powers to make law. Accordingly, the Parliament has ‘exclusive’ powers to make law on the matters in the List I (Union List) in Schedule VII. The State legislatures have the power to enact law on matters in the List II (State List).

In this context it is relevant to recall the Doctrine of Pith and Substance.⁽¹⁾ Since the jurisdiction of the Parliament and the State legislatures are exclusive in their respective spheres, there must not be any encroachment by either of them. The court applies the Doctrine of Pith and Substance to ascertain this. Any law that is made deliberately to encroach upon the jurisdiction not belonging to it is known as ‘Colourable Legislation’ and is struck down by the court as unconstitutional.

With respect to the matters in the Concurrent List both Parliament and the State legislatures have equal powers to make laws. However, this is subjected to the provision of Article 254. It deals with the inconsistency between the laws made by the Parliament and State legislatures. In case any provision of a law made by a State legislature on a matter in Concurrent List conflicts with any provision of a law made by the Parliament on the same subject, then the law enacted by the Parliament shall prevail over the law made by the State.

However, according to Article 254 (2), if the State law has been reserved for the consideration of the President and he has given his assent, then the law shall remain applicable for that State. For the rest of the States the Parliament law will be applicable. But the Parliament has the powers to override or amend the State law if needed.

Article 248 vests the ‘residuary powers’ in the union. Hence, the power to make law on any such matter that is not enumerated in any of the Lists in Schedule VII. This includes the power to make any law that imposes tax. The States do not have any power with regard to such matters.

Distribution of Legislative Powers Notable Features

- Three-fold distribution of legislative power.
- Maintaining supremacy of federal laws
- Vesting the ‘Residuary Powers’ in centre
- Power of Parliament to legislate on State subjects during emergency.

Power of the Parliament to Make Law on State Subjects

Although the legislative relations between the union and the States are federal in nature there are certain circumstances in which the Parliament can enact law on the matters in the State List.

- Article 249 empowers Parliament to enact law on any matter in the State List. If the Rajya Sabha passes a resolution that it is expedient in the interest of the nation, then the Parliament can make law on any subject on State List. Such resolution has to be ‘supported by not less than two-thirds of the members present and voting majority of not less than two-thirds of the total membership of the House’. Such resolution has the validity of one year from the date of passing. However, the validity of the resolution may be extended. Such a law will cease to have effect on the expiration of a period of six months after the resolution has ceased to be in force (Article 249 (3)).

¹ Refer the Chapter on Judiciary.

- Article 250 confers on the Parliament unlimited powers to make law on any matter in State List during when a national emergency remains in operation. But the law will not remain in force six months after the proclamation ceases to remain in operation.
- Article 252 provides that the Parliament shall have the powers to make a common law on State subjects if two or more States. If the State legislatures request by a resolution the Parliament shall make law on the State subjects applicable to the States. The law can be adopted by any other State later. The power to amend such a law is vested in the Parliament. The State legislatures do not have the power to amend or repeal the law.

Power of Parliament to Legislate on State Subjects

Article 249	Upon the resolution of Rajya Sabha in the national interest
Article 250	During the proclamation of a national emergency
Article 252	When two or more states request
Article 253	To give effect to international agreements and treaties

- Article 253 confers on the Parliament the power to make law to implement any international treaty, agreement or convention with any other country.

The law enacted by Parliament on a matter in State subject under Article 249 or Article 250 conflicts with a law enacted by the State legislature, the State law shall be inoperative until the Parliament law remains in force.

How Supremacy of Union Law Maintained?

According to Article 246, if any question arises as to whether a subject fall within the List 1 or List 2 or Concurrent List, the union law if any enacted will prevail. This is the importance of 'Notwithstanding' clause in Article 246.

(B) ADMINISTRATIVE RELATIONS (ARTICLES 256–263)

The administrative relations between Centre and State spans over the power of the union to control the States, delegate certain functions, settlement of disputes and coordination between states.

Control of Union over States

In a truly federal system, the idea of the union giving directions to the States is irrelevant. However, the constitution provides for the control of the union over States.

Article 256 expressly makes it an obligation for the States to comply with the law of the Parliament. The State must exercise its executive power in compliance with the laws enacted by the Parliament. Towards this the union government has the powers to issue binding directives to the States.

Article 257 expressly provides that the union government shall have powers to control the States. According to Article 257 (1), the union government has the powers to give directions to the States as to the exercise of their executive powers.

The union government also has the power to give directions towards 'the construction and maintenance of means of communication declared in the direction to be of national or military importance' (Article 257 (2)). The union government also has the powers to give directions to the State to take measures to protect the railways within the State.

Specific Agencies For Union Control

- Directions to the State government
- Delegation of union functions
- All-India Services
- Grant-in-aid
- Interstate councils
- Interstate Commerce Commission (Article 307)

The Parliament has the power to declare any highway or waterway as national highway or national waterway. Also, the union government has the power to construct and maintain means of communication for naval, military and air force works.

In case of any dispute relating to the expenses incurred by the State in fulfilling the directives between the union and the States it shall be decided by an arbitrator appointed by the Chief Justice of India.

Delegation of Functions

Article 258 provides for the power of the union government to delegate its functions to States. The President has the powers to entrust either conditionally or unconditionally any of the executive functions of the union government. The Parliament may law confer upon the State or its officers' certain functions which may not be part of the subject matter over which the State has powers.

Article 258A confers powers on the State to delegate its functions to union government. The original constitution did not have this provision. It was inserted by the Constitution (70th Amendment) Act, 1956. Article 258a states, 'the Governor of a State may, with the consent of the Government of India, entrust either conditionally or unconditionally to that government or to its officers' functions' relating to the executive powers of the State.

Article 258A: Purpose

Article 258A is the provision enabling the Governor of a State to entrust State functions in connection with the execution of certain development projects in the States to the Central government or its officers

Source: Constitution (7th Amendment) Act, 1956.

Settlement of Disputes over Interstate River Water and River Valleys

Article 262 provides for the mechanism for the settlement of disputes relating to interstate river water and river valley. The Parliament has powers to enact a law and establish an Interstate river Water Dispute Settlement Tribunal. The law can exclude the jurisdiction of the Supreme Court on the dispute.

Complexity of the Problem and Adequacy of the Mechanisms

Important questions from Previous years' on this topics are mentioned below:

Constitutional mechanisms to resolve interstate water disputes have failed in its role. Is it due to structural inadequacy or process inadequacy or both? IAS Mains GS II (2013)

Important questions from Previous years' on this topics are mentioned below:

Disputes between the riparian states on sharing of river waters in post-Independence India are becoming increasingly complex. Objectively analyse the major disputes in this connection, with special reference to the southern states.

IAS Mains (2010)

Interstate river water disputes have been a problem prevalent even before independence. But the problem has in the recent past has become more complex since independence. The increasing complexity of the problem can be attributed to the following reasons:

- The area of the arable lands increased after independence as all the States undertook measures to increase agricultural production. Every State attempt to achieve self-sufficiency in food production.
- The need for water for many States increased due to industrialization also.
- The upper riparian States especially in the peninsular region (Example Karnataka) needed to construct dams and water storage facilities as the water flows down due to the gradient of the land structure.
- The lower riparian States like Tamil Nadu demand their rights over certain rivers like Cauvery based on historical and cultural reasons. Such demands are not accepted by the State like Karnataka.
- The historical and cultural reasons have made the problem to be more taken over by certain local linguistic and regional groups which make the issue a political problem.
- The failure of the government of the union and the States to undertake adequate measures to create drought resistant seed and plant varieties. This could have been a joint venture of various states so that the funding and other resources could have been optimally spent in the mission.
- The State political parties tend to use the interstate water problem as an election issue to garner voter support in the elections. Hence, there have not been honest and genuine moves to resolve the problem. Instead, attempts were made only to keep the issue alive through legal battles.
- Water supplies and irrigation being a State subject and regulation of interstate river water development being a central subject makes it more complex prevents a viable solution.

The constitution provides for Interstate River Water Dispute Settlement Tribunal. Further, Supreme Court also serves as a mechanism to adjudicate relating to the disputes where the tribunal has not been constituted. But the mechanisms suffer from structural and procedural inadequacies:

1. There is no permanent mechanism with adequate powers to deal with the interstate river water disputes. Though Article 262 provides for setting up a river water disputes settlement tribunal, it is not a permanent body. It is left to the Parliament to determine whether to set-up one or not.
2. The tribunal set-up for the purpose is not vested with enough powers. For instance, when the States did not comply with the tribunal awards, the tribunal does not have powers to force to implement the orders.
3. Entry 56 in the Union List vests in the union government the function of 'Regulation and development of interstate rivers and river valleys to the extent to which such regulation and development under the control of the union is declared by Parliament by law to be expedient in the public interest'. But this is very ambiguous and is left to the Parliament to determine in the public interest.
4. The union government in the past has not taken any concrete step to resolve this issue. Though there is a Water Resources Ministry and a National Water Resources Council but their functioning is grossly inadequate in dealing with the interstate river water disputes. The union government has not taken any significant step with respect to evolve a distress sharing arrangement to share waters.
5. **River Board:** The River Boards Act, 1956, provides for the establishment of a River Board for the purpose of advising the governments interested in relation to the regulation or development of an interstate river or river valley. But no significant policy measure has been taken in this regard.

TABLE 20.1 Major Disputes

S.No.	Name of Tribunal	States Concerned	Date of Constitution	Present Status
1.	Godavari Water Disputes Tribunal	Maharashtra, Andhra Pradesh, Karnataka, Madhya Pradesh and Odisha	April 1969	Award given on July 1980
2.	Krishna Water Disputes Tribunal I	Maharashtra, Andhra Pradesh and Karnataka	April 1969	Award given on May 1976
3.	Narmada Water Disputes Tribunal	Rajasthan, Madhya Pradesh, Gujarat and Maharashtra	October 1969	Award given on December 1979
4.	Ravi and Beas Water Tribunal	Punjab, Haryana and Rajasthan	April 1986	Report and decision given in April 1987. Clarification /explanation sought from the tribunal by the party States. Also, a presidential reference in the matter is before Supreme Court and as such the matter is sub-judice.
5.	Cauvery Water Disputes Tribunal	Kerala, Karnataka, Tamil Nadu and Puducherry	June 1990	Report and decision given on 5 February 2007. A Special Leave Petition (SLP) filed by party States in Hon'ble Supreme Court, as such the matter is sub-judice.
6.	Krishna Water Disputes Tribunal -II	Karnataka, Telangana, Andhra Pradesh and Maharashtra	April 2004	Report and decision given on 30 December 2010. However, as per Supreme Court Order dated 16 September 2011, till further order, decision taken by the tribunal on references filed by States and Central government shall not be published in the official gazette. As such, matter is sub-judice. Term of the tribunal has been extended for a further period of two years with effect from 1 August 2014 to address the terms of reference as contained in Section 89 of Andhra Pradesh Reorganization Act, 2014. The term of KWDT-II has further extended for period of one-year with effect from 1 August 2016. The matter is under adjudication in the tribunal. The Government of Telangana has filed a SLP 33623-26 of 2014 and WP(C) 545 of 2015 in the Hon'ble Supreme Court in the matter. The matter is sub-judice.

(Continued)

TABLE 20.1 Major Disputes (Continue)

S.No.	Name of Tribunal	States Concerned	Date of Constitution	Present Status
7.	Vansadhara Water Disputes Tribunal	Andhra Pradesh and Odisha	February 2010	Report and decision not given by the tribunal. State of Odisha has filed an SLP in Supreme Court against the appointment of one of the members of the tribunal. The SLP in the matter filed by the State of Odisha in the Supreme Court is pending. The matter is sub-judice. Besides, Vansadhara Water Disputes Tribunal in its order dated 17 December 2013 has directed to constitute a three-member <i>pro tem</i> Supervisory Flow Management and Regulation Committee on River Vansadhara to implement its order. State Government of Odisha has filed Special Leave to Appeal (Civil) No.3392 of 2014 with regard to the Vansadhara Water Disputes Tribunal judgement dated 17 December 2013. The matter is sub-judice.
8.	Mahadayi Water Disputes Tribunal	Goa, Karnataka and Maharashtra	November 2010	Report and decision not given by the tribunal.

Coordination between States

Towards bringing coordination between the States constitution provides for setting up of interstate council by Article 263. For details please refer the Chapter 25 on the constitutional offices.

Other Controls

The control of the union over the States also extends in respect of:

- The power to appoint and dismiss the Governor (Articles 155–156).
- Power to appoint other dignitaries in the State, e.g., judges of the court.
- Appointing members of the Joint Public Service Commission (Articles 316) and removal of the members of State Public Service Commission (Articles 317).
- Granting previous sanction to introduce legislation the State legislature (Article 304).
- Assent to specified legislation which must be reserved for his consideration and the veto power in respect of other State Bills reserved by the Governor (Article 200).
- Instruction of President required for the Governor to make ordinance relating to specified matters (Article 213(1)).

(C) FINANCIAL RELATIONS

The Centre-State financial relations are not in a federal structure and are unitary in nature. The financial powers are distributed more in favour of the union. All the taxes provided in the constitution are levied by the union government. The States do not have the power to levy the taxes referred in the constitution.

Immunity from Mutual Taxation

Immunity from mutual taxation can prevent redundancy in assessment and calculation and cross-accounting of taxes between the two governments (Union and State). This matter is dealt with in Articles 285 and 289 of our Constitution, relating to the immunity of the Union and a State, respectively.

Immunity of Union Property from State Taxation

The property of the union shall, save insofar as Parliament may by law otherwise provide, be exempt from all taxes imposed by a State or by any authority within a state (Article 285(1)).

Exemption of Property and Income of a State from Union Taxation

The property of a State is immune from union taxation (Article 289(1)). The immunity, however, does not extend to all union taxes, as held by our Supreme Court, but is confined only to such taxes as are levied on property. A State is, therefore, not immune from customs duty, which is imposed, not on property, but on the act of import or export of goods.

Not only the 'property' but also the 'income' of a State is exempted from union taxation. The exemption is, however, confined to the State government and does not extend to any local authority situated within a State. The above immunity of the income of a State is, again, subjected to an overriding power of Parliament as regards any income derived from a commercial activity. Thus:

- Ordinarily, the income derived by a State from commercial activities shall be immune from income-tax levied by the union.
- Parliament is, however, competent to tax the income of a State derived from a commercial activity.
- If, however, Parliament declares any apparently trading functions as functions 'incidental to the ordinary functions of government', the income from such functions shall be no longer taxable, so long as such declaration stands.

Borrowing Powers

The borrowing powers of the Government of Union and of the States are dealt by Articles 292 and 293 respectively. According to Article 292 the union government has the powers to borrow upon the security of the Consolidated Fund of India. However, it should be within the limits fixed by the law of Parliament.

The Parliament is empowered to fix the limits of the borrowing powers of the union and fix the limits for the guarantee to given on the Consolidated Fund of India. The union government can borrow both from within India and outside India within the limits and upon the guarantee on the Consolidated Fund.

According to Article 293, the States are allowed to borrow only within the territory of India. That is, the State governments cannot borrow from out of India. The States can borrow upon the security of the Consolidated Fund of the State. The limits of such borrowing are fixed by the law enacted by the State legislature.

The law can also fix the limits for the guarantee to given on the Consolidated Fund of the State. The State governments can borrow only with the consent of the union government, in case the:

- State has already borrowed from the union and the loan is still outstanding or;
- The union government has given a guarantee in respect of a loan raised by the State.

Borrowing Powers: A Quick Reference

• Union Government (Article 292)	• State Government (Article 293)
• Can borrow from both within and out of India	• Can borrow from sources only within India
• Security upon Consolidated Fund of India	• Security upon Consolidated Fund of State
• Within the limits set by Parliament	• Within the limits set by State legislature
• Limits on guarantee set by law of Parliament	• Limits on guarantee set by law of State legislature
• Not applicable	• Subjected to regulation of the law of the Parliament by Article 293 (3)

Practice Questions

1. Which Article of the Constitution provides for the adjudication of disputes relating to waters of interstate rivers?
 - (a) Article 258
 - (c) Article 262
 - (b) Article 260
 - (d) Article 264

2. The power of amending the constitution is vested in Parliament while exercising the power under Article 368, Parliament would not be subjected to the limitations which curb its legislative powers to make laws under:
 - (a) Articles 241 to 242
 - (b) Articles 242 to 243
 - (c) Articles 245 to 246
 - (d) Articles 246 to 248

3. As far as the Centre-State administrative relations are concerned, which of the following is NOT correct?
 - (a) The executive power of every State shall be so exercised as to ensure compliance with the laws made by the Parliament.
 - (b) The union government cannot give directions to a state as to the construction and maintenance of the means of communication of national or military importance.
 - (c) The executive power of the union shall also extend to giving of directions to a State as to the measure to be taken for the protection of railways within the State.
 - (d) The Parliament may impose restrictions on the interstate trade or commerce.

4. Which of the following measures offends Article 302 of the Constitution, which says that Parliament can impose restrictions on freedom of trade and intercourse in public interest?
 - (a) Licensing provisions with compensatory fees.
 - (b) A rule which totally prohibits movement of cement during 8 AM to 8 PM.
 - (c) A tax on forward contract.
 - (d) Sales tax imposed by the State discriminating the goods imported from another State.

5. The constitution provides for a number of dispute resolution mechanisms to sort out differences that may arise among the States

and between the States and the union, which include:

1. Article 131 conferring exclusive jurisdiction on the Supreme Court to decide suits between the union and the States and the States inter-se.
2. Under Article 262, Parliament may by law provide for adjudication of any dispute or complaint with respect to the use, distribution or control of the waters of, or in, any interstate river or river valley.
3. Article 280 provides for constitution of a Finance Commission for distribution between the union and the States of the net proceeds of taxes.
4. In the area of interstate trade and commerce Article 307 of the Constitution contemplates the appointment of an authority for carrying out the purposes of Articles 301–304.
 - (a) 1, 2, 3, 4
 - (c) 2 and 3
 - (b) 1, 2, 4
 - (d) 1, 3, 4
6. Which of the following machineries is most likely to be effective in solving inter-state disputes?
 - (a) Central Council of Health and Local Self-Government
 - (b) Finance Commission and Planning Commission
 - (c) Zonal Council and meetings between ministers and Chief Ministers of States
 - (d) Inter-State Council, as recommended by the Administrative Reforms Commission
7. 'No tax shall be levied or collected except by authority of law'. Which Article of the Constitution of India provides this?
 - (a) Article 209
 - (c) Article 256
 - (b) Article 215
 - (d) Article 265
8. Under which of the constitutional provisions the Union has the power to issue binding directions to the States:
 - (a) Articles 256, 257, 258
 - (b) Articles 256, 257
 - (c) Articles 256, 257, 258
 - (d) Articles 256, 257, 258, 258A

- 9.** In case of inconsistency between laws made by Parliament under Articles 249 and 250 and laws made by the legislatures of States, the law made by the:
- State legislature shall prevail over the parliamentary law
 - Parliament shall prevail over the State law
 - State Legislature shall prevail over the parliamentary law if it had been submitted for the President's consideration and he had given his assent
 - Parliament shall prevail over the State law during the period when the parliamentary law is applicable according to Articles 249 and 250
- 10.** Under which Article of the Constitution have the courts been empowered to entertain and allow petitions for damages against the government for torts?
- Article 299
 - Article 300
 - Article 301
 - Article 303

11. Match: List I

- Taxes on income other than agricultural income
- Estate duty in respect of agricultural land
- Interplanetary outer space travel
- Acquisition and requisitioning of property

List II

- State List
- Residuary Power
- Concurrent List
- Union List

A	B	C	D
(a) 4	3	2	1
(b) 4	1	2	3
(c) 2	3	1	4
(d) 3	2	4	1

- 12. Assertion:** The Finance Commission depends mainly on the data and information of the financial needs of the States, supplied by the States themselves.

Reason: This information and data may not be free from the hidden unrealities; and an

attempt to secure more financial assistance and window dressing of the financial position of the States cannot be ruled out.

- Both A and R are true and R is the correct explanation of A
- Both A and R are true and R is not the correct explanation of A
- A is true but R is false
- A is false but R is true

- 13. Assertion:** The principles which govern the grants-in-aid of the revenues of the States out of the Consolidated Fund of India are determined by the Finance Commission.

Reason: The Finance Commission is a constitutional body to deal with financial relations between the union and the States.

- Both A and R are true and R is the correct explanation of A
- Both A and R are true and R is not the correct explanation of A
- A is true but R is false
- A is false but R is true

- 14. Which among the following is true, according to Article 300 of Indian Constitution?**

- Governments cannot be sued for the cases of civil contempt
- Governments can be sued for the cases of criminal contempt
- Governments cannot be sued for the cases of criminal contempt
- Governments can be sued for the cases of both civil and criminal contempt

- 15. The Finance Commission does NOT recommend on:**

- The distribution of net proceeds of taxes between the union and the States.
- The principles to be followed by the centre while giving grants-in-aid to the states out of the Consolidated Fund of India.
- The amount of money to be allocated to the states from Public Account of India.
- Any other matter referred to the Commission by President in the interest of sound finance.

Answer Key

- 1.** (c), **2.** (c), **3.** (b), **4.** (d), **5.** (a), **6.** (d), **7.** (d), **8.** (b), **9.** (d), **10.** (b),
11. (b), **12.** (b), **13.** (a), **14.** (c), **15.** (c)

Hints and Explanations

1. (c)

- Article 262 provides for the mechanism for the settlement of disputes relating to interstate river water and river valley.
- Article 258 provides for the power of the union government to delegate its functions to States.
- Article 260 covers about the jurisdiction of the Union in relation to territories outside India
- Article 264 provides for the interpretation of 'Finance Commission'.

Refer Page 20.4

2. (c)

- Article 245 provides the jurisdiction for law-making process for the Union and States.
- Article 246 provides the subject matter over which the Union and States can make laws.

Refer Page 20.2

3. (b)

- By Article 257(2) Union government has the powers to give directions to the State to take measures to protect the railways within the State.

Refer Page 20.3

4. (d)

- A State taxing goods imported from another State may be on parochial grounds and/or political reasons.
- This violates public interest as mentioned under Article 302.

Refer Chapter 8 – Restrictions on freedom of trade and commerce.

5. (a)

Refer Page 20.4 Chapter 8, 17

6. (d)

Refer Chapter 25

7. (d)

Refer Chapter 25

8. (b)

- Article 256 makes it an obligation for the States to comply with the law of the Parliament
- Article 257 provides that the union government shall have powers to control the States

Refer Page 20.3

9. (d)

- The law enacted by Parliament on a matter in State subject under Article 249 or Article 250 conflicts with a law enacted by the State legislature, the State law shall be inoperative until the Parliament law remains in force.

Refer Page 20.3

10. (b)

- Article 300 provides that the government may sue or be sued on grounds of civil legal liability by the name of Union of India or Government of a State.

11. (b)

- Article 246 provide the subject matters on which the Parliament and the State legislatures have powers to make law.
- The subjects are mentioned in the Seventh Schedule.

Also Refer Page 20.2

12. (b)

- One of the flaws with the data and information from the States is that it may not be free from the hidden unrealities and window dressing of financial position of States.
- It may be for to secure more financial assistance.
- But, this is not the reason for the dependence of Finance Commission on the data and information from States.

Refer Chapter 25 for Finance Commission

13. (a)

- Finance Commission provides the principles which govern the grants-in-aid of the revenues of the States out of the Consolidated Fund of India.

- Because, by Article 280, Finance Commission is constituted to deal with financial relations between the Union and the States.

Refer Chapter 25

14. (c)

- Article 300 allows government to sue and be sued for civil legal liability and not criminal contempt.

15. (c)

Refer Chapter 25

Public Services and Public Service Commissions

Learning Objectives

After reading this chapter, you will be able to:

- Know constitutional provisions relating to recruitment and conditions of service
- Understand provisions relating to dismissal, removal and reduction of rank
- Analyse and understand the need for All India Services and provisions relating to creation of new All India Services
- Compare the provisions relating to Union, State and Joint Public Service Commissions
- Analyze the independence of the Public Service Commissions and the changing role of Union Public Service Commission (UPSC)

INTRODUCTION

PART XIV (Articles 308 to 323) of the Constitution deals with the public services and public service commissions. These provisions are not applicable to Jammu and Kashmir.

The constitution provides for the 'Central Services, State Services, and All India Services' corresponding to the Union List, State List and the Concurrent List in the Schedule VII.

RECRUITMENT AND CONDITIONS OF SERVICE (ARTICLE 309)

The constitution empowers the union Parliament to regulate the recruitment, and conditions of service of persons appointed, to public services and posts under the central services.

Until the Parliament enacts the law in this regard the President of India shall have the powers to regulate the recruitment, and conditions of service of persons appointed, to public services and posts under the central services.

Similarly, it empowers the State legislature to regulate the recruitment, and conditions of service of persons appointed, to public services and posts under the state services.

Until the State legislatures enacts the law in this regard the Governor of the State shall have the powers to regulate the recruitment, and conditions of service of persons appointed, to public services and posts under the state services.

Tenure of Office (Article 310)

Every person who is a member of a defence service or civil service of the union or of an All India Services shall hold office during the pleasure of the President.

Every person who is a member of a civil service of a State shall hold office during the pleasure of the Governor of the State.

The constitution also provides for the employment of any person having special qualifications in the service of the union or the State governments on a contractual agreement. However, a compensation is to be paid to him if:

- The post is abolished before the expiration of an agreed period or;
- He is required to vacate that post, for reasons not connected with any misconduct on his part.

Dismissal, Removal or Reduction in Rank (Article 311)

Any person who is a member of central services or an All India Services or State Services shall not be dismissed or removed by an authority subordinate to that by which he was appointed.

That is in practice, in case of the members of central services and All India Services, the President is the only authority who can dismiss or remove. And in case of the members of State Services, the Governor is the only authority who can dismiss or remove.

Before any decision on the removal or dismissal is taken, an inquiry has to be conducted. During the inquiry the concerned person must be informed of the charges against him and he must be given a reasonable opportunity of being heard in respect of those charges.

It shall not be necessary to give such person any opportunity of making representation on the penalty proposed to be imposed after such inquiry. This clause was added, replacing the original provision which made it an obligation to give the second opportunity to defend against the punishment proposed, by Constitution (15th Amendment) Act, 1963.

However, due to the extraordinary protection enjoyed by the public servants, government employees and civil servants, several commissions of reform have recommended for the repealing of the Article 311. Even the Second Administrative Reforms Commission has made this recommendation.

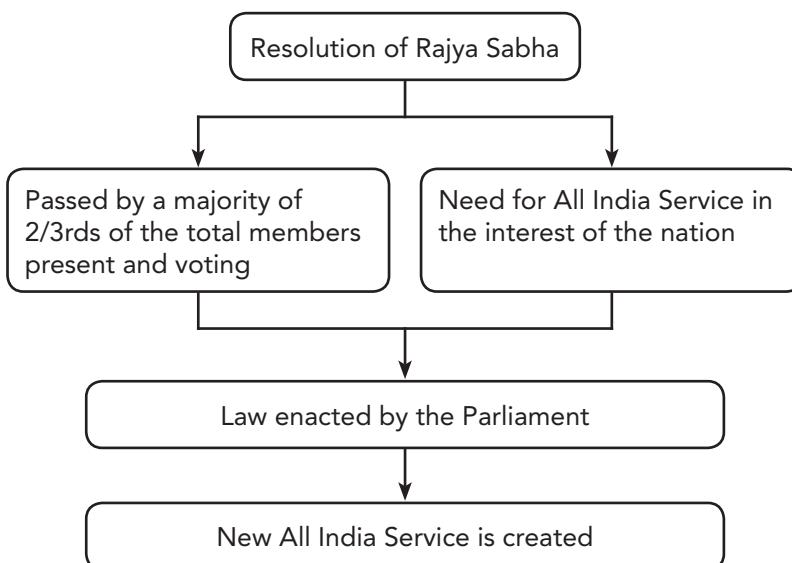


FIGURE 21.1: Creation of All India Services

Exemption from Inquiry

In case where a person is dismissed or removed or reduced in rank of the certain grounds, the conduct of inquiry is not needed. The grounds are:

- Conduct which has led to his conviction on a criminal charge.
- Where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason it is not reasonably practicable to hold such inquiry. But such reasons have to be recorded by that authority in writing.
- Where the President or the Governor is satisfied that in the interest of the security of the State it is not expedient to hold such inquiry.

ALL INDIA SERVICES

All India Services are the services common to the union and the States. The Constitution of India recognizes three All India Services namely Indian Administrative Service, Indian Police Service, and the All India Judicial Service. However, it provides for unlimited number of All India Services.

Creation of New All India Services

The constitution empowers the Parliament to create any number of All India Services. Article 312 reads '...Parliament may by law provide for the creation of one or more All India Services (including an All India Judicial Service) common to the union and the States...'.

The Parliament can create any All India Service by enacting a law. However, the Parliament can exercise this power only when the Rajya Sabha passes a resolution authorizing the Parliament to create a new All India Service.

The Rajya Sabha has to declare by that it is necessary or expedient in the national interest to create a new All India Service by a resolution. Such resolution must be supported by not less than two-thirds of the members present and voting.

The Parliament created Indian Forest Service, the new All India Service in 1962 under this article. Indian Administrative Service and the Indian Police Service shall be deemed to be services created by Parliament under this article.

With regard to the All India Judicial Service which is yet to be created Article 312 provides that it shall not include any post inferior to that of a district judge as defined in Article 236.

Need for All India Services

At the time of independence, there was severe opposition to continue have the All India Services. However, the services still continue to exist and are justified on the following grounds:

- (a) All India Services serve as a facilitator between the union and the State governments in matters of common interest.
- (b) All India Services Officers are allocated to different state cadres and they work in different States, thus, they share their experience for the benefit of the nation.
- (c) All India Services officers are recruited by the UPSC and are appointed by the President; hence, they act as impartial advisors to the States as the State government does not have any power to adversely affect them.
- (d) All India Services Officers are recruited through an All India Level Exam of Higher Standards, which in turn sets higher standards to the government.

Need for All India Services

All India Services help in: Maintaining better working standards.

- Promoting all India outlook in all the civil servants.
- Strengthening the federation.

PUBLIC SERVICE COMMISSIONS

The constitution provides for the Public Services Commission for the Union and the States. There is a provision for a Joint Public Service Commission for two or more States. A Joint Public Service Commission may be established by the Parliament by enacting a law if two or more States requested for the creation. The Table 21.1 is a comparison of the constitutional provisions relating to the Public Service Commissions:

*UPSC: Union Public Service Commission

*SPSC: State Public Service Commission

*JPSC: Joint Public Service Commission

TABLE 21.1 Difference between Nominated and Elected Members

BASES	UPSC*	SPSC*	JPSC*
1. Creation	Constitution of India	Constitution of India	Law of the Parliament if agreed by the concerned states and requested for the creation by a resolution of the State legislatures
2. Appointment of Members	President of India	Governor of the State	President of India
3. Condition for Appointment	As nearly as may be one-half of the members shall be persons who have held office for at least ten years either under the Government of India or under the Government of a State.	As nearly as may be one-half of the members shall be persons who have held office for at least ten years either under the Government of India or under the Government of a State.	As nearly as may be one-half of the members shall be persons who have held office for at least ten years either under the Government of India or under the Government of a State.
4. Term of Office	Six years from the date on which he enters upon his office or until he attains the age of sixty-five years.	Six years from the date on which he enters upon his office or until he attains the age of sixty-two years.	Six years from the date on which he enters upon his office or until he attains the age of sixty-two years.
5. Resignation from Office	By writing under his hand addressed to the President.	By writing under his hand addressed to the Governor of the State.	By writing under his hand addressed to the Governor of the State.
6. Removal • Grounds • Method of Removal	• Misbehaviour • On the report of Supreme Court on inquiry held in accordance with the procedure prescribed in that behalf under Article 145.	• Misbehaviour • On the report of Supreme Court on inquiry held in accordance with the procedure prescribed in that behalf under Article 145.	• Misbehaviour • On the report of Supreme Court on inquiry held in accordance with the procedure prescribed in that behalf under Article 145.

(Continued)

TABLE 21.1Difference between Nominated and Elected Members (*Continue*)

BASES	UPSC*	SPSC*	JPSC*
7. Removal without Report of Supreme Court	Chairman or any member is removed if (a) Adjudged an insolvent; or (b) Engages during his term of office in any paid employment outside the duties of his office or; (c) Is, in the opinion of the President, unfit to continue in office by reason of infirmity of mind or body.	Chairman or any member is removed if (a) Adjudged an insolvent; or (b) Engages during his term of office in any paid employment outside the duties of his office or; (c) Is, in the opinion of the President, unfit to continue in office by reason of infirmity of mind or body.	Chairman or any member is removed if (a) Adjudged an insolvent; or (b) Engages during his term of office in any paid employment outside the duties of his office or; (c) Is, in the opinion of the President, unfit to continue in office by reason of infirmity of mind or body.
8. Prohibition as to the holding of offices	<p>Chairman: Ineligible for further employment either under the Government of India or under the government of a State.</p> <p>Members: Ineligible for further employment either under the Government of India or under the Government of a State</p> <p>Eligible for: Chairman of UPSC or Chairman of a SPSC/JPSC</p>	<p>Chairman: Ineligible for further employment either under the Government of India or under the government of a State. Eligible for appointment as the Chairman of UPSC member of UPSC Chairman of any other State Public Service Commission.</p> <p>Members: Ineligible for further employment either under the Government of India or under the Government of a State</p> <p>Eligible for: Chairman of UPSC or Chairman of a SPSC/ JPSC; Member of UPSC</p>	<p>Chairman: Ineligible for further employment either under the Government of India or under the government of a State. Eligible for appointment as the Chairman of UPSC member of UPSC Chairman of any other State Public Service Commission</p> <p>Members: Ineligible for further employment either under the Government of India or under the Government of a State</p> <p>Eligible for: Chairman of UPSC or Chairman of a SPSC/ JPSC; Member of UPSC</p>

(Continued)

TABLE 21.1 Difference between Nominated and Elected Members (Continue)

BASES	UPSC*	SPSC*	JPSC*
9. Power to extend functions (Article 321)	Parliament by a law	State legislature by law	Parliament by a law
10. Power to Remove Functions	President	Governor	President
11. Expenses of Commission India (Article 322).	Charged on the Consolidated Fund of	Charged on the Consolidated Fund of the State (Article 322).	Charged on the Consolidated Fund of the States concerned and shared between the States (Article 322).
12. Report of Commission	Submitted to President President causes it to be laid before each House of the Parliament (Article 323).	Submitted to the Governor of the State Governor causes it to be laid before each House of the legislature (Article 323).	Submitted to the Governor of the States concerned. Governors cause it to be laid before each House of the concerned State legislature (Article 323).
13. Functions of Public Service Commission (Article 320)	To conduct examinations for appointments to the services under the union.	To conduct examinations for appointments to the services under the State.	To conduct examinations for appointments to the services under the States concerned.
14. Obligations on the State	The Union Public Service Commission or the State Public Service Commission, as the case may be, shall be consulted on all matters relating to methods of recruitment to civil services and for civil posts: <ul style="list-style-type: none"> (a) On the principles to be followed in making appointments to civil services and posts and in making promotions and transfers from one service to another and on the suitability of candidates for such appointments, promotions or transfers. (b) On all disciplinary matters affecting a person serving under the Government of India or the Government of a State in a civil capacity, including memorials or petitions relating to such matters. (c) On any claim by or in respect of a person who is serving or has served under the Government of India or the Government of a State or under the Crown in India or under the Government of an Indian State, in a civil capacity, that any costs incurred by him in defending legal proceedings instituted against him in respect of acts done or purporting to be done in the execution of his duty should be paid out of the Consolidated Fund of India, or, as the case may be, out of the Consolidated Fund of the State. (d) On any claim for the award of a pension in respect of injuries sustained by a person while serving under the Government of India or the Government of a State or under the Crown in India or under the Government of an Indian State, in a civil capacity, and any question as to the amount of any such award, and it shall be the duty of a Public Service Commission to advise on any matter so referred to them and on any other matter which the President, or, as the case may be, the Governor of the State, may refer to them. 		

Independence of the Public Service Commissions

The Public Service Commissions in India enjoy constitutionally guaranteed independence.

- (a) The Chairman and the members of the Public Service Commission have a fixed tenure and they do not hold office during the pleasure of any authority (Article 316).
- (b) Their salary, allowances and other expenditure are charged on the Consolidated Fund, in case of UPSC, the Consolidated Fund of India and in case of State Public Service Commissions, the Consolidated Fund of the State (Article 322).
- (c) Their salary, allowance or conditions of office cannot be varied to their disadvantage during their term. It implies that the salary and allowance can be increased but cannot be decreased.
- (d) The Chairman and the members of the Public Service Commissions are barred from holding any office of profit outside their official duty in the Commission (Article 317).
- (e) They are eligible for reappointment to the same office again. That is, a member of UPSC cannot be reappointed as a member of UPSC once his term as a member is completed (Article 316).
- (f) The Chairman and the members are not eligible for any further employment under any government after they cease to hold office as the Chairman or member of the Public Service Commissions (Article 319). It implies that, irrespective of whether the person completed his term as member or Chairman or resigned as member or Chairman of Public Service Commissions or removed, he is ineligible for any employment under the governments.
- (g) The Chairman or the member of the Public Service Commissions can be removed only on the specific ground and the manner provided in the constitution.

Changing Role of UPSC

With the changing context of governance by the turn of the millennium, the role played by various constitutional bodies is changing. On the same lines the role of UPSC is also changing.

UPSC cannot be a mere recruiting agency. With the experience it had gained it is expected to play a more strategic role. Recruitment to certain services can be removed from UPSC and can be vested in the bodies like Staff Selection Commission. Similarly, functions like consulting UPSC for granting financial relief can be removed, so that the Commission can be a professional body to formulate Human Resource Development (HRD) policies.

Further, the UPSC must be involved in making other related policy like the education policy so that the Human Resource (HR) experience of the UPSC is used for the good of the nation.

There is a need for uniform personnel policy for the whole nation in the context of globalization. The performance of the State Public Service Commissions is not considered up to the required standards. There have been several allegations against the State Public Service Commissions. UPSC must help in evolving standards to the HR policy for the nation.

Important questions from Previous years' on this topics are mentioned below:

In the changing context of governance in the country, what should be the role of the UPSC?

(IAS MAINS GS (2009):

Practice Questions

- 1.** The Chairman of UPSC is entitled to receive a salary that is equal to that of the:
- Judge of Supreme Court
 - Judge of high court
 - Chief Election Commissioner
 - Election Commissioner
- 2.** Match:
- List I**
- Pensions of high court judges
 - Salaries of high court judges
 - Salaries of the Cabinet
 - Pensions of members of UPSC
- List II**
- Consolidated Fund of India
 - Consolidated Fund of State
 - Demand for grants
 - Charged to the Consolidated Fund of India
 - Contingency Fund of India
- | A | B | C | D |
|-------|---|---|---|
| (a) 2 | 1 | 3 | 5 |
| (b) 1 | 2 | 3 | 4 |
| (c) 2 | 1 | 3 | 4 |
| (d) 5 | 3 | 4 | 1 |
- 3.** Which of the following statements are NOT correct?
- A member of UPSC holds office for a term of six years or until he attains the age of 65 years.
 - A member of UPSC is eligible for reappointment for the same post for a second term.
 - A member of UPSC can accept employment under Central or State government after retirement.
 - A member of UPSC can accept employment as a member of state Public Service Commission after retirement.
- 1 and 2
 - 1 and 4
 - 1, 2, 3
 - 2, 3, 4
- 4.** The power to expand the functions of the UPSC is vested in the:
- President
 - Parliament by law
- 5.** Council of Ministers by a resolution
- Council of Ministers subjected to approval of the Parliament
- 6.** A Joint Public Service Commission for two or more States can be established by:
- The concerned States
 - An Act of Parliament
 - The Union Public Service Commission
 - The Government of India
- 7.** Which of the following are the functions of the Union Public Service Commission?
- To conduct examinations for recruitment to the services of the Union.
 - To advise on matters referred to them by the President or the Governor.
 - To advise on all disciplinary matters affecting a government servant.
 - To advise on the principles to be followed in respect of promotions and transfers.
- 1 and 2
 - 1, 3, 4
 - 1, 2, 3
 - 2, 3, 4
- 8.** A member of the State Public Service Commission may be removed by the:
- The Governor, after the inquiry conducted by high court.
 - The President, after the inquiry conducted by the Supreme Court.
 - The Governor on the basis of impeachment in the Vidhan Sabha.
 - The President on the basis of impeachment in Parliament.
- 9.** Consider the following:
- In the case of a Joint Public Service Commission, the Governor may, by regulations, determine the number of members of the Commission and their conditions of service.

2. It shall be the duty of the Union Public Service Commission to assist those States in framing and operating schemes of joint recruitment for any services, if requested by Governor so to do.

Which of the above statements is correct?

- 10.** In the removal of which of the following officials does the Parliament not play any role?

- Chairman of the Union Public Service Commission
 - Judges of the high courts
 - Judges of the Supreme Court
 - Comptroller and Auditor General of India
 - 1 only
 - 1 and 2
 - 2, 3, 4
 - 3 only

- 11.** Which of the following is NOT charged expenditure on the Consolidated Fund of India?

- (a) Expenditure on Five-year Plans
 - (b) Expenditure on the Chairman and members of UPSC
 - (c) Expenditure on the judges of the Supreme Court
 - (d) Debt charges of the Government of India

- 12.** According to the Constitution of India, the UPSC is consulted on/in:

- 13.** The report of the Supreme Court is NOT needed to remove a member of UPSC if he:

1. Is an undischarged insolvent
 2. Engages in any paid employment outside the duties of his office
 3. Suffers from infirmity of mind or body
 - (a) 1, 2, 3
 - (b) 1 only
 - (c) 2, 3 only
 - (d) 4 only

- 14.** A member of an All India Service can be dismissed or removed by:

- (a) President of India
 - (b) An authority subordinate to that by which he was appointed
 - (c) Governor of the State to which they are allotted
 - (d) Cabinet Secretary

- 15.** Who appoints the Chairman of Union Public Service Commission?

- (a) President
 - (b) Chief Justice of India
 - (c) Prime Minister
 - (d) Speaker of Lok Sabha

- 16.** How can functions of the Union Public Service Commission be extended in respect of the services of the Union and also in respect of the services of any local authority or other body corporate constituted by law or any public institution?

- (a) By the President
 - (b) By a resolution of the union government
 - (c) By an Act of Parliament
 - (d) By the Union Home Minister

- 17.** Which one of the following is NOT correct in respect of the Union Public Service Commission?

- (a) The Constitution of India does not specify the number of members of the Union Public Service Commission while it specifies the number in case of the Supreme Court judges.

- (b) As nearly as may be one-half of the members of the Union Public Service Commission must have held office for at least ten years either under the Government of India or under the Government of a State prior to their joining the Commission.

- (c) On ceasing to hold office, a member of the Union Public Service Commission other than the Chairman is eligible for appointment as the Chairman of a State Public Service Commission.

- (d) Before creation of a new Group 'A' post under the Central Government, a clearance from the Union Public Service Commission is required.

- 18.** In the context of All India Services, which one of the following finds mention in Article 312 of the Constitution of India?
- All India Service of Engineering
 - All India Revenue Service
 - All India Judicial Service
 - All India Medical and Health Service

- 19.** Match:

List I (Provisions)

- Tenure of office persons serving the union or State
- Public Service Commissions for the union and for States
- Recruitment and conditions of service of persons serving in the union or State
- Dismissal, removal, reduction in rank of persons employed in civil capacity under the union or State

List II (Contained in)

- Article 315
 - Article 310
 - Article 312
 - Article 309
 - Article 311
- | A | B | C | D |
|-------|---|---|---|
| (a) 2 | 5 | 4 | 1 |
| (b) 4 | 1 | 3 | 5 |
| (c) 2 | 1 | 4 | 5 |
| (d) 4 | 5 | 3 | 1 |

- 20.** A Joint Public Service Commission for two or more States can be established by

- The Concerned States
- An Act of Parliament
- The Union Public Service Commission
- The Government of India

Answer Key

-
- 1.** (c), **2.** (c), **3.** (d), **4.** (b), **5.** (b), **6.** (c), **7.** (b), **8.** (d), **9.** (d), **10.** (a),
11. (c), **12.** (a), **13.** (a), **14.** (a), **15.** (a), **16.** (c), **17.** (d), **18.** (c), **19.** (c), **20.** (b)

Hints and Explanations

1. (c)

- Chairman of UPSC is entitled to receive a salary that is equal to that of the Chief Election Commissioner.

2. (b)

- While salaries of High Court judges are charged on Consolidated Fund of State, pensions are charged on Consolidated Fund of India.
- These are charged expenditure and not voted by the Parliament.
- Salaries of Cabinet or the Council of Ministers are made through demand for grants.
- They require approval of the Parliament.

Refer Page 21.6 and Chapter 17

3. (d)

A Member of UPSC is:

- Not eligible for reappointment.
- Ineligible for further employment either under the Government of India or under the government of a State
- Eligible to be Chairman of UPSC or Chairman of a SPSC/JPSC

Refer Page 21.4 and 21.5

4. (b)

- Article 321 provides Parliament the power to expand the functions of UPSC by law.

Refer Page 21.6

5. (b)

- Joint Public Service Commission for two or more states can be created by a Parliamentary law.

Refer Page 21.4

6. (c)

- It shall be the duty of Union Public Service Commission to advise on matters referred only by the President and not the Governor. (Article 320)

Refer Page 21.6

7. (b)

- Article 317(1) provides that any member of a Public Service Commission shall only

be removed by President by order on the ground of misbehaviour after the Supreme Court enquiry.

Refer Page 21.4

8. (c)

- Article 315(4) provides that Union Public Service Commission may agree to serve all or any of the needs of the State if requested by the Governor with the approval of President.

9. (d)

- For a Joint Public Service Commission, President may determine the number of members and their conditions of service.
- Article 320(2) provides that it is the duty of Union Public Service Commission to assist those States in framing and operating schemes of joint recruitment for any services, if requested by any two or more States.

Refer Page 21.4

10. (a)

- Chairman of Union Public Service Commission is removed by the President.
- Parliament is involved in the process of impeachment in case of removal of judges of Supreme Court and High Court.
- Comptroller and Auditor General of India is removed in the like manner as that of judge of Supreme Court.

Refer Page 21.4 and Chapter 17, 25

11. (a)

- Expenditure on Five-year Plans requires parliamentary approval.

Refer Page 21.6 and Chapter 17

12. (a)

- UPSC is not consulted while making transfers from one place to another.
- UPSC is also consulted on any claim for the award of a pension in respect of injuries sustained by a person while serving under the Government of India or the Government of a State

Refer Page 21.6

13. (a)

Refer Page 21.5

14. (a)

- A member of an all-India service holds office during pleasure of President.
- Hence, he/she can be dismissed or removed only by the President of India.

Refer Page 21.2

15. (a)

Refer Page 21.4

16. (c)

- Article 321 provides power to Parliament to extend functions of the Union Public Service Commissions.

Refer Page 21.6

17. (d)

- President determines the number of members of the Union Public Service Commission.

- By Article 124(1) provides that Supreme Court shall have one Chief Justice of India and seven other judges which can be changed by Parliamentary law.

- Article 316 provides the conditions for appointment.
- Article 319 has provisions regarding eligibility for further employment under the State.

Refer Page 21.4, 21.5 and Chapter 17

18. (c)

- Under Article 312, the Constitution of India recognizes three All India Services namely Indian Administrative Service, Indian Police Service, and the All India Judicial Service

Refer Page 21.3

19. (c)

Refer Page 21.2-4

20. (b)

Refer Page 21.4

CHAPTER 22

Elections

Learning Objectives

After reading this chapter, you will be able to:

- Learn about the constitutional provisions relating to elections
- Learn the composition of election commission of india
- Know what are the power of the legislatures to regulate the laws and the issues relating to disputes in elections
- Explain the model code of conduct and the salient features of the code

ELECTION COMMISSION OF INDIA

Part XV between Articles 324 and 329 deal with elections. This Part deals with the conduct of free and fair elections, right to vote, etc. Article 324 provides for an independent Election Commission entrusted with the superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of all elections. The Election Commission conducts the elections to Parliament and to the legislature of every State and of elections to the offices of President and Vice-President.

A Political Party is Recognized by the Election Commission Only if it

- Engaged in political activity for a continuous period of five years
- Has returned atleast one member of the Lok Sabha for every 25 members of the House or any fraction of that number elected from that State or;
- Has returned at least one member to the Legislative Assembly of that State for every thirty members of that Assembly or any fraction of that number or;
- Has polled not less than 6 percent of the total number of valid votes polled by all contesting candidates at the general elections
- If a party is recognised in four states then it is recognised as National party

Composition of the Commission

The constitution does not provide for the complete composition of the commission. Article 324(2) provides that the Election Commission shall consist of a Chief Election Commissioner and such other Commissioners as the President may, from time to time, fix. The Chief Election Commissioner and other Election Commissioners are appointed by the President.

The power to determine the size of the Commission is vested in the President who exercises the power with the advice of the Union Council of Ministers. In effect the size of the Commission is determined by the Council of Ministers. This has attracted severe criticism.

At present, the Commission consists of a Chief Election Commissioner and two other Election Commissioners. But it was single-member body until 1989 with only the Chief Election Commissioner. From October 1989 to the 1 January 1990, it became a three-member body with R. V. S. Peri Sastri (C.E.C) and S. S. Dhanoa and V. S. Seigell as Election Commissioners. Then from January 1990 to September 1993, it was a single-member Commission and again from 1 October 1993, it has become a three-member Commission. The Chief Election Commissioner will be the Chairman of the Commission and the other Commissioners are the members.

The Chief Election Commissioner and other Elections Commissioners enjoy equal powers and equal salaries similar to that of Supreme Court judge. The salary and other expenditures of the Commission are NOT charged on the Consolidated Fund of India.

In case of any difference of opinion between the CEC and the Election Commissioners then the decision shall be made according to the opinion of the majority.

Term of Office

The Chief Election Commissioner or an Election Commissioner shall hold office for a term of six years from the date on which he assumes his office.

Voter Verifiable Paper Audit Trail (VVPAT)

- VVPAT is an independent system attached with the Electronic Voting Machines (EVM).
- It allows the voters to verify that their votes are cast as intended.
- When a vote is cast, a slip is printed containing the serial number, name and symbol of the candidate and remains exposed through a transparent window for seven seconds.
- Thereafter, this printed slip automatically gets cut and falls in the sealed dropdown of the VVPAT.

Source: Election Commission

Regional Commissioners

The President may appoint the Regional Election Commissioners to assist the Election Commission before any election. The tenure and the conditions of service of Regional Election Commissioners are determined by the President.

Removal Procedure

The constitution provides for different procedure for the removal of Chief Election Commissioners and other Election Commissioners. The Chief Election Commissioner can be removed on the like grounds and in the like manner as a judge of Supreme Court is removed.

That is, the Chief Election Commissioner can only be removed by the President only on the address of each House of the Parliament passed by a special majority on the ground that he is guilty of proved misbehaviour or suffers from incapacity. The election Commissioners and the Regional Commissioners can be removed only on the recommendation of the Chief Election Commissioner.

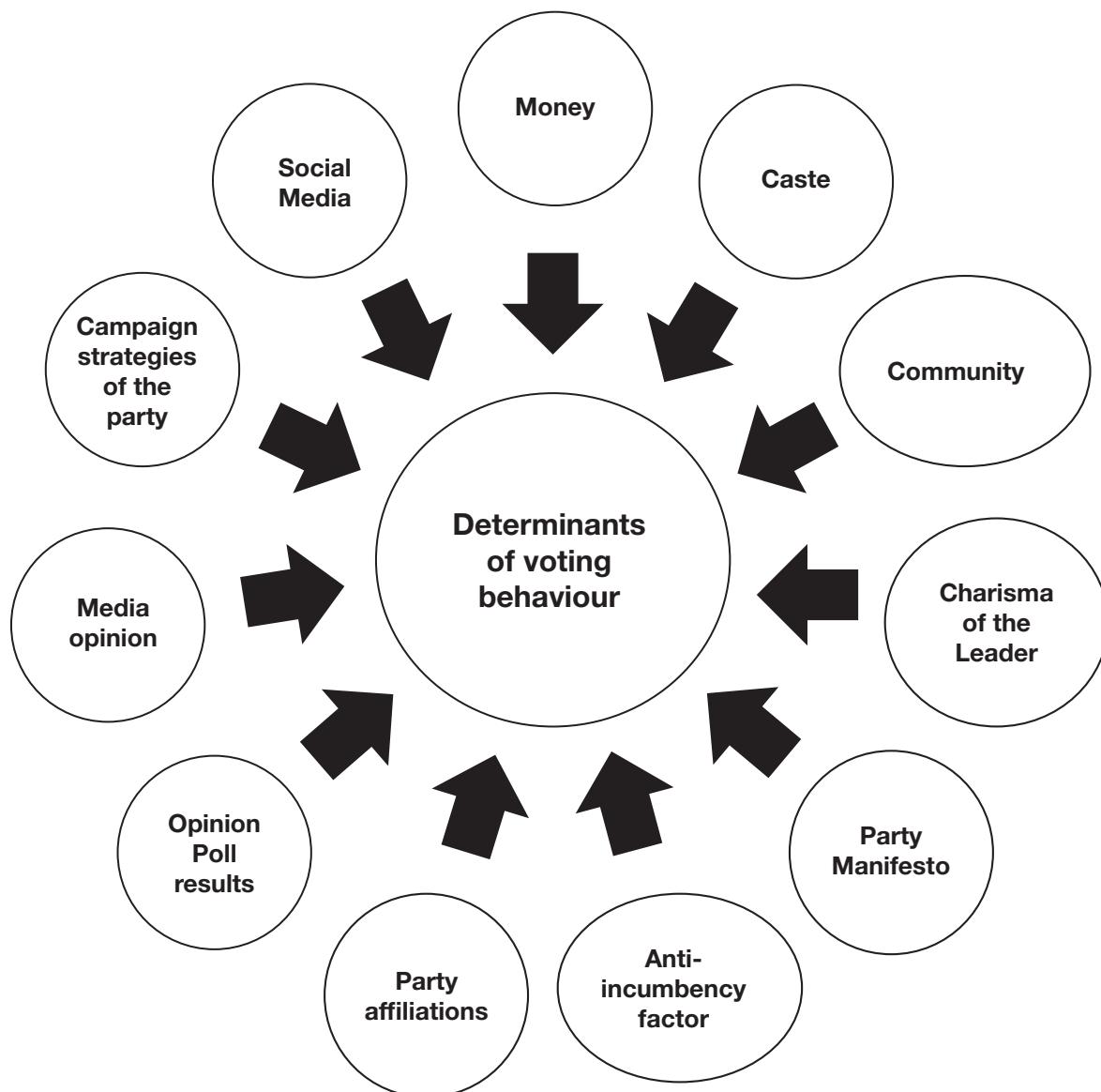


FIGURE 22.1 Determinants of Voting Behaviour in Indian Elections

Systematic Voters' Education and Electoral Participation (SVEEP)

- SVEEP is the program of the Election Commission of India.
- Started with the planned Information, Education, and Communication (IEC) interventions in the Jharkhand elections of end-2009.
- SVEEP is for voter education, spreading voter awareness and promoting voter literacy in India.
- SVEEP is for encouraging all eligible citizens to vote and make an informed decision during the elections.
- SVEEP also aims at improving the voter turnout in the elections which had historically stagnated around 55–60 per cent.

Source: Election Commission

Elections

The procedure for the election of the President (Article 54) and the Vice-President (Article 66) is provided in the constitution. The procedure for election to the legislatures of the union and the States is left to legislation. However, the constitution provides for certain principles governing the elections namely:

- (a) **No Communal Representation:** The constitution does not provide for communal, separate or special representation. All the constituency are single-member territorial constituencies.
- (b) **Single Electoral Roll:** There shall be one electoral roll for every territorial constituency for election to either House of Parliament or to the State legislature and no person shall be excluded from such roll-on grounds only of religion, race, caste, sex or any of them (Article 325).
- (c) **Universal Adult Suffrage:** The election shall be on the basis of adult suffrage, i.e., every person who is a citizen of India and completed 18 years of age shall be entitled to vote at the election. However, he must not be disqualified by any provision of the constitution or of any law made by the appropriate legislature on the ground of non-residence, unsoundness of mind, crime, or corrupt or illegal practice (Article 326).

National Commission to Review the Working of the Constitution

'Elections are critical to the maintenance and development of democratic tradition because at one level, these are influenced by the political culture in which they operate, but at another, they also generate strong influences that can improve or distort this political culture.'

Power of Legislature

The Union Parliament has the power to make laws relating to all matters in connection with the election subjected to the above principles and the provisions of the constitution. This is in accordance with Article 327 and the Entry 72 of List I in the 7th Schedule. Hence, the election to the Houses of Parliament and the State legislatures are conducted in accordance with the law enacted by the Parliament.

However, the state legislature has a subsidiary power in this respect. It can legislate on all electoral matters relating to the state legislature on such matters that are not covered by legislation by Parliament. The laws of the State legislature shall, in other words, be valid if they are not repugnant to laws made by Parliament and, of course, to provisions of the constitution (Article 328).

Parliament has enacted the Representation of the People Acts, 1950, 1951, as well as the Delimitation Commission Acts, 1962, 1972, to prescribe the mode of election, and the formation and delimitation of the constituencies relating to election.

Reservation in Elections

- Seats reserved according to their proportion of population with respect to the total population of a State.
- Reservation is for seats in the Lok Sabha as also the Legislative Assembly (Articles 330 and 332).
- Two members of the Anglo-Indian community in the Lok Sabha and one member in a State Assembly.
- One third of the seats reserved for women in the Panchayats and municipalities.

Election Disputes

India being the world's largest democracy with large-scale election, disputes are bound to arise, such as:

- Whether the procedure for election was properly followed or;
- Whether any candidate returned as member suffered from any disqualification under the law or the constitution or;
- Whether a candidate who ought to have been returned has been declared not elected.

For the decision of such disputes, the Article 329 of the Constitution provides that the ordinary courts of the land will have no jurisdiction and that any question relating to an election can be agitated only by an election petition, as provided for by law. Article 329 (b) provides:

'Notwithstanding anything in this Constitution no election to either House of Parliament or to the House or either House of the legislature of a State shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by the appropriate legislature.'

Adult Suffrage

- The Presidential and Vice- Presidential Election Act, 1952.
- The Representation of People Act, 1950.
- The Representation of People Act, 1951.
- The Delimitation Act, 1952, 1962, 1972 and 2002.

Under the Representation of the People Act, as it stood at the end of 1996, the power to decide an election petition is vested in the high court, with appeal to the Supreme Court.

By Article 323B of the Constitution, as inserted by the Constitution (42nd Amendment) Act, 1976, power has been conferred on the appropriate legislature to set-up a tribunal for the adjudication of disputes relating to elections of the legislature concerned, by making law. By the law the jurisdiction of courts over the adjudication of election disputes can be excluded. However, a Special Leave Petition may be made to the Supreme Court under Article 136 on any such matter.

In short, when any such law is made in exercise of this power, the high court will cease to have any jurisdiction over election disputes; they will be determined only by the Administrative Tribunal set-up by law, with appeal from the decision of such tribunal to the Supreme Court by special leave under Article 136.

Disputes in Election of President, Vice-President, Prime Minister, Speaker

According to Article 71, the exclusive forum for adjudicating disputes relating to the election of the President and Vice-President is the Supreme Court. There is no special provision for the Prime Minister or the Speaker of the House of the People, so that any dispute relating to election to these offices is to be determined only by an election petition before the high court, according to Article 329 (b).

Model Code of Conduct^[1]

The Model Code of Conduct for guidance of political parties and candidates is a set of norms which has been evolved with the consensus of political parties who have consented to abide by the principles embodied in the said code and also binds them to respect and observe it in its letter and spirit.

The Model Code of Conduct is enforced from the date of announcement of election schedule by the Election Commission and is operational till the process of elections is completed. The Model Code of Conduct is applicable:

- (a) During general elections to House of People (Lok Sabha), the code is applicable throughout the country.
- (b) During general elections to the Legislative Assembly (Vidhan Sabha), the code is applicable in the entire State.
- (c) During by-elections, the code is applicable in the entire district or districts in which the constituency falls.

The Election Commission ensures its observance by political party(ies) in power, including ruling parties at the Centre and in the States and contesting candidates in the discharge of its constitutional duties for conducting the free, fair and peaceful elections to the Parliament and the State legislatures under Article 324 of the Constitution of India.

It is also ensured that official machinery for the electoral purposes is not misused. Further, it is also ensured that electoral offences, malpractices and corrupt practices such as impersonation, bribing and inducement of voters, threat and intimidation to the voters are prevented by all means. In case of violation, appropriate measures are taken.

The model code of conduct is applicable for the elections to panchayats and municipalities as well. However, the respective state election commissions may make required modifications in accordance with the needs and suitability for the states.

Salient Features of Model Code of Conduct

General Conduct

1. No party or candidate shall include in any activity which may aggravate existing differences or create mutual hatred or cause tension between different castes and communities, religious or linguistic.
2. Criticism of other political parties, when made, shall be confined to their policies and programme, past record and work. Parties and candidates shall refrain from criticism of all aspects of private life, not connected with the public activities of the leaders or workers of other parties. Criticism of other parties or their workers based on unverified allegations or distortion shall be avoided.
3. There shall be no appeal to caste or communal feelings for securing votes. Mosques, Churches, Temples or other places of worship shall not be used as forum for election propaganda.
4. All parties and candidates shall avoid scrupulously all activities which are 'corrupt practices' and offences under the election law, such as bribing of voters, intimidation of voters, impersonation of voters, canvassing within 100 meters of polling stations, holding public meetings during the period of 48 hours ending with the hour fixed for the close of the poll, and the transport and conveyance of voters to and from polling station.

Laws Governing Elections

- Adult suffrage means that barring exceptions every citizen who is an adult possesses the right to vote.
- A person may be registered as a voter in only one constituency.
- He must also be ordinarily resident in the constituency in which he desires to be registered.

¹ http://eci.nic.in/eci_main/faq/faq_mcc.pdf.

Party in Power

1. The party in power whether at the Centre or in the State or States concerned, shall ensure that no cause is given for any complaint that it has used its official position for the purposes of its election campaign and in particular:
 - (a) The ministers shall not combine their official visit with electioneering work and shall not also make use of official machinery or personnel during the electioneering work.
 - (b) Government transport including official aircrafts, vehicles, machinery and personnel shall not be used for furtherance of the interest of the party in power.
- Issue of advertisement at the cost of public exchequer in the newspapers and other media and the misuse of official mass media during the election period for partisan coverage of political news and publicity regarding achievements with a view to furthering the prospects of the party in power shall be scrupulously avoided.
- Ministers and other authorities shall not sanction grants/payments out of discretionary funds from the time, elections are announced by the Commission.
- From the time elections are announced by Commission, ministers and other authorities shall not announce any financial grants in any form or promises thereof; or (except civil servants) lay foundation stones, etc., of projects or schemes of any kind; or make any promise of construction of roads, provision of drinking water facilities etc.; or make any *ad-hoc* appointments in government, Public Undertakings, etc., which may have the effect of influencing the voters in favour of the party in power.

Practice Questions

- 1.** The incumbent of which of the following offices is appointed by the President under his hand and seal?
- Chief Election Commissioner
 - Comptroller and Auditor General(CAG)
 - Attorney General
 - Chairman UPSC
- 2.** A political party is recognized by the Election Commission only if:
- It has been engaged in political activity for a continuous period of five years.
 - Has returned at least one member of the Lok Sabha for every 25 members of the House or any fraction of that number elected from that State.
 - Has polled not less than six per cent of the total number of valid votes polled by all contesting candidates at the general elections.
 - Has contested elections in four or more states in three consecutive general elections.
- Correct statement
- 1 and 2
 - 1, 2, 3
 - 1, 3, 4
 - 1, 2, 3, 4
- 3.** The constitution stipulates that:
- The Election Commission may consist of a Chief Election Commissioner and not more than three other Election Commissioners
 - When any other Election Commissioner is appointed, the Chief Election Commissioner shall act as Chairman of the Election Commission.
 - Election Commissioners can be removed only on the recommendation of the Supreme Court.
 - The Supreme Court may set aside an election on the ground that the electoral roll was defective.
- 4.** Which of the following is correct regarding the removal of an Election Commissioner of India?
- He may be removed by the President on the recommendation of the Chief Election Commissioner of India.
 - He must be removed by the President on the recommendations of the Chief Election Commissioner of India.
 - He may be removed by the President even without the recommendations of the Chief Election Commissioner.
 - He cannot be removed by the President without passing of an impeachment motion in Parliament.
- 5.** Consider the following statements regarding political parties in India:
- The Representation of the People Act, 1951 provides for the registration of political parties.
 - The Election Commission carries out the registration of political parties.
 - A national level political party is one which is recognized in four or more states.
 - There are six national and 48 state-level parties recognized by the Election Commission.
- Correct statement
- 1, 2, 4
 - 1, 2, 3
 - 2 and 4
 - 1, 2, 3, 4
- 6.** Consider the following statements
- The Chief Election Commissioner and other Election Commissioners enjoy equal powers but receive unequal salaries.
 - The Chief Election Commissioner is entitled to the same salary as is provided to a judge of the Supreme Court.
 - The Chief Election Commissioner shall not be removed from his office except in like manner and on like grounds as a judge of the Supreme Court.
 - The term of office of the Election Commissioner is five years from the date he assumes his office or till the day he attains the age of 62 years, whichever is earlier.
- Correct statement
- 1 and 2
 - 2 and 3
 - 1 and 4
 - 2 and 4
- 7.** Consider the following with respect to Election Commission of India:

1. The expenditure for the Election Commission is charged upon the Consolidated Fund of India.
2. There is a separate Secretariat to function with the Election Commission.

Correct statement

- | | |
|------------|---------------------|
| (a) 1 only | (c) Both 1 and 2 |
| (b) 2 only | (d) Neither 1 nor 2 |

8. Consider the following:

1. Article 324(2) also empowers the President of India to fix from time to time the number of Election Commissioners other than the Chief Election Commissioner.
2. Under Article 324(2), the President of India shall appoint the Chief Election Commissioner and the Election Commissioners by a warrant under his hand and seal.

Correct statement

- | | |
|------------|---------------------|
| (a) 1 only | (c) Both 1 and 2 |
| (b) 2 only | (d) Neither 1 nor 2 |

9. Which one of the following is NOT correct? The Model Code of Conduct:

1. It is applicable during general elections to House of People and Legislative Assembly only
 2. It is not applicable during elections to the Panchayat raj institutions and Municipalities
- | | |
|------------|---------------------|
| (a) 1 only | (c) Both 1 and 2 |
| (b) 2 only | (d) Neither 1 nor 2 |

10. Consider the following:

1. While it is obligatory for the President to appoint the Chief Election Commissioner, the appointment of other Election Commissioners was left by the constitution to the discretion of the President.
2. The posts of other Election Commissioners, once created, cannot be abolished by the President, except by a law of the Parliament.
3. Apart from the Chief Election Commissioner and other Election Commissioners, the constitution has a provision for the appointment of Regional Commissioners also.

Correct statement

- | | |
|-------------|----------------------|
| (a) 1 and 3 | (c) 1 and 2 |
| (b) 2 and 3 | (d) All of the above |

11. The election to which of the following offices is NOT conducted by the Election Commission of India?

1. Speaker of Lok Sabha
 2. Chairman of Rajya Sabha
 3. Prime Minister
 4. Members of Rajya Sabha
- | | |
|------------------|------------------|
| (a) 4 only | (c) 1 and 3 only |
| (b) 1, 2, 3 only | (d) 3 only |

12. Under the Constitution of India, the Election Commission is entrusted to deal with:

1. Qualification of members of Parliament
 2. Duration of Parliament and State legislatures
 3. Reservation of seats in the House of People for SCs
 4. Determination of population for the purpose of election
- | | |
|----------------|---------------|
| (a) 1, 2, 3, 4 | (c) 1, 4 only |
| (b) 4 only | (d) 2, 3 only |

13. Consider the following:

1. Constitution has defined the qualification for a person to be appointed as the Election Commissioner.

2. Constitution has not defined the grounds for removal of the Election Commissioners.

Incorrect statement

- | | |
|------------|---------------------|
| (a) 1 only | (c) Both 1 and 2 |
| (b) 2 only | (d) Neither 1 nor 2 |

14. Which among the following is NOT an advisory function of Election Commission?

- (a) Post-election disqualification of sitting members of Parliament.
- (b) Dispute in the election to the office of the President which come before the Supreme Court
- (c) Disqualifying a Member of Parliament on grounds of defection
- (d) All of the above

15. Consider the following:

1. Election Commission conducts the elections to Parliament and the State legislature and to office of President.
2. Rajya Sabha has the power to direct and conduct elections to the office of the Vice-President.

3. Chief Election Commissioner can be removed by the Parliament by a simple majority like the procedure to remove the Supreme Court judge.

Correct statement

- (a) 1 and 3 (c) 2 and 3
 (b) 1 only (d) 3 only

- 16.** Which one of the following is NOT a function of the Election Commission?

- (a) To superintend, direct and control elections to the office of the President
 (b) To select the candidate for election
 (c) To recognize and derecognize political parties
 (d) To prepare electoral roles

- 17.** Consider the following statements in respect of the election system in India:

1. As per provision of the Constitution of India, a Regional Commissioner shall not be removed from office except on the recommendation of the Governor of State where the Regional Commissioner is posted.
2. The number of the Election Commissioners in the Election Commission shall be fixed by the President from time to time.

Correct statement

- (a) 1 only (c) 1 and 2
 (b) 2 only (d) Neither 1 nor 2

- 18.** In case of difference of opinion amongst the Chief Election Commissioner and other Election Commissioners in the Election Commission of India: The matter is to be referred to the Supreme Court of India

- (a) The opinion of the Chief Election Commissioner is final
 (b) The matter is to be referred to the Law Commission
 (c) The matter is decided by the Election Commission by majority

- 19.** The President of India may from time to time fix the number of Election Commissioners of the Election Commission of India on the basis of:

- (a) Advice by the Council of Ministers
 (b) Advice by the Prime Minister's Office
 (c) Recommendation of the Union Law Ministry
 (d) The law made in that respect by the Parliament

- 20. Assertion:** An Election Commissioner in the Election Commission of India cannot be removed from office except on the recommendation of Chief Election Commissioner.

Reason: An Election Commissioner is appointed on the recommendation of the Chief Election Commissioner.

Answer Key

-
- 1.** (b), **2.** (b), **3.** (b), **4.** (a), **5.** (b), **6.** (b), **7.** (b), **8.** (a), **9.** (d), **10.** (a),
11. (b), **12.** (a), **13.** (c), **14.** (a), **15.** (b), **16.** (b), **17.** (b), **18.** (d), **19.** (a), **20.** (c)

Hints and Explanations

1. (b)

- Chief Election Commissioner is appointed by the President (Article 324(2)).

Refer Chapter 25

2. (b)

- Recognition of political parties is given under Representation of Peoples Act, 1951.

Conditions for recognition of a political party by Election Commission of India.

Refer box on Page 22.1 Box

3. (b)

- Election Commission may consist of Chief Election Commissioner and such other Election Commissioners as the President may determine.
- Election Commissioners can be removed on the recommendation of the Chief Election Commissioner.
- Article 329 provides a bar on interference of courts in electoral matters.

Refer Page 22.1

4. (a)

- An Election Commissioner may be removed by the President on the recommendation of Chief Election Commissioner.
- However, the advice of the Chief Election Commissioner is not binding on the President.

Refer Page 22.2

5. (d)

Refer: Page 22.5-7

6. (b)

- The Chief Election Commissioner and other Elections Commissioners enjoy equal powers and equal salaries similar to that of Supreme Court judge.
- The term of office is 6 years or up to age 65 years, whichever is earlier.

Refer Page 22.1 and 22.2

7. (b)

- The expenditure for Election Commission is voted upon by the Parliament.

Refer Page 22.1 and 22.2

8. (a)

Refer Page 22.1

9. (d)

Refer Page 22.4

10. (a)

- The existence of post and number of other Election Commissioners are determined by the President.
- Regional Commissioners are appointed by the President to assist the Election Commission before election.

Refer Page 22.1 and 22.2

11. (c)

- The Election Commission conducts the elections to Parliament and to the legislature of every State and of elections to the offices of President and Vice-President.

Refer Page 22.1

12. (a)

Representation of Peoples Act 1950 and 1951 provide a list of functions and powers to the Election Commission including:

- Qualification of members of Parliament
- Duration of Parliament and State Legislatures
- Reservation of seats in the House of People for SCs
- Determination of population for the purpose of election

Also Refer Page 22.3

13. (b)

Hint:

- Constitution has not defined the qualifications for the office of Election Commissioner.
- It is to be determined by law of Parliament.
- Constitution has provided that Election Commissioners may be removed by the President on the recommendation of Chief Election Commissioner.

Refer Page 22.2

14. (a)

Refer Page 22.4. Also Refer chapter 14– Disqualification of Members of Parliament

15. (b)

- Election Commission conducts the election of members to the Council of States.
- Chief Election Commissioner is removed in the like grounds and like manner as that of judge of Supreme Court.
- The Commissioner can be removed by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting. (Special majority)

Refer Page 22.2

16. (b)

Hint:

- By Article 324, Election Commission is entrusted with the superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of all elections.

Refer Page 22.1

17. (b)

- The Regional Commissioners are removed by the President on the recommendation of the Chief Election Commissioner.

Refer Page 22.2

18. (d)

- According to the Election Commission (Conditions of Service of election commissioners and transaction of business) act, 1991, in case of difference of opinion amongst the Chief Election Commissioner and other members, the decision is taken by majority.

19. (a)

- The power to determine the size of the Commission is vested in the President who exercises the power with the advice of the Union Council of Ministers.

Refer Page 22.1

20. (c)

- An Election Commissioner is appointed by the President on the advice of Council of Ministers.

Refer Page 22.2

CHAPTER 23

Emergency

Learning Objectives

After reading this chapter, you will be able to:

- Understand the need for emergency and the concepts of National Emergency, Constitutional Emergency and Financial Emergency
- Know the Constitutional Safeguards and the effects of such Proclamations
- Know safeguards introduced by the 44th amendment Act to prevent the misuse of the emergency provisions
- Analyze various Supreme Court Judgements and Constitutional Amendments relating to Emergency Provisions
- Understand the meaning of the term 'Break down of Constitutional Machinery'

INTRODUCTION

Emergency 'is a failure of social system to deliver reasonable conditions of life'.⁽¹⁾ It refers to the circumstances in which the public authorities are expected to take immediate action in response to certain sudden developments. Part XVIII of the Constitution of India between Articles 352 and 360 deal with emergency. The provisions enable the union government to centralize the powers to it and the system becomes completely unitary in nature. The constitution provides for three types of emergency namely:

(i) National Emergency	Article 352
(ii) Constitutional Emergency	Article 356
(iii) Financial Emergency	Article 360

NATIONAL EMERGENCY (ARTICLE 352)

Article 352 confers upon the President to proclaim the national emergency. The President can proclaim national emergency if he is satisfied that 'a grave emergency exists whereby the security of India or of any part of the territory thereof is threatened, whether by war or external aggression or armed rebellion'.

According to the explanation to Article 352 (1), a Proclamation of National Emergency may be made even before the actual occurrence of war or of any such aggression or rebellion, if the President is satisfied that there is imminent danger thereof.

1 Black Law's Dictionary

The Presidential satisfaction is not his singular satisfaction, but he has to make the proclamation only on the advice of the Council of Ministers. The President also has the power to make a subsequent proclamation revoking the Proclamation of Emergency.

Instruments of Cooperative Federalism

National emergency was proclaimed on ground of 'internal disturbance' in India in 1975 and lasted till 1977. The reasons quoted for proclaiming emergency were:

- The movement organized by Jayaprakash Narayan was seen as a threat to India's security and democracy.
- Unemployment, rising inflation and food scarcity resulting in protests and riots created the need for rapid economic growth.
- The threat of international intervention which could destabilize India.

Safeguards

President can make a Proclamation of Emergency subjected to the following conditions:

- (a) The President can make the Proclamation of Emergency or varying that, only when the advice is signed by all the members of the Cabinet⁽²⁾ and communicated to him in writing.
- (b) Every proclamation issued has to be laid before Lok Sabha and Rajya Sabha separately and the Houses must approve the proclamation. The proclamation has to be laid before the Houses within one month from date on which it was made.
- (c) The Houses of the Parliament need to approve the proclamation by a majority of total membership of the House and by majority of not less than two-thirds of members present and voting.
- (d) The proclamation will continue to remain in operation if approved by both the Houses and will cease to remain in operation even if any one of the Houses did not approve.
- (e) Once approved by the Houses, the proclamation will remain in force for a maximum period of six months from the date on which the proclamation was made. However, the proclamation can be extended beyond six months if approved by the Houses of the Parliament. Such extension must also be passed by a special majority.

Conflict between Government and Judiciary that led to Emergency

The Supreme Court ruled that the Parliament does not have the power to:

- Amend fundamental rights with an effect of abridging them.
- Amend the basic features of constitution.
- Restrict fundamental rights to implement DPSP.

Provision for Special Session for the Approval of Proclamation: The 44th amendment inserted the provision for a special session for disapproving the proclamation if the members of the Lok Sabha give their intention to the Speaker or the President.

Not less than one-tenth of the total number of members of Lok Sabha must sign and submit the notice expressing their intention to disapprove the proclamation to the Speaker, if the House is in session or the President, if the House is not in session.

2 The term Cabinet is mentioned in Article 352, after the 44th Amendment Act. This is the only provision in which the term finds a mention.



On receipt of the notice of intention, a special sitting of the House must be held within fourteen days from the date on which such notice is received.

Effects of Proclamation

When emergency is proclaimed: The federal system becomes a unitary system.

- Fundamental rights can be restricted or suspended.
- The courts cannot entertain petitions to enforce the fundamental rights if the right is suspended.
- Government can censor the newspapers and curtail freedom of press.
- During a financial emergency even, the salary of the judges of Supreme Court and high courts can be reduced.

Effects of Proclamation: Article 353 expressly provides for the following effects of the Proclamation of National Emergency:

1. According Article 353 (a), the union government will have the power to give binding directions to the States as to the exercise of their executive powers.
2. Article 353 (b) empowers the Parliament to make laws to confer powers or impose duties on the officers of the union, in respect of any matter, even if it is not a matter in Union List, in effect it means the State List.
3. According to Article 354, the President may issue an order to suspend the operation of any of provision of Articles 268–279. The suspension may remain in force for a period as specified in the order within the given financial year.
4. According to Article 250, the Parliament will have ‘unlimited’ powers to make law on any matter given in the State List. The power is unlimited because the Parliament can make the law for whole of India or any region. Any such law made will remain in force during the period when the proclamation remains in force.
5. According to Article 356 (5), the Proclamation of Constitutional Emergency already in force on any State can be extended in case a national emergency is proclaimed.
6. According to Article 358, when a Proclamation of National Emergency is made on the ground of war or external aggression, then the fundamental rights guaranteed by Article 19 are automatically suspended.
7. Article 359 provides that the President can suspend the enforcement of any of the fundamental rights during when a Proclamation of National Emergency remains in operation. However, after the 44th amendment, the rights guaranteed by Articles 20 and 21 cannot be suspended.
8. The normal term of the House of People, can be extended for a period not more than one year by a law of the Parliament (Article 83). It provides that the term of five years ‘may, while a Proclamation of Emergency is in operation, be extended by Parliament by law for a period not exceeding one year at a time and not extending in any case beyond a period of six months after the proclamation has ceased to operate’.

Controversies of Emergency 1977

- Postponement of elections
- Forced sterilizations
- Men were given ghee as a compensation for sterilization
- Custodial death unreported
- Press was curtailed
- Constitution (42nd Amendment) known as ‘mini constitution’ was enacted.

TABLE 23.1 National Emergency: Before 44th Amendment and After: A Comparison

Bases of Comparison	After 44th Amendment	Before 44th Amendment
1. Grounds of Proclamation	National emergency is proclaimed on the grounds of war or external aggression or armed rebellion. The term 'internal disturbance' was replaced by the term 'Armed Rebellion'. The term internal disturbance was open to interpretation and led to the misuse of the provision in 1976.	National emergency could be proclaimed on the grounds of war or external aggression or internal disturbance.
2. Advice in Writing	The advice of the Council of Ministers to proclaim emergency must be communicated to the President in writing. Entire cabinet ministers must affix their signature on the advice.	No such provision.
3. Time Limit for Approval	Parliament must approve the proclamation within 30 days from the date on which the proclamation was made.	Parliament must approve the proclamation within 60 days from the date on which the proclamation was made.
4. Majority for Approval	The House has to approve by special majority.	No such provision. Approval was by simple majority.
5. Special Session for Disapproving	If one-tenth of the members of Lok Sabha signed and submitted a notice expressing their intention to convene a special session to the Speaker of Lok Sabha or the President, then the special session must be held within 14 days from the date on which the notice was received.	No such provision.
6. Duration of Emergency	Once approved, the proclamation will remain in force for six months from the date of proclamation	No time limit prescribed, can remain in force for indefinite period.
7. Extension of Proclamation	Can be extended on the approval of the Parliament	Not applicable as the duration was not fixed and the proclamation can remain in operation for an indefinite period.
8. Suspension of Fundamental Rights	President can suspend any fundamental right except those provided by Articles 20 and 21.	No exceptions. All fundamental rights could be suspended.



CONSTITUTIONAL EMERGENCY

Article 356 which provides for the constitutional emergency was inspired by Section 93 of the Government of India Act, 1935. While the 1935 Act vested the power in the Governor of the State, Article 356 confers the power on the President.

Provision in Case of Failure of Constitutional Machinery in States

According to Article 356, the President can proclaim the constitutional emergency on the States in case of the 'breakdown of the constitutional machinery'. It provides that if at any time the President is satisfied that the administration of any State cannot be carried in accordance with the constitution, on the basis the report of the Governor or otherwise, then he can proclaim a constitutional emergency. The President may then:

- Assume to himself all or any of the functions of the government of the State.
- Assume to himself all or any of the powers vested in or exercisable by the Governor other than the legislature of the State.
- Declare that the powers of the legislature of the State shall be exercisable by or under the authority of Parliament.

Safeguards

The Proclamation of Constitutional Emergency has to be laid before Lok Sabha and Rajya Sabha for approval. The Houses need to approve the proclamation separately.

The proclamation must be laid for approval in the Parliament before two months from the date of proclamation.

Once approved, the proclamation will remain in operation for a maximum period of six months from the date of proclamation.

Extension of the Proclamation: The proclamation can be extended beyond six months subjected to the following conditions:

- If the continuance of the proclamation is approved by the Parliament, from the date on which it was approved. However, the proclamation cannot remain in force for more than three years or;
- The proclamation can be extended in case a Proclamation of National Emergency is made and becomes operational over the State which is already under constitutional emergency or;
- In case, the Election Commission certifies that the continuance of the constitutional emergency on account of the difficulties in holding free and fair elections.

However, by the 67th Amendment, the time limit of three years was extended to five years due to the insurgency of the Khalistan Movement.

Articles 365 and 356: The constitution confers upon the union government the power to issue directives that are binding on the States. Article 365, provides that it is 'lawful for the President to hold that a situation has arisen in which the government of the State cannot be carried on in accordance with the provisions of this constitution' in case any State failed to give effect to the directives issued by the Union. By this the President can proclaim the constitutional emergency over such State by the provisions of Article 356.

Effects of Proclamation of State Emergency

- When a Proclamation of State Emergency is made the powers of the State legislature shall be exercised by or under the authority of the Parliament.
- The Parliament is competent to confer on the President the power to make laws and delegate the power to any other authority.
- The Parliament or the President can confer the power or imposition of duties upon the union.
- The President can authorize the expenditure from the Consolidated Fund of the State

Issues involved

While incorporating Article 356, the general expectation of the constituent assembly was that Article 356 would be resorted to only in unavoidable and extreme circumstances. The founding fathers of the constitution believed that it would not be invoked as a ‘surgical operation for a mere cold or cataract’.⁽³⁾ Dr Ambedkar hoped that Article 356 ‘will never be called into operation’ and ‘would remain a dead letter’.⁽⁴⁾

The most important issue is the Presidential satisfaction with regard to the ‘failure of the constitutional machinery’ in any State. The President exercises this power with the ‘aid and advice’ of his Council of Ministers and hence, it is the collective satisfaction of the Council and not the President alone. Hence, the political motive and *mala fide* intention in the Proclamation of the Constitutional Emergency cannot be ruled out. The proclamation could be made upon considerations that are wholly extraneous and irrelevant to the purpose for which Article 356 was incorporated.

The entire gamut of this view is because of the President satisfying himself based on ‘otherwise’ than the report of the Governor. There have been several occasions in which the report of the Governor being got after the proclamation being made. In certain cases, the proclamation was made even when the Governor refused to make an adverse report and expressed satisfaction upon the performance of the State government. For example, in 1991 when Rajiv Gandhi was assassinated, the then Governor of Tamil Nadu refused to make an adverse report and expressed satisfaction in the manner in which the State government was managing the crises resulting from the assassination, the union government invoked Article 356 and dismissed the government. Thus, the use of the power for political reasons is evident.

The next issue involved in this is the purpose of the article. The founding fathers provided Article 356, only as a step-in caution with the objective of protecting and preserving the territorial integrity of the nation. It was to correct any erring State and ensuring that the administration of the States is conducted in accordance with the constitution. But the reality after the constitution coming into force is completely different and the provision has been used ‘liberally’ that it had worked against the spirit of the constitution. Dr Ambedkar said in his Constituent Assembly speech, ‘the first thing the President will do would be to issue a mere warning to a province that has erred, that things were not happening in the way in which they were intended to happen in the Constitution. ...’ However, in the past, there have been many occasions in which Article 356 was invoked and the State governments being toppled without any warnings. The dismissal of S. R. Bommai headed government in Karnataka in 1988 is an example. Though, Bommai the Chief Minister of Karnataka pleaded for a chance to prove the majority on the floor of the House, the government was dismissed invoking Article 356. This resulted in challenging the use of Article 356 in the Karnataka High Court. Later, in 1992 with the dismissal of the BJP governments in States other than UP in the wake of the Babri Masjid demolition, the Supreme Court took the case to itself and decided.

S. R. Bommai Case Ruling: In the landmark judgement, the Supreme Court ruled that:

- (a) The Proclamation of Constitutional Emergency under Article 356 is subjected to judicial review. The President satisfies himself only on the advice of the Council of Ministers and so the *mala fide* is not ruled out. However, it was argued that the advice of the Council of Ministers under Article 74(2) cannot be questioned in a court of law. The court ruled that the constitution ‘does not bar the court to call upon the union government to disclose the material upon which the President had formed the requisite satisfaction’.⁽⁵⁾ The court held that the ‘material on the basis of which the advice was tendered’ does not form part of the advice.

3 Constituent Assembly Debates

4 Constituent Assembly Debates

5 Supreme Court: S. R. Bommai Case

Sarkaria Commission on Article 356

President's Rule can be imposed in case of:

- Political crises
- Internal subversion
- Physical breakdown
- Non-compliance with constitutional directions of the union executive

- (b) The court ruled that neither the Governor nor the President shall take any action that is irreversible until the proclamation was laid before the Parliament and approved by it. For instance, the Legislative Assembly of the State must not be dissolved until the proclamation was approved by the Parliament.
- (c) If needed the Assembly can be held in suspended animation (in a state of freeze) so as to prevent it from taking any unauthorized action.
- (d) In case the court was satisfied that the proclamation was made with *mala fide* intentions, the court will have the power to restore the *status quo ante*, that is the status before the proclamation was made. For instance, the court can restore the government back to power. In 1998, the Kalyan Singh Government was restored back by the Lucknow Bench of Allahabad High Court. Similarly, in 2016 the court restored the Government of Arunachal Pradesh.
- (e) The court also ruled that the right forum to test the confidence of the Council of Ministers is the floor of the Legislative Assembly. The majority support of the Council must not be determined on the subjective assessment of the Governor.
- (f) Before making the proclamation, the State government must be given adequate opportunity to present its case of defence.
- (g) In cases where there are law and order problems in any State, the Union must provide all possible support at its disposal to the State before deciding to make the proclamation.
- (h) The court also ruled that certain circumstances arising out of:
 - Stringent financial crisis in the State
 - Problem of rampant corruption in the State
 - Poor performance of the ruling party of the State in the Lok Sabha elections
 - Intra-party crisis, etc.

Must not be viewed as failure of constitutional machinery and Article 356 be invoked.

Rameshwar Prasad Case

The Supreme Court ruled that:

- Dissolving the assembly even before the first meeting of the Legislative Assembly on the ground of horse trading.
- It was not the constitutional power of the Governor.

Is Article 356 against Federal Principle?: Article 356 is inspired by the British enacted Government of India Act 1935, by which the British intended to provide 'controlled democracy' or 'restricted democracy' to India. But the founding fathers of the constitution did not intend to import such restricted democracy. 'The socio-political experience of the framers of the constitution made them acutely aware that security of the nation and the stability of its polity could not be taken for granted. The road to democracy was not expected to be smooth. The vast difference in social, economic and political life, the diversity in languages, race and region were expected to present the nascent republic with many a difficult situation.'⁽⁶⁾ Hence, they have chosen to incorporate Article 356.

Do You Know?

- Constitutional emergency was first imposed in Punjab in 1951.
- Secondly it was imposed in Kerala in 1957.
- In 1986, President's rule was imposed on ground of terrorism and insurgency.

The constitution establishes a 'cooperative federalism'. The spirit of cooperative federalism demands an unconditional cooperation between the union and the States for promoting the welfare of the people. The attitude of dominance would only spoil the objective. Neither can attempt to dominate for 'sovereignty doesn't lie in any one institution or in any one wing of the government'.⁽⁷⁾ The distributed power is essential for promoting good governance. Hence, it is to be realized that the power vested in the union to control the States must be used in its true spirit. Such powers must not be used except for achieving the purpose for which they are provided. Article 356 is one such power.

But over a period of time, it is found that Article 356 is subjected to gross abuse. The Sarkaria Commission observed that 'the State governments were dismissed even when they enjoyed the majority in the Assembly; on some occasions, they were dismissed without giving them an opportunity to prove their strength on the floor of the House. Hence, the flaw does not lie in the very provision but the manner in which it subjected to use.'

Breakdown of Constitutional Machinery: Meaning⁽⁸⁾

Important questions from Previous years' on this topics are mentioned below:

Discuss the meaning of 'breakdown of constitutional machinery'. What are its effects?

IAS MAINS GS (2004)

It is the condition in which the administration of a State cannot be carried in accordance with the constitution and such condition may arise due to:

Firstly, it could mean a circumstance in which there is a severe law and order problem, which could not be controlled even after exhausting all possible methods and means with the State and the union.

Secondly, if after the general election to the State legislature, a stable government could not be formed either due to the hung assembly or any difficulty in running the incumbent government.

Thirdly, if a Proclamation of National Emergency is made over any State which is already under State emergency, then it can be extended beyond six months (Article 356 (5)).

Fourthly, if the Election Commission certifies that the conditions in a State were not conducive for the conduct of free and fair elections (Article 356(5)). Fifthly, according to Article 365, if any State failed to give effect to any directive issued by the union, such conditions are referred to as 'breakdown of the constitutional machinery'.

On the other hand, the following circumstances must not be construed as 'breakdown of the constitutional machinery'. Such circumstances arising out of:

- Stringent financial crisis in the State
- Problem of rampant corruption in the State
- Poor performance of the ruling party of the State in the Lok Sabha elections
- Intra-party crisis, etc.

6 Report of the National Commission to Review the Working of the Constitution

7 National Commission to Review the Working of the Constitution Report

8 IAS MAINS GS (2004): Discuss the meaning of 'breakdown of constitutional machinery'. What are its effects?



FINANCIAL EMERGENCY: ARTICLE 360

Article 360 provides for the financial emergency. 'If the President is satisfied that a situation has arisen whereby the financial stability or credit of India or of any part of the territory thereof is threatened'⁽⁹⁾, he may proclaim Financial Emergency.

The proclamation has to be laid before each House of the Parliament within two months from the date of proclamation. If approved by the Houses the proclamation will remain in operation until revoked. The duration of the proclamation is not provided in the constitution. The Proclamation of Financial Emergency has not been made ever since the coming into force of the constitution.

Effects of Proclamation

During when the proclamation is in operation, the union government has the powers to issue directives to the States to 'observe such canons of financial propriety'.

- (a)** The President may issue such directions to the State as he may deem fit.
- (b)** The President may require the States to reserve all the Money Bills for his consideration.
- (c)** The President may issue direction reducing the salary and allowances of all persons serving in the State government.
- (d)** The President may also reduce the salary and allowances of all persons serving in the union government including the judges of Supreme Court and high courts.

Practice Questions

1. Consider the following statements in respect of financial emergency under Article 360 of the Constitution of India:

1. A Proclamation of Financial Emergency issued shall cease to operate at the expiration of two months, unless before the expiration of that period it has been approved by the resolutions of both Houses of Parliament.
2. If any Proclamation of Financial Emergency is in operation, it is competent for the President of India to issue directions for the reduction of salaries and allowances of all or any class of persons serving in connection with the affairs of the union but excluding the judges of the Supreme Court and the high courts.

Correct statement

- | | |
|------------|---------------------|
| (a) 1 only | (c) Both 1 and 2 |
| (b) 2 only | (d) Neither 1 nor 2 |

2. Consider the following:

1. There is a provision in the constitution for the extension of the term of the Lok Sabha by one year in case a Proclamation of National Emergency remains in operation.
2. There is no provision in the constitution for the extension of the term of the Legislative Assembly of a State by one year in case a Proclamation of National Emergency remains in operation.

Correct statement

- | | |
|------------|---------------------|
| (a) 1 only | (c) Both 1 and 2 |
| (b) 2 only | (d) Neither 1 nor 2 |

3. Which one of the following propositions is a correct description of the powers of the President of India under Article 356 of the Constitution?

- (a) If the Chief Minister, in spite of commanding the confidence of the Legislative Assembly, cannot lead the government in accordance with the Constitution, President can proclaim emergency.
- (b) If the law and order in the State completely breaks down, the President can proclaim emergency.

(c) The President can refer the matter to the Supreme Court for advice and act in accordance with such advice.

(d) The President cannot make a Proclamation of Emergency if the Governor refuses to make a report.

4. National emergency can be imposed:

- (a) If the President of India is satisfied that the security of India is threatened either by war or external aggression or armed rebellion.
- (b) If the President of India is satisfied that the security of India is threatened either by war or external aggression or internal disturbance, he can impose emergency, provided he receives a written communication from the Cabinet headed by the Prime Minister.
- (c) President of India can impose emergency if he receives a communication in writing from the Cabinet headed by the Prime Minister to this effect.
- (d) If the President is satisfied that the security of India or any part of it is threatened by war or external aggression or armed rebellion, he can issue proclamation provided he received a communication in writing from the Cabinet headed by the Prime Minister to this effect.

5. With the approval of the Parliament an emergency under Article 352 can continue to remain in force for a:

- (a) A maximum period of five years
- (b) A maximum period of three years
- (c) A maximum period of ten years
- (d) An indefinite period

6. When a State fails to implement the administrative directions given by the union under Article 256 of the Constitution?

- (a) Parliament may compel the State to execute the said directions.
- (b) The Governor may dissolve the State legislature.
- (c) The President may presume that constitutional machinery in the State has failed.
- (d) The President may impose emergency under Article 352 of the Constitution.

- 7.** Which is NOT correct statement regarding financial emergency?

 - President can ask States to follow a certain canon of financial propriety.
 - The States may be asked to reserve the Money Bills for the consideration of the President.
 - President can suspend the normal allocation of revenues.
 - President can reduce the salaries of civil servants and not judges.

8. The grounds on which the Parliament is empowered to enact a law on a matter in State List does NOT include:

 - National interest
 - Implementing international agreement
 - National emergency
 - Interest of the State

9. The criticisms placed against national emergency under the Constitution of India include:

 1. The federal character of the constitution is destroyed
 2. The President becomes a dictator
 3. Financial autonomy of the States is nullified
 - 1 only
 - 2 only
 - 1, 2, 3
 - 1 and 3 only

10. Which among the following is NOT an effect of the Proclamation of National Emergency?

 1. The President can suspend fundamental rights
 2. The union government can issue binding directions to the States
 3. The President can alter any provision relating to tax
 - 1, 2 only
 - 1 only
 - 1, 2, 3
 - 3 only

11. Consider the following:

 1. The proposal for the impeachment of the President has to be signed by not less than one-tenth of the total number of members.
 2. The proposal seeking for a special session for approval of a Proclamation of National Emergency has to be signed by not less than one-fourth of the total number of members of the House of the People.

Correct statement

12. Consider the following:

1. The constitution has created a 'strong' centre, which is 'strong' only during emergencies.
 2. During financial emergency, the President can ask the States to reserve their Money Bills also for the consideration of Parliament.

Correct statement

13. The impact of financial emergency does NOT include:

- (a) Union government getting the power to issue directions to State governments to observe certain canons of financial propriety.
 - (b) The President's power to direct a reduction in the salaries of Supreme Court and high court judges.
 - (c) The President's right to direct States to reserve even Money Bills for his consideration.
 - (d) The President's power to suspend the fundamental rights in Articles 19.

14. If a State government fails to comply with the directions of the centre in the exercise of administrative power:

- (a) The Governor may be directed by the President to dismiss the ministry.
 - (b) The President can declare a national emergency and convert the federal structure into a unitary one.
 - (c) A constitutional emergency can be declared in the State and the President can assume all the powers of the State government.
 - (d) The Supreme Court may be asked to intervene.

15. Consider the following:

1. There is a provision in the constitution for the extension of the term of the Lok Sabha by one year in case a Proclamation of National Emergency remains in operation.



Answer Key

1. (a), **2.** (a), **3.** (b), **4.** (d), **5.** (d), **6.** (c), **7.** (d), **8.** (d), **9.** (c), **10.** (c),
11. (d), **12.** (a), **13.** (d), **14.** (c), **15.** (a)

Hints and Explanations

1. (a)

- During the operation of Financial Emergency, the President may reduce the salary and allowances of all persons serving in the union government including the judges of Supreme Court and high courts.

Refer Page 23.9

2. (a)

- Article 83 provides for the extension of term of Lok Sabha by one year when proclamation of National Emergency is in operation.
- Similar extension is available to the State Legislative Assembly by Article 172.

Refer Page 23.4

3. (a)

Supreme Court has laid down certain circumstances which cannot be viewed as breakdown of constitutional machinery like:

- Law and order problems in the State in which all possible measures by the State and Union Government are exhausted
- Rampant corruption
- Intra-party crisis
- Satisfaction of the President is sufficient to enforce President's rule under Article 356 and the Governor's report is not mandatory.

Refer Page 23.5 and 23.6

4. (d)

Under Article 352, the proclamation of Emergency can be made by the President on the grounds of:

- War
- External aggression
- Armed rebellion (44th Amendment Act 1978)
- Threat of any of the above

Refer Page 22.4

5. (d)

- With approval by Parliament with a special majority for every 6 months, proclamation of National Emergency can be in force for an indefinite period.

Refer Page 23.4

6. (c)

- Non-compliance of States to the directions of the Union (Articles 256, 365) is considered as breakdown of constitutional machinery.
- By this, the President can proclaim constitutional emergency over such State by the provisions of Article 356.

7. (d)

- When financial emergency is in force, the President can reduce the salaries of civil servants and also of judges of Supreme Court and High Courts.

Refer Page 23.9

8. (d)

Grounds under which Parliament can legislate on State subjects:

- National interest (Article 249)
- National emergency (Article 250)
- International agreements or treaties (Article 252)

Refer Chapter 2

9. (c)

Also Refer Chapter 1 Reasons For Non - Federal Features in the Indian Constitution

10. (d)

Effects of Proclamation of National Emergency:

- By Article 353, Union government can give binding directions to the States to exercise their executive powers.
- After 44th Amendment Act, 1978, the President can suspend enforcement of all fundamental rights except Article 20 and 21. (Article 359)

Refer Page 23.3

11. (d)

- The proposal for the impeachment of the President has to be signed by not less than one-fourth of the total number of members

- The proposal seeking for a special session for approval of a proclamation of national emergency has to be signed by not less than one-tenth of the total number of members of the House of the People

Refer Page 23.4 and Chapter 11

12. (a)

- Strong Centre is non-federal in character.
- It would only come into play when emergency circumstances arise.
- During Financial Emergency, the President can ask the States to reserve their Money Bills for his/her consideration and not that of the Parliament (Article 360(4)).

Refer Page 23.9 and Chapter 2

13. (d)

- Effects of proclamation of Financial Emergency under Article 360 does not include suspension of fundamental rights.

Refer Page 23.9

14. (c)

- Non-compliance of State Governments to the directions of the Centre could lead to the President proclaiming a constitutional emergency.

Consequence:

- The President can assume all or any of the functions of the government of State.
- He/She can declare that the powers of State Legislature be exercised by the Parliament.

Refer Page 23.5

15. B

Refer Page 23.9

CHAPTER 24

Jammu and Kashmir

Learning Objectives

After reading this chapter, you will be able to:

- Understand issues related to integration of the State of Jammu and Kashmir with India
- Know the provisions of the Indian Constitution that will apply to Jammu and Kashmir on their own right
- Learn about the making of Jammu and Kashmir Constitution
- Learn Jammu and Kashmir constitution in comparison with the Indian Constitution
- Analyze the controversy relating to Article 35A and the need for continuing the special status to the Jammu and Kashmir

INTRODUCTION

Jammu and Kashmir has been formed as a part of the 'Territory of India' under Article 1 and included as the fifteenth State in the First Schedule of the constitution. In the original constitution, Jammu and Kashmir was specified as a 'Part B' State. However, the State was accorded a 'distinctive position' having regard to the circumstances in which the State acceded to India.

The Government of India had declared that it was the people of the State of Jammu and Kashmir were to finally determine the constitution of the State and the jurisdiction of the Union of India. Towards this, a Constituent Assembly of the State was to be formed. Hence, the applicability of the provisions of the constitution with respect to Jammu and Kashmir, were to be in the nature of an interim arrangement. This was incorporated as the substance of the provision embodied in Article 370 of the Constitution of India.

Although the States Reorganization Act, 1956, abolished the category of Part B States, the special constitutional position which Jammu and Kashmir enjoyed under the original constitution (Article 370) has been maintained. Hence, all the constitutional provisions relating to the States in the First Schedule are not applicable with respect to Jammu and Kashmir.

Jammu and Kashmir: Controversies

- Since independence Pakistan believes that Kashmir was to be part of Pakistan.
- People of Kashmir valley have very strong political aspirations relating to their regional identity.
- They fear losing the *Kashmiriyat* identity being part of India or Pakistan.

JAMMU AND KASHMIR: INTEGRATION WITH INDIA

To have a proper understanding of the ‘special status’ granted to the State, it is necessary to understand the development of the constitutional relationship of the State with India retrospectively.

Before Indian independence, Jammu and Kashmir was ruled by a hereditary Maharaja as a Princely State in British India. On the 26 October 1947, the state was attacked by Azad Kashmir Forces with the support of Pakistan. As a consequence, the Maharaja (Sir Hari Singh) was forced to seek the help of India and signed an Instrument of Accession. Consequently, India acquired the jurisdiction with respect to the subjects of ‘Defence, External Affairs and Communications’ of the State.

By the Accession the dominion of India acquired jurisdiction over the State with respect to the subjects of Defence, External Affairs and Communications. This is similar to the jurisdiction of the Government of India over other Indian States which survived as political units at the time of the making of the Constitution of India. Hence, the State of Jammu and Kashmir was included as a Part B State in the First Schedule of the Constitution of India, as it was promulgated in 1950.

Accession to India: Implications

It may be well understood that the ‘distinctive circumstances’ in which Jammu and Kashmir was acceded to India necessitates its ‘distinctive position’ in the constitution. However, the misconception and misinterpretation of this position requires due definition and description of the legal implications of the Accession of the State to India.

- The Instrument of Accession signed by Maharaja Hari Singh was in the same form as was executed by the rulers of several other Princely States which had acceded to India following the enactment of the Indian Independence Act, 1947. Hence, the legal consequences of the execution of the Instrument of Accession, by the ruler of Jammu and Kashmir, are not in any way different from the case of the other Indian States.
- Under Section 7(1) (b) of the Indian Independence Act, 1947, the paramountcy of the British over the Indian States lapsed. Hence, the Princely States had become absolutely sovereign and the rulers of the Indian States had the power to decide on acceding to either India or Pakistan.
- Therefore, by the Act of Accession the State of Jammu and Kashmir became a part of the territory of India ‘legally and irrevocably’. Also, the Instrument of Accession granted the jurisdiction with respect to those matters over Jammu and Kashmir, as contained in the Instrument of Accession.

In spite of this, the State was given ‘an assurance that the Accession or the constitutional relationship between India and the State would be subjected to confirmation by the people of the State by the Government of India’. This is an extralegal assurance given by the Government of India on a goodwill basis. Thus, the position makes it crystal clear that no third-party other can interfere, taking advantage that the legal procedure of the State acceding to India had not been completed.

ARTICLES OF THE CONSTITUTION: APPLICATION TO THE STATE OF THEIR OWN FORCE

When Indian Constitution was made in 1949, the grant of special status to Jammu and Kashmir was accommodated in the framework of that constitution. It is natural that the ‘distinctive position’ of the state has to be represented with necessary provisions in the constitution.

The Constituent Assembly unequivocally gave legal effect to the Act of Accession by declaring Jammu and Kashmir a part of the territory of India (Article 1). Hence, Article 1 of the Indian constitution applies to the State of its own force.

However, the application of the other provisions of the Constitution of India to Jammu and Kashmir was placed on a tentative basis, subjected to the eventual approval of the Constituent Assembly of the State.

Schedule 1

Entry 15: The territory which immediately before the commencement of the constitution was comprised in the Indian State of Jammu and Kashmir.

The constitution thus, provided that the only Articles of the Constitution which would apply of their own force to Jammu and Kashmir were —Articles 1 and 370. The application of the other articles was to be determined by the President in consultation with the Government of the State (Article 370).

According to Article 370 (1), the legislative powers of Parliament over the State is confined to those items of the Union and Concurrent Lists as correspond only to matters specified in the Instrument of Accession.

According to Article 370 (3), the President may, by public notification, declare that this article shall cease to be operative or shall be operative only with such exceptions and modifications and from such date as he may specify. However, the recommendation of the Constituent Assembly of the State shall be necessary before the President issues such a notification.

The Constitution Order

In 1950, the Constitution (Application to Jammu and Kashmir) Order was made by the President 1950 in consultation with the Government of the State of Jammu and Kashmir. As specified in the order the Parliament of India was vested with the power to enact laws relating to the three subjects of Defence, Foreign Affairs and Communications with respect to which Jammu and Kashmir.

Subsequently, in June, 1952 the Delhi Agreement was made between the Government of India and the Government of Jammu and Kashmir. The agreement dealt with the subjects over which the Indian Government should have jurisdiction over the State, while the decision of the Constituent Assembly of Jammu and Kashmir was pending.

In 1954, the Constituent Assembly of Jammu and Kashmir ratified both the Accession to India and the decision made in the Delhi Agreement regarding the future relationship with India. As a sequel the Constitution (Application to Jammu and Kashmir) Order, 1954 was made by the President, in consultation with the State Government. This order came into force on the 14 May 1954.

On being ratified by the Constituent Assembly, the order implemented the Delhi Agreement and also superseded the order of 1950. According to this order, the jurisdiction of the union extended to all union subjects under the Constitution of India (subjected to certain slight alterations) instead of only the three subjects of Defence, Foreign Affairs and Communications with respect to which the State had acceded to India in 1947.

This order, as amended in 1963, 1964, 1965, 1966, 1972, 1974 and 1986, deals with the entire constitutional position of the State within the framework of the Constitution of India, excepting only the internal constitution of the State Government, which was to be framed by the Constituent Assembly of the State.

MAKING OF THE STATE CONSTITUTION

The Constituent Assembly of the State was elected and first met on 31 October 1951. The Constituent Assembly enacted the first official act that brought the hereditary rule of the Maharaja to an end.

Subsequently, the Maharaja invited Sheikh Mohammad Abdullah, President of the All Jammu and Kashmir National Conference, to form an interim Government, and to carry on the administration of the State which later became the full-fledged Cabinet, with Sheikh Abdullah as the first Prime Minister.

The Jammu and Kashmir Cabinet demanded Maharaja Hari Singh to step down. Maharaja Hari Singh abdicated throne in June 1949 and his son Yuvaraj Karan Singh was elected as the 'Sadar-i-Riyasat' by the Constituent Assembly of the State. Thus, the head of the State was henceforth to be an elected person.

Major Separatist Parties and Leaders of Jammu and Kashmir

Peoples Conference	Abdul Ghani Lone
Jamat-e-Islami	Syed Ali Shah Geelani
Awami Action Committee	Mirwaiz Umar Farooq
People's League	Sheikh Yaqoob
Itehad-ul-Muslimeen	Mohammad Abbas Ansari
Muslim Conference	Mohammad Abbas Ansari
Jammu Kashmir Liberation Front (JKLF)	Yasin Malik
Jammu Kashmir National Front (JKNF)	Nayeem Ahmad Khan

In November, 1951, the Jammu and Kashmir Constitution (Amendment) Act was enacted. The Act recognized to the transfer of power from the hereditary Maharaja to the popular government headed by an elected Sadar-i-Riyasat.

In November 1952, the President made a Declaration under Article 370 (3) accepting the position. Thus, the 'Government' of the State of Jammu and Kashmir came to mean the Sadar-i- Riyasat of Jammu and Kashmir, acting on the advice of the Council of Ministers of the State. Subsequently the name of Sadar-i-Riyasat has been changed to that of Governor.

The Constituent Assembly appointed committees to make different aspects of the constitution. The Drafting Committee presented the Draft Constitution in October 1956. After due discussion, it was finally adopted on 17 November 1957. It came into force on 26 January 1957. Thus, the State of Jammu and Kashmir became the only State to have a separate constitution for its administration instead of being administered by the provisions of Part VI of the Constitution of India.

Important Provisions of the State Constitution

- The constitution declares that the State of Jammu and Kashmir is 'an integral part of Union of India'.
- The composition of territory of the State will include all the territories, which, on 15 August 1947, were under the sovereignty or suzerainty of the Ruler of the State (i.e., including the Pakistan occupied area of Jammu and Kashmir). And this feature cannot be amended.
- The executive and legislative power of the State will extend to all matters except those with respect to which Parliament has powers to make laws for the State under the provisions of the Constitution of India.
- In other states, the head of the State executive was called 'Governor' and he is appointed by the President (Articles 152 and 155), but the executive head of the State of Jammu and Kashmir was called Sadar-i-Riyasat (Governor) and he was to be elected by the State Legislative Assembly.
- However, the executive power of the State will be vested in the Governor and shall be exercised by him with the advice of the Council of Ministers. But the Governor does not have the power to
 - (a) appoint the Chief Minister
 - (b) issuing a proclamation for introducing 'Governor's Rule' in case of breakdown of constitutional machinery
- The Governor will hold office for a term of five years. The Council of Ministers, headed by the Chief Minister, will be collectively responsible to the Legislative Assembly.
- The high court of the State will consist of a Chief Justice and two or more other judges. Every Judge of the high court will be appointed by the President after consultation with the Chief Justice of India and the Governor, and in the case of appointment of a judge other than the Chief Justice, the Chief Justice of the high court.

- The official language of the State will be Urdu, but English will, unless the Legislature by law otherwise provides, continue to be used for all official purposes of the State(s) (145.)
- The State Constitution may be amended by introducing a bill in the Legislative Assembly and getting it passed in each House by a majority of not less than two-thirds of the total membership of that House. But the following provisions cannot be amended:
 - The Relationship of Jammu and Kashmir with the union Government
 - The extent of executive powers of the State
 - The extent of legislative powers of the State
 - The provisions of the Constitution of India as applicable in relation to the State

Indira-Abdullah Agreement of 1975

Notwithstanding the liberal measures introduced in the State by the adoption of a separate State Constitution the pro-Pakistani elements ('Plebiscite front') in Jammu and Kashmir resorted to protest and agitated a plebiscite to determine whether the State should accede to India or Pakistan. The leader of that front, Sheikh Abdullah got involved in these anti-Indian movements and continued acts against the Indian policy towards the State. After phased negotiations, an agreement was eventually reached on 24 February 1975 and the demand for plebiscite was abandoned by Abdullah and his followers and, on the other hand, it was agreed that the special status of the State of Jammu and Kashmir would continue to remain under the provisions of Article 370 of the Constitution of India. However, owing to differences over matters arising out of the agreement, it has not been implemented by issuing a fresh Presidential Order under Article 370.

THE CONSTITUTIONAL POSITION OF JAMMU AND KASHMIR VIS-A-VIS THE UNION

(a) Jurisdiction of Parliament

- The jurisdiction of Parliament in relation to Jammu and Kashmir shall be confined to the matters enumerated in the Union List, and the Concurrent List, subjected to certain modifications, while it shall have no jurisdiction as regards most of the matters enumerated in the Concurrent List.
- While in relation to the other States, the residuary power of legislation belongs to Parliament, in the case of Jammu and Kashmir, the residuary power shall belong to the legislature of that State, excepting certain matters, specified in 1969, for which Parliament shall have exclusive power, e.g., prevention of activities relating to cession or secession, or disrupting the sovereignty or integrity of India.
- The power to legislate with respect to preventive detention in Jammu and Kashmir, under Article 22(7), shall belong to the legislature of the State instead of Parliament, so that no law of preventive detention made by Parliament will extend to that State.
- By the Constitution (Application to Jammu and Kashmir) Order, 1986, however, Article 249 has been extended to the State of Jammu and Kashmir, so that it would now be competent to extend the jurisdiction of Parliament to that State, in the national interest (e.g., for the protection of the borders of the State from aggression from Pakistan or China), by passing a resolution in the Council of States (Constitution Order, 129).

Why do Kashmiris Fear?

People of Kashmir are not satisfied with the autonomy conferred by Article 370 because:

- Post tribal invasion in 1947 promises were not fulfilled. The promise of 'Plebiscite' not fulfilled.
- The special privileges granted by Article 370 have been continuously eroded.

(b) Autonomy of the State in certain matters

The Parliament cannot make any law without the consent of the legislature of the State of Jammu and Kashmir, where that State is to be affected by such legislation, e.g., (i) alteration of the name or territories of the State (Article 3), (ii) international treaty or agreement affecting the disposition of any part of the territory of the State (Article 253).

(c) To safeguard the autonomy of the State of Jammu and Kashmir

- No decision affecting the disposition of the State can be made by the Government of India, without the consent of the Government of the State.
- The union shall have no power to suspend the Constitution of the State on the ground of failure to comply with the directions given by union under Article 365.
- According to the Amendment Order of 1964, Articles 356–357 relating to constitutional emergency have been extended to Jammu and Kashmir.

Dr Charu Wali Khanna versus Union of India

- In this case the constitutional validity of Article 35A is challenged on the grounds that:
 - (a) It was inserted by the Presidential Order into Part III: Fundamental Rights
 - (b) It is conflicting with Article 14: The right to equality
- It also challenges Article 6 of the Jammu and Kashmir Constitution.

But failure of the constitutional machinery refers to the definition of 'failure' by the Constitution of Jammu and Kashmir and not Part VI of the Constitution of India. In Jammu and Kashmir two types of proclamations are made:

- The 'Governor's Rule' under Section 92 of the Constitution of Jammu and Kashmir.
- The 'Presidents Rule' under Article 356 as in the case of other States.
- Governor's Rule is provided by the State Constitution. In exercise of this power the Governor has the power, with the concurrence of the President, to assume to himself all or any of the functions of the Government of the State, except those of the high court.
- With respect to the State of Jammu and Kashmir, the union shall have no power to make a proclamation of Financial Emergency under Article 360.

(d) Fundamental Rights and the Directive Principles

- The Directive Principles of State Policy (Part IV of Constitution of India) do not apply to the State of Jammu and Kashmir.
- Article 35A confers special rights as regards employment, acquisition of property and settlement on 'permanent residents' of the State.
- The fundamental right to property is still guaranteed in this State as the Articles 19(1)(f) and 31(2) still holds good here.

(e) Separate constitution for the State.

The State of Jammu and Kashmir has its own constitution (made by a separate Constituent Assembly and promulgated in 1957).

(f) Procedure for Amendment of State Constitution.

While an Act of Parliament is required for the amendment of any of the provisions of the Constitution of India, the provisions of the State Constitution of Jammu and Kashmir (excepting those relating to the relationship of the State with the Union of India) may be amended by an Act of the Legislative Assembly of the State, passed by a majority of not less than two-thirds of its membership; but if such amendment seeks to affects the Governor or the Election Commission, it shall have no effects unless the law is reserved for the consideration of the President and receives his assent.

According to Article 370(1), no amendment of the Constitution of India shall extend to Jammu and Kashmir unless it is extended by an Order of the President in that regard.

- (g)** No alteration of the area or boundaries of this State can be made by Parliament without the consent of the legislature of the State of Jammu and Kashmir.

(h) Other jurisdictions

The jurisdictions of the Comptroller and Auditor General, of the Election Commission, and the Special Leave Jurisdiction of the Supreme Court have been extended to the State of Jammu and Kashmir, by amendments of the Constitution Order.

Article 35A Controversy

The present controversy relating to the Article 35A is around the meaning of the term 'permanent residents' and the special rights enjoyed by them in the State. The term 'permanent residents' of the State was first defined, by the order of the Dogra Ruler, in 1927 and reiterated in 1932. According to the order 'all persons born or settled within the state before 1911 or after having lawfully acquired immovable property resident in the state for not less than ten years prior to that date. All emigrants from Jammu and Kashmir, including those who migrated to Pakistan, are considered state subjects. The descendants of emigrants are considered state subjects for two generations.

The Constitution of Jammu and Kashmir framed in 1956 retained the same definition. According to the law enacted by the Jammu and Kashmir legislature later, a non-permanent resident is prohibited from settling in the State, acquiring immovable property and are not eligible for government jobs. Later Article 35A was inserted after Article 35 in Part III (Fundamental Rights) by the Constitution (Application to Jammu and Kashmir) Order, 1954.

Article 370 provides that any other provisions of the constitution than Articles 1 and 370 shall apply to Jammu and Kashmir with such exceptions specified in the order passed by the President. Accordingly, after Article 35, the new Article 35A was added.

Article 35A provides that any existing law or any law enacted by the Jammu and Kashmir legislature relating to defining the status of permanent resident of the State and conferring certain rights on them shall not be void on the ground of being inconsistent with the fundamental rights. It also empowers the State legislature to impose certain restrictions on the rights of the other persons (those who are not permanent residents of the State according to the law) in respect of:

- Employment under the State Government
- Acquisition of immovable property in the State
- Settlement in the State
- Right to scholarships and such other forms of aid as the State Government may provide.

It is clear that this is a reiteration of the Maharaja's order. The constitutionality of this provision has been challenged in the Supreme Court on the grounds that:

- It was not inserted by a constitutional amendment under Article 368.
- It was not enacted by the Parliament which is empowered to amend the constitution.
- Article 370 was provided as a 'temporary provision' to bring normality in Jammu and Kashmir and strengthen democracy. It was never intended to bring permanent amendments to the constitution.
- It is discriminatory in nature. It prohibits the Kashmiri woman who marries a non-Kashmiri male loses her succession rights (right to inherit properties). After the 2002 Jammu and Kashmir High Court judgement, the rights of such women were restored. However, the children of such women will not enjoy succession rights. It is a clear infringement of the fundamental rights guaranteed by Article 14.

SHOULD THE SPECIAL STATUS FOR JAMMU AND KASHMIR CONTINUE?

As a sequel to the above debate, continuance of Article 370 which grants special status to the State is also questioned. There have been demands for abrogating the provision. The arguments placed for abrogating Article 370 are:

1. It was expected to be a temporary provision and there is no reason for the continuance of the provision

2. The special status was accorded to the State in 1947 due to the political situation after partition and the political turmoil created by the tribal insurgency with the Pakistani support. It was therefore, required for the special status to restore normalcy and strengthen democracy. But at present there is no need for the provision.
3. Initially there was a fear that the demographic constitution of the State could be manipulated by encouraging the non-Muslim settlements. However, any such eventuality has not happened and so the provision can be abrogated.
4. Also, the State has a government elected by popular vote conducted within the provisions of the constitution.

Special Status Challenged

- Ashwini Kumar Upadhyay filed a Public Interest Litigation (PIL) challenging constitutional validity of Article 370 and the continuance of special status to the State of Jammu and Kashmir.
- It is challenged on the ground that it is against "supremacy of the Constitution of India and contrary to dictum of 'One Nation, One Constitution, One National Anthem and One National Flag'.

On the other hand, there are certain important arguments for the continuance of the provisions.

The situation in Jammu and Kashmir has been relatively normal than at the time of independence the State has been infected by cross-border terrorism for a considerable length of time. This requires governing the state with difference in order to gain the confidence of the people and prevent the spread of terrorism to other parts of the State—Jammu and Ladakh.

After 1949, a considerable part of the State has been occupied by Pakistan which aggressed on the State in 1947. Since then the issue remains unsettled and has been referred to the United Nations Organization (UNO). This is clearly an abnormal situation that has to be handled appropriately. The issue coupled with the cross-border terrorism creates the abnormality that requires the special status to the State.

However, the present state of affairs cannot continue for an indefinite period. The 'temporary' provisions need to be removed. The governance of the State has to be improved for that to happen.

Practice Questions

1. Consider the following statements

1. Jammu and Kashmir was incorporated as 'territory of India' under Article 1 by the State Reorganization Act 1956.
2. State was accorded a 'distinctive position' due to the nature of its accession to India.

Correct statements are:

- (a) 1 only
- (b) 2 only
- (c) Both 1 and 2
- (d) Neither 1 nor 2

2. Which of the following statements is NOT correct?

- (a) Jammu and Kashmir was included as the fifteenth State in the First Schedule of the Indian Constitution.
- (b) The applicability of the provisions of the Constitution with respect to Jammu and Kashmir is embodied in Article 370 of the Constitution of India.
- (c) An amendment to the Indian Constitution under Article 368 conferred the special position for Jammu and Kashmir under Article 370.
- (d) All the constitutional provisions relating to the States in the First Schedule are not applicable with respect to Jammu and Kashmir

3. Which of the following States has 'Urdu' as its official language?

- (a) Bihar
- (b) Jammu and Kashmir
- (c) Madhya Pradesh
- (d) Rajasthan

4. Consider the following statements:

1. Jammu and Kashmir was a princely state that became part of Indian Union by signing the Instrument of Accession.
2. India acquired the jurisdiction with respect to the subjects of Defence, External Affairs and Communications of the State in 1950.
3. Jammu and Kashmir was included as a Part B State in the First Schedule of the Constitution of India.

Which of the following statements is/are correct?

- (a) 1 and 2 only
- (b) 2 and 3 only
- (c) 1 and 3 only
- (d) 1, 2 and 3

5. Assertion: The application of other provisions of the Constitution of India to Jammu and Kashmir was subjected to the approval of the Constituent Assembly of the State.

Reason: The Indian Constitution made in 1949 granted that special status to JandK after signing the Instrument of Accession.

- (a) Both A and R are true and R is the correct explanation for A.
- (b) Both A and R are true but R is not the correct explanation for A.
- (c) A is true and R is false.
- (d) A is false and R is true.

6. Consider the following statements:

1. The constitution provided that only Articles 1 and 370 of the Constitution would apply to Jammu and Kashmir.
2. The application of the other articles was to be determined by the President in consultation with the Government of the State.

Correct statements:

- (a) 1 only
- (b) 2 only
- (c) Both 1 and 2
- (d) Neither 1 nor 2

7. Consider the following statements:

1. According to Article 370 (1), the legislative powers of Parliament over the State is confined to those items of the Union and Concurrent Lists as correspond only to matters specified in the Instrument of Accession.
2. According to Article 370 (3), the President may, by public notification, declare that this article shall cease to be operative or shall be operative only with such exceptions and modifications.

3. The recommendation of the Constituent Assembly of the State shall be necessary before the President issues such a notification

Correct statements:

- (a) 1 and 2 only
- (b) 2 and 3 only
- (c) 1 and 3 only
- (d) 1, 2 and 3

8. Match

List I

- A. President's Order 1950
- B. Delhi Agreement
- C. Instrument of Accession
- D. State Reorganisation Act, 1956

List II

1. Power of Parliament to legislate on three subjects – Defence, External affairs and Communication
2. Extension of jurisdiction of Union to all union subjects under the Constitution of India
3. Accession of JandK to Indian Union after enactment of Indian Independence Act, 1947
4. Abolition of category of Part B states

A	B	C	D
(a) 1	2	3	4
(b) 2	1	3	4
(c) 1	2	4	3
(d) 4	3	2	1

9. Consider the following:

1. Governor of JandK is appointed by the President
2. The advice of Council of Ministers is required in the matters of appointment of the Chief Minister and proclamation of Governor's Rule.

Correct statements

- (a) 1 only
- (b) 2 only
- (c) Both 1 and 2
- (d) Neither 1 nor 2

10. Identify the INCORRECT statement

- (a) The Governor of JandK is elected by the State Legislative Assembly.

- (b) JandK High Court will consist of a Chief Justice and two or more other judges who will be appointed by the President.

- (c) An amendment to the State Constitution requires a Bill to be passed with a majority of not less than two-thirds of the membership present and voting.
- (d) Official language of the State will be Urdu and English shall continue to be used for all official purposes of the State(s).

11. Which of the following about the jurisdiction of Parliament in Jammu and Kashmir is Correct?

- (a) The residuary power shall belong to the legislature of that State, excepting certain matters, specified in 1969.
- (b) Jurisdiction of Parliament shall be confined to the matters enumerated in the Union List, and the Concurrent List, subjected to certain modifications.
- (c) The power to legislate with respect to preventive detention in Jammu and Kashmir, under Article 22(7), shall belong to the legislature of the State.
- (d) All statements are correct.

12. Which of the following statements is Incorrect?

- (a) The Parliament requires the consent of the State legislature of JandK for effecting a law regarding international treaty or agreement under Article 253.
- (b) The Union cannot impose the President's Rule under Article 356.
- (c) The Directive Principles of State Policy (Part IV of Constitution of India) do not apply to the State of Jammu and Kashmir.
- (d) Article 35A confers special rights as regards employment, acquisition of property and settlement on 'permanent residents' of the State.

13. Which of the following provisions is/are applicable to the State of Jammu and Kashmir?

1. Fundamental Rights under Part III including the Right to property.
2. Proclamation of Financial Emergency under Article 360.
3. Proclamation of President's Rule under Article 356.
4. Jurisdiction of Election Commission and Special Leave of Supreme Court

Correct answer:

- (a) 1 and 2 only
- (b) 1, 2 and 3 only
- (c) 1, 3 and 4 only
- (d) 1, 2, 3 and 4

14. Identify the CORRECT statements:

1. No amendment of the Constitution of India shall extend to Jammu and Kashmir except by an order of the President in that regard.
2. No alteration of the area or boundaries of this State can be made by Parliament without the consent of the legislature of the State of Jammu and Kashmir.
 - (a) 1 only
 - (b) 2 only
 - (c) Both 1 and 2
 - (d) Neither 1 nor 2

15. Article 35A confers special rights on the permanent resident of the State. Such rights include:

1. Employment under the State Government
2. Acquisition of immovable property in the State
3. Settlement in the State
4. Right to scholarships

Correct Statements:

- (a) 1, 2 and 3 only
- (b) 2, 3 and 4 only
- (c) 1, 3 and 4 only
- (d) 1, 2, 3 and 4

Answer Key

-
- 1.** (b), **2.** (c), **3.** (b), **4.** (d), **5.** (a), **6.** (c), **7.** (d), **8.** (a), **9.** (d), **10.** (c),
 - 11.** (d), **12.** (b), **13.** (c), **14.** (c), **15.** (d)

Hints and Explanations

1. (b)

- Jammu and Kashmir was incorporated as 'territory of India' under Article 1 as a Part B state in the original Constitution.

Refer Page 24.1

2. (c)

- The special position conferred to JandK was made available in the original Constitution itself.

Refer Page 24.1

3. (b)

Refer Page 24.5

4. (d)

Refer Page 24.2

5. (a)

Refer Page 24.2

6. (c)

Refer Page 24.3

7. (d)

Refer Page 24.3

8. (a)

Refer Page 24.3

9. (d)

- Governor of JandK is elected by the State legislative assembly.

- The advice of Council of Ministers is not required in the matters of appointment of the Chief Minister and proclamation of Governor's Rule.

Refer Page 24.4

10. (c)

- An amendment to the State Constitution requires a Bill to be passed with a majority of two-thirds of total membership.

Refer Page 24.4

11. (d)

Refer Page 24.5

12. (b)

- Article 356 has been extended to JandK through an amendment order of 1964.

Refer Page 24.6

13. (c)

- The Union does not have the power to make proclamation of financial emergency.

Refer Page 24.6

14. (c)

Refer Page 24.6

15. (d)

Refer Page 24.7

CHAPTER 25

Constitutional Offices and Important Terminologies

Learning Objectives

After reading this chapter, you will be able to:

- Know the important Constitutional offices, their powers, duties and functions
- Compare the office of Attorney General and Advocate General
- Understand the functions of Interstate Council and Zonal Council
- Explain the functions of National Commission for Backward Classes, SCs and STs
- Understand the concept of Alternative Dispute Redressal and Administrative Tribunals
- Learn various Important Terminologies

ATTORNEY GENERAL (ARTICLE 76)

The Attorney General is the highest law officer of the Government of India. He is appointed by the President and holds office during the pleasure of the President.

The person to be appointed as the Attorney General must be qualified to be appointed as a judge of the Supreme Court. He shall receive a consolidated sum as remuneration as fixed by the President.

Duties of the Attorney General

To give advice to the Government of India on legal matters referred to him.

- (a) To perform such other functions of a legal character as may be assigned to him by the President.
- (b) To discharge the functions conferred on him by the constitution or any other enactment (Article 76(2)).

The Attorney General generally appears on behalf of the government in the Supreme Court. He may also be required to appear on behalf of the Government of India in any high court.

Solicitor General

- He is appointed to assist the Attorney General.
- Additional Solicitors General of India are appointed to assist the Solicitor General.
- Solicitor General advises the government on legal matters and appear before the courts on behalf of the government.
- While Attorney General and Advocate General are constitutional offices, Solicitor General is a statutory office.

Since the number of cases in which the Government of India is a party is very large, he cannot appear in all the cases. There are Solicitor General of India and a number of additional Solicitor Generals to assist him and to appear for the Government of India. The Attorney General shall not:

- (a) Advice nor hold brief against the Government of India in any case in which he has been called upon to advise the government.
- (b) Defend accused persons and cannot take appointment as a director in any company.

Right of the Attorney General

In the performance of his duties the Attorney General has a right to:

- (a) Audience in all courts in the territory of India.
- (b) Speak and take part in the proceedings of the Lok Sabha, Rajya Sabha or any joint sitting of the Houses and any committee of the Parliament (Article 88). He is the only officer who is allowed by the constitution⁽¹⁾, to participate in the meetings of the Parliament. But he does not have the right to vote in the House.

ADVOCATE GENERAL FOR THE STATE (ARTICLE 165)

There is an Advocate General for each state similar to the office of the Attorney General of India. He shall be appointed by the Governor of the state and shall hold office during the pleasure of the Governor (Article 165). To be appointed as Advocate General a person must be qualified to be judge of a high court.

He receives such remuneration as the Governor may determine. He shall have the right to speak and take part in the proceedings of, but no right to vote in, the Houses of the legislature of the State (Article 177). He is the first law officer of the State and performs the similar as the Attorney General performs in respect of the Union government.

¹ The CAGI can also take part in the proceedings of the Houses of Parliament if required by the House.

OFFICE OF ATTORNEY GENERAL AND ADVOCATE GENERAL: A COMPARISON

Bases	Attorney General (Article 76)	Advocate General (Article 165)
Appointment	President	Governor
Role	Law officer of Union	Law officer of State
Duty	To give advice to Union government upon legal matters, and to perform other duties of a legal character	To give advice to State government upon legal matters, and to perform other duties of a legal character
Tenure	During the pleasure of President	During the pleasure of Governor
Qualification	Qualified to appointed as a judge of Supreme Court	Qualified to appointed as a judge of high court
Salary	Fixed by President	Fixed by Governor
Legislative Role	Take part in the proceedings of Parliament, speak but no voting rights	Take part in the proceedings of legislature, speak but no voting rights
Special Rights	Right to audience in all courts in India	No such right

COMPTROLLER AND AUDITOR GENERAL OF INDIA (CAGI): ARTICLES 148–151

The CAGI is known as the custodian of public purse (financial system). He is the head of the audit and account system of India. The CAGI maintains the accounts of the State governments and audits the financial transactions of the government of the Union and the States. He submits the audit report to the President and he causes the reports to be laid before the Lok Sabha and Rajya Sabha (Article 151). According to Article 279, the CAGI has the powers to certify the ‘net proceeds’ of the taxes or duty ‘attributable to any area’.

‘Student Intern Program’ (SIP)

- Office of the CAGI organizes the SIP to provide a unique learning opportunity to students.
- SIP gives them exposure to the functioning of the CAG and the Indian Audit and Accounts Department.
- The SIP will be of 2 to 3 month’s duration.

Term of Office and Removal

The CAGI holds office for a term of six years from the date on which he enters upon office or 65 years of age whichever is earlier. He is removed on the like grounds and in the like manner as a judge of Supreme Court is removed. He is removed by the process of impeachment.

Conditions of Service and Independence

- CAGI is appointed by the President by a warrant under his hand and seal.
- CAGI can be removed by the President only on an address from both Houses of Parliament, on the grounds of proved misbehaviour or incapacity.

- His salary and conditions of service shall be determined by the law of the Parliament. The salary and conditions of service cannot be reduced or changed to his disadvantage during his term of office.
- The term of office of the CAGI shall be six years from the date on which he assumes office or 65 years of age, whichever is earlier.
- He may at any time resign from his office by writing under his hand to the President of India (Article 148(1)).
- After retirement he shall be disqualified for any other Government ‘office’.
- The salaries, etc., of the CAGI and his staff and the administrative expenses shall be charged upon the consolidated fund of India and shall this be non-votable (Article 148).

Young Professionals Program (YPP)

- Office of the CAGI organizes the YPP with the objective of bringing young professionals to work on important initiatives within the CAG office and the Indian Audit and Accounts Department.
- It also aims at mentoring the young generation of future leaders.

Duties

Article 149 provides for the duties and powers of the CAGI. According to the constitution, the Parliament is to determine the ‘duties and powers’ of the Auditor General by law. Accordingly, the Parliament has enacted the CAGI (Duties, Powers and Conditions of Services) Act. According to the Act, the CAGI is:

1. To audit and report on all expenditure from the Consolidated Fund of India and of each State and each Union Territory having a legislative assembly as to whether such expenditure has been in accordance with the law.
2. To audit and report on all expenditure from the Contingency Fund of India and of the states.
3. To audit and report on all trading, manufacturing, profit and loss accounts, etc., kept by any department of the Union or a state.
4. To audit the receipts and expenditure of the Union and of each state to satisfy himself that the rules and procedures in that behalf are designed to secure an effective check on the assessment, collection and proper allocation of revenue.
5. To audit and report on the receipts and expenditure of:
 - (a) All local bodies and authorities ‘substantially financed’ from the Union or State revenues.
 - (b) Government companies and other corporations or bodies, when so required by the laws relating to such corporations or bodies.
 In performing the above duties, the CAG conducts:
 - (i) Audit against provision of funds
 - (ii) Regularity audit
 - (iii) Propriety audit
 - (iv) Efficiency-cum-performance audit and
 - (v) Systems audit

Audit Advisory Board

- Constituted to provide suggestions on matters relating to audit, including coverage, scope and prioritization of audits.
- It also suggests regarding audit approaches and techniques.
- The members of the Audit Advisory Board will function in an honorary capacity.
- The CAGI is the *ex officio* Chairman of the Board

Audit Against Provision of Funds

It is the audit to check whether the money spent was legally granted and sanctioned by the Parliament for the purpose for which it was spent.

Regularity Audit

It is the audit to check whether the expenditure was sanctioned by the appropriate authority. Also, it checks whether the person who sanctioned the expenditure was the appropriate authority under law.

Propriety Audit

It is the audit to check whether the principles of economy are followed while spending the money. The propriety audit confers upon the CAG the power of discretionary audit. It checks the 'wisdom, faithfulness and economy' in the expenditure made. The first ever case in which the CAGI applied his discretionary audit is the Bofor's kickback case.

Efficiency-cum-performance Audit

It appraises the implementation of the development programmes. The audit assesses to what extent the social and economic objectives of the programmes within the sanctioned cost.

Systems Audit

It assesses the systems and processes that govern the authorization of accounting, the control systems, the quality standards and audits the performance.

Important questions from Previous years' on this topics are mentioned below:

Exercise of CAG's powers in relation to the accounts of the Union and the States is derived from Article 149 of the Indian Constitution. Discuss whether audit of the government's policy implementation could amount to overstepping its own (CAG) jurisdiction.

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From the propriety audit, efficiency-cum-performance audit and the systems audit the CAGI gets the authority to audit the performance and to conduct 'value for money' audit. However, it is well known that the CAGI shall not scrutinize the policy matters and principles of the expenditure as they are already approved by the Parliament. But the CAGI (Duties, Powers and Conditions of Services) Act has not explicitly prohibiting the CAGI from scrutinizing them. While checking for the performance and ensuring value for money the CAGI eventually ends up checking the policy of the department.

There are two views prevailing on this. One section is of the view that, the CAGI is overstepping his jurisdiction and encroaches on the domain of the executive and the legislature. For instance, the CAGI declared the 'presumed loss' caused to the State in the Spectrum 2G auctions by following the policy formulated in 2001. This is considered as the overstepping of the CAGI. Earlier in 1999, when the CAGI questioned the purchase of the coffins for the Kargil soldiers also it was criticized that the CAG overstepped the jurisdiction by scrutinizing the charged expenditure. Similarly, in the coal mine allocation the CAG released the highlights of his report to press immediately after submitting the report to President. It was criticized because the report has not been tabled in the Parliament.

On the other hand, this is more viewed as an eventual consequence and cannot be considered as overstepping the jurisdiction. In the era of Good Governance, transparency, accountability and value for taxpayer's money are to be ensured by the CAGI. It is an accepted principle that it is the duty of the CAGI is to ensure that not even a rupee of the public money is wasted. In the process it is inevitable that the CAGI steps into the policy issues.

FINANCE COMMISSION (ARTICLE 280)

Article 280 provides for the constitution of a Finance Commission. The commission is constituted every five years. It is a constitutional obligation on the President to constitute a Finance Commission at the expiry of every five years. Therefore, even if the Council of Ministers did not advise him or advised him not to constitute a Finance Commission, the President must constitute the commission.

Finance Commission submits its report to the President. Till date fourteen Finance Commissions have been appointed. The Fourteenth Finance Commission has been appointed in 2013 with Shri Y. V. Reddy as Chairman.

Constitutional Provisions relating to Financial Imbalances

1. Article 268: Levy of duties by the Centre but collected and retained by the States
2. Article 269: Taxes and duties levied and collected by the Centre but assigned in whole to the States.
3. Article 270: Sharing of the proceeds of all Union taxes between the Centre and the States.
4. Article 275: Statutory grants-in-aid of the revenues of States
5. Article 282: Grants for any public purpose
6. Loans for any public purpose (Article 293).

Composition and Appointment

The commission consists of a Chairman and four other members to be appointed by the President. Parliament has under Article 280 (2) enacted a law prescribing the qualifications for appointment as members of the commission. Accordingly, the Finance Commission (Miscellaneous Provisions) Act, 1951 has been enacted. The Act provides that the Chairman shall be a person who has experience in public affairs. The other four members shall be selected from among persons who:

1. Qualified to be a high court judge or a sitting judge or retired judge of a high court or;
2. Have special knowledge of the finance and accounts of the government or;
3. Have wide experience in financial matters and in administration or;
4. Have special knowledge of economics.

The members continue to hold office for the period specified in the Presidential Order. The members can be reappointed to the commission. The commission is vested with the powers of a civil court in respect of summoning and enforcing the attendance of witnesses, production of documents, etc.

Connect

- Concept of overall ceiling on total Central transfers to States was first fixed by the 11th Finance Commission
- Constitution provided for the sharing of only two Central taxes with States namely Income tax and Union Excise
- 80th amendment, 2000 provided for sharing of the proceeds of all Union taxes and duties with the States

Duties

The duty of the commission is provided in Article 280 (3). Accordingly, the commission makes recommendations to the President as to:

- (a) The distribution of 'net proceeds' taxes between the Union and the States and allocation of shares of such proceeds between the States.
- (b) The principles which should govern the grants-in-aid to be given to the States by the Union.
- (c) Measures to increase the finances of the State so that the funds of the *Panchayats* in the State may be supplemented on the basis of the recommendations made by the State Finance Commission.

- (d) Measures to increase the finances of the State so that the funds of the municipalities in the State may be supplemented on the basis of the recommendations made by the State Finance Commission.
- (e) Any other matter that may be referred by the President.

The recommendations of the Finance Commission and an explanatory memorandum showing the action taken on it are laid before the Houses of the Parliament.

INTERSTATE COUNCIL

Article 263 provides for the appointment of an Interstate Council. The constitution does not provide for a permanent Interstate council. The President has the power to appoint an Interstate Council at any time when he deems necessary to serve the public interest.

The Council is a recommendatory body. The Council may be charged with the duty of:

- (a) Inquiring into and advising upon disputes between States.
- (b) Investigating and discussing subjects a common interest to the States and the Union.
- (c) Making recommendations for the better coordination of policy and action.

The Interstate Council was set-up by the Presidential Order dated 28 May 1990. The present composition of the Council is as follows:

- Prime Minister as the Chairman
- Chief Ministers of all States members
- Chief Ministers of Union Territories having a Legislative Assembly and administrators of UTs not having a Legislative Assembly and Governors of States under President's Rule (Governor's Rule in the case of Jammu and Kashmir) Members
- Six Ministers of Cabinet rank in the Union Council of Ministers to be nominated by the Prime Minister Members
- Other Ministers of Cabinet rank as Permanent invitees members

An Interstate Council Secretariat is set-up under the Ministry of Home Affairs. The Secretariat is responsible for organizing the meetings of Interstate Council, Zonal Council and North-Eastern Council meetings.

Interstate Council Reconstituted

- Interstate Council has been reconstituted with Prime Minister Narendra Modi as its chairman and six Union ministers and all chief ministers as members.
- The Union ministers who will be members of the reconstituted council are Rajnath Singh (Home), Sushma Swaraj (External Affairs), Arun Jaitley (Finance), Nitin Gadkari (Road Transport), Thaawar Chand Gehlot (Social Justice and Empowerment) and Nirmala Sitharaman (Defence).
- Eight other Union ministers have been made permanent invitees to the council. They are Suresh Prabhu (Commerce), Ramvilas Paswan (Food), Harsimrat Kaur Badal (Food Processing Industries), Jual Oram (Tribal Affairs), Prakash Javadekar (HRD), Dharmendra Pradhan (Petroleum) and Piyush Goyal (Railway).

2 The number of invitees is not mentioned in the original order made by the President. It is left to the discretion of the Prime Minister who is the chairman of the council. Usually there are five permanent invitees. In the year 2016 the number was 11.

Eleventh Meeting

After the establishment in 1990, the 11 meetings of the council have taken place. The Eleventh meeting is latest meeting conducted. In the 11th meeting held in July 2016, the following were discussed:

- (a) Consideration of the recommendations of the Punchhi Commission on Centre–State relations.
- (b) Use of Aadhaar as an identifier and use of DBT for providing subsidies, benefits and public services.
- (c) Improving quality of school education with focus on improving learning outcomes, incentivizing better performance, etc
- (d) Internal security with focus on intelligence sharing and coordination for combating terrorism/insurgency, police reforms and police modernization.

Standing Committee: Interstate Council

The Sarkaria Commission on the Centre–State relation recommended the setting up of the Standing Committee of the Council

Functions

- (a) To monitor the implementation of decisions taken on the recommendations of the Council
- (b) To process all matters relating to Centre–State relations before they are taken-up for consideration in the Interstate Council.
- (c) To consider any other matter referred to it by the Chairman/Interstate Council.

ZONAL COUNCILS

Zonal Councils have been established by the States Reorganization in Act, 1956 to advice on matters of common interest to each of the five zones into which the territory of India has been divided—Northern, Southern, Eastern, Western and Central.

It should be remembered that these Zonal Councils do not owe their origin to the constitution but to an Act of Parliament, having been introduced by the States Reorganization Act, as a part of the scheme of reorganization of the States with a view to securing cooperation and coordination as between the States, the Union Territories and the Union, particularly in respect of economic and social development.

The creation of the Zonal Councils was a logical outcome of the reorganization of the States On a linguistic basis. For, if the cultural and economic affinity of linguistic States with their contiguous States was to be maintained and their common interests were to be served by cooperative action, a common meeting ground of some sort was indispensable. The object of these Councils, as Pandit Nehru envisaged it, is to 'develop the habit of cooperative working'. The presence of a Union Minister, nominated by the Union government, in each of these Councils (and the Chief Ministers of the States concerned) also furthers coordination and national integration through an extra-constitutional advisory organization, without undermining the autonomy of the States. If properly worked, these Councils would thus foster the 'federal sentiment' by resisting the separatist tendencies of linguism and provincialism.

- (i) The Central Zone, comprising the States of Uttar Pradesh, Madhya Pradesh, Chhattisgarh and Uttarakhand.
- (ii) The Northern Zone, comprising the States of Haryana, Himachal Pradesh, Punjab, Rajasthan, Jammu and Kashmir, and the Union Territories of Delhi and Chandigarh.
- (iii) The Eastern Zone, comprising the States of Bihar, West Bengal, Orissa and Jharkhand.

- (iv) The Western Zone, comprising the States of Gujarat, Maharashtra and Goa and the Union Territories of Dadra and Nagar Haveli, Daman and Diu.
- (v) The Southern Zone, comprising, the States of Andhra Pradesh, Karnataka, Tamil Nadu, Kerala, and the Union Territory of Pondicherry.
- (vi) The North Eastern Zone, comprising the States of Assam, Meghalaya, Nagaland, Manipur, Tripura, Mizoram and Arunachal Pradesh.

Each Zonal Council consists of the Chief Minister and two other Ministers of each of the States in the Zone and the Administrator in the case of a Union Territory. There is also provision for holding joint meetings of two or more Zonal Councils. The Union Home Minister has been nominated to be the common chairman of all the Zonal Councils.

The Zonal Councils, as already stated, discuss matters of common concern to the States and Territories comprised in each Zone, such as, economic and social planning, border disputes, interstate transport, matters arising out of the reorganization of States and the like, and give advice to the governments of the States concerned as well as the Government of India.

Objectives of Zonal Council^[3]

The main objectives of setting up of Zonal Councils are as under:

- Bringing out national integration
- Arresting the growth of acute State consciousness, regionalism, linguism and particularistic tendencies
- Enabling the Centre and the States to cooperate and exchange ideas and experiences
- Establishing a climate of cooperation amongst the States for successful and speedy execution of development projects.

Functions of the Councils

Each Zonal Council is an advisory body and may discuss any matter in which some or all of the States represented in that Council, or the Union and one or more of the States represented in that Council, have a common interest and advise the Central government and the government of each State concerned as to the action to be taken on any such matter. In particular, a Zonal Council may discuss, and make recommendations with regard to:

- Any matter of common interest in the field of economic and social planning.
- Any matter concerning border disputes, linguistic minorities or interstate transport.
- Any matter connected with, or arising out of, the reorganization of the States under the State's Reorganization Act.

North-Eastern Council

The seven North Eastern States are not included in the Zonal Councils. The North Eastern Council, set-up under the North Eastern Council Act, 1972 deals with the special problems relating to these States. The State of Sikkim has also been included in the North Eastern Council by North Eastern Council (Amendment) Act, 2002. Consequently, a Sikkim is excluded as member of Eastern Zonal Council.

3 http://mha.nic.in/zonal_council

4 *Ibid.*

North Eastern Region Vision 2020

- Brought out by NEC and accepted in the 56th Plenary of the NEC, Agartala in May 2008.
- Seventeen thematic groups with experts constituted to develop specific action plans to operationalize the Vision 2020 Document.
- The groups identified broad intervention areas and mechanisms for development of the North Eastern Region.
- Major infrastructure projects in roads, railways, airways and power have been implemented and telecom connectivity has also improved considerably.
- Larger plan investment and focus on infrastructure development has resulted in average growth of gross domestic product in NE States at 9.8 per cent.
- Presently, the Vision 2020 is undergoing mid-term academic evaluation.

Source: <http://necouncil.gov.in/about-us/nec-vision-2020-0>

NATIONAL COMMISSION FOR SCHEDULED CASTES: ARTICLE 338

Concerned with the socio-economic conditions of the Scheduled Castes Article 338 establishes the National Commission for Scheduled Caste. The commission is established for ensuring the proper implementation of the constitutional safeguards for Scheduled Castes.

The original constitution provided for the 'Special Officer for the Scheduled Castes and Scheduled Tribes' to investigate all matters relating to the safeguards provided for the Scheduled Castes and Scheduled Tribes under the constitution and to report to the President on their working. The Constitution (65th Amendment) Act, 1990 renamed the office as the 'National Commission for Scheduled Castes and Scheduled Tribes.'

Later by the Constitution 89th Amendment Act, 2003 the commission was bifurcated and the National Commission for Scheduled Castes and the National Commission for Scheduled Tribes were separated. A new Article 338A was inserted providing for a separate National Commission for Scheduled Tribes.

Composition of the Commission

The commission shall consist of a Chairperson, Vice-Chairperson and three other members. The Chairperson, Vice-Chairperson and other members of the commission shall be appointed by the President by warrant under his hand and seal.

The conditions of service and tenure of office of the Chairperson, Vice-Chairperson and other members so appointed shall be such as the President may by rule determine. The commission shall have the power to regulate its own procedure.

It is the duty of the President to place the report of the commission before Lok Sabha and Rajya Sabha. The government must submit a memorandum explaining the actions taken on the recommendations or the reasons for the non-acceptance of the recommendations (Articles 338 (6) and (7)).

Powers: Article 338 (8)

While investigating into any complaint or inquiring into any matter under Article 338, the commission has the powers to:

- (a) Summon and enforce the attendance of any person
- (b) Require the discovery and production of any document

- (c) Receive evidence on affidavits
- (d) Requisition any public record or copy from any court or office
- (e) Issue commissions for the examination of witnesses and documents.

Functions: Article 338 (5)

It shall be the duty of the commission:

- (a) To investigate and monitor the safeguards provided for the Scheduled Castes and to evaluate the working of such safeguards.
- (b) To the deprivation of rights and safeguards of the Scheduled Castes.
- (c) To participate and advise on the planning process of socio-economic development of the Scheduled Castes and to evaluate the progress of their development under the Union and any State.
- (d) To present to the President, annually and at such other times as the commission may deem fit, reports upon the working of those safeguards.
- (e) to make in such reports recommendations as to the measures that should be taken by the Union or any State for the effective implementation of those safeguards and other measures for the protection, welfare and socio-economic development of the Scheduled Castes.
- (f) To discharge such other functions in relation to the protection, welfare and development and advancement of the Scheduled Castes as the President may, subjected to the provisions of any law made by Parliament, by rule specify.

NATIONAL COMMISSION FOR SCHEDULED TRIBES: ARTICLE 338A

There shall be a commission for the Scheduled Tribes to be known as the National Commission for the Scheduled Tribes. The commission is a five-member body. The Chairperson, Vice-Chairperson and three other members of the commission shall be appointed by the President by warrant under his hand and seal.

The conditions of service and tenure of office of the Chairperson, Vice-Chairperson and other members so appointed shall be such as the President may by rule determine. The commission shall have the power to regulate its own procedure.

It is the duty of the President to place the report of the commission before Lok Sabha and Rajya Sabha. The government must submit a memorandum explaining the actions taken on the recommendations or the reasons for the non-acceptance of the recommendations (Articles 338A (6) and (7)).

Functions: Article 338A (5)

It shall be the duty of the commission:

- (a) To investigate and monitor the safeguards provided for the Scheduled Tribes and to evaluate the working of such safeguards.
- (b) To the deprivation of rights and safeguards of the Scheduled Tribes.
- (c) To participate and advise on the planning process of socio-economic development of the Scheduled Tribes and to evaluate the progress of their development under the Union and any State.
- (d) To present to the President, annually and at such other times as the commission may deem fit, reports upon the working of those safeguards.
- (e) to make in such reports recommendations as to the measures that should be taken by the Union or any State for the effective implementation of those safeguards and other measures for the protection, welfare and socio-economic development of the Scheduled Tribes.
- (f) To discharge such other functions in relation to the protection, welfare and development and advancement of the Scheduled Tribes as the President may, subjected to the provisions of any law made by Parliament, by rule specify.

Powers: Article 338 A (8)

While investigating into any complaint or inquiring into any matter under Article 338, the commission has the powers to:

- (a) Summon and enforce the attendance of any person
- (b) Require the discovery and production of any document
- (c) Receive evidence on affidavits
- (d) Requisition any public record or copy from any court or office
- (e) Issue commissions for the examination of witnesses and documents.

Constitutional Safeguards for SCs and STs

Constitutional Provisions	For Scheduled Caste	For Scheduled Tribes
Article 14	Right to Equality before law and equal protection of law	Right to Equality before law and equal protection of law
Article 15 (2)	Right against discrimination on ground of caste with respect to access to public places	Right against discrimination on ground of caste with respect to access to public places
Article 15 (4)	Special protection and positive discrimination	Special protection and positive discrimination
Article 16 (4)	Reservation in matters of recruitment to public office	Reservation in matters of recruitment to public office
Article 16 (4A)	Reservation in matters of promotion with consequential seniority	Reservation in matters of promotion with consequential seniority
Article 16 (4B)	Filling backlog vacancies in case of unavailability of adequate number of candidates	Filling backlog vacancies in case of unavailability of adequate number of candidates
Article 17	Abolition of the practice of untouchability	-
Article 25 (2) (b)	Power of the State to regulate or restrict the right to freedom of religion for throwing open Hindu ⁽⁵⁾ religious institutions	-
Article 29 (2)	Prohibition on the discrimination on the ground of caste with respect to admission to educational institutions	Prohibition on the discrimination on the ground of caste with respect to admission to educational institutions
Article 46	Promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections	Promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections

5 Hindu religious institutions include the Sikh, Buddhist and Jain religious institutions also.

Constitutional Provisions	For Scheduled Caste	For Scheduled Tribes
Article 164	In the States of Chhattisgarh, Jharkhand, Madhya Pradesh and Odisha there shall be a Minister in charge of the welfare of the Scheduled Castes	In the States of Chhattisgarh, Jharkhand, Madhya Pradesh and Odisha there shall be a Minister in charge of the welfare of the Scheduled Castes
Articles 243D and 243T	Reservation in the <i>Panchayats</i> and Municipalities in proportion to the population	Reservation in the <i>Panchayats</i> and Municipalities in proportion to the population
Article 330	Reservation of seats in Lok Sabha	Reservation of seats in Lok Sabha
Article 332	Reservation of seats in State legislatures	Reservation of seats in State legislatures
Article 338	National Commission for SCs	-
Article 338A	-	National Commission for STs

COMMISSION FOR BACKWARD CLASSES: ARTICLE 340

Article 340 empowers the President to appoint a commission to investigate the conditions of the backward classes. The commission shall investigate 'the difficulties under which they labour and to make recommendations as to the steps that should be taken by the Union or any State to remove such difficulties and to improve their condition'. The President shall have to cause the report of the commission laid before each House of the Parliament along with the memorandum explain the action taken for the implementation of the recommendations.

National Commission for Backward Classes

The Supreme Court of India in its Judgment in the Mandal Commission case directed the government to constitute a permanent commission for entertaining, examining and recommending upon requests for inclusion and complaints of over-inclusion and under-inclusion in the list of OBCs. In pursuant of the order the NCBC was constituted by an Act of Parliament.

According to the law, the government has the powers to constitute the commission. All the members are to be nominated by the Union government.

The commission shall consist of:

- (a) A Chairperson, who is or has been a Judge of the Supreme Court or of a high court
- (b) A social scientist
- (c) Two persons, who have special knowledge in matters relating to backward classes
- (d) A Member-Secretary, who is or has been an officer of the Central government in the rank of a Secretary to the Government of India.

Term of Office

Every member shall hold office for a term of three years from the date he assumes office. A member may, by writing under his hand addressed to the Central government, resign from the office of Chairperson or, as the case may be, of member at any time.

The Central government shall remove a person from the office of member if that person:

- (a) Becomes an undischarged insolvent.
- (b) Is convicted and sentenced to imprisonment for an offence which, in the opinion of the Central government, involves moral turpitude.
- (c) Becomes of unsound mind and stands so declared by a competent court.
- (d) Refuses to act or becomes incapable of acting.
- (e) Is, without obtaining leave of absence from the commission, absent from three consecutive meetings of the commission.
- (f) Has, in the opinion of the Central government, so abused the position of Chairperson or member as to render that person's continuance in office detrimental to the interests of backward classes or the public interest.

Constitution (102nd Amendment) Act 2018: In the Mandal Commission case the Supreme Court directed to constitute a permanent Commission for entertaining, examining and recommending upon requests for inclusion and complaints of over-inclusion and under-inclusion in the list of OBCs. The National Commission for Backward Classes Act 1993 was enacted in pursuit of the order and the National Commission for Backward Classes (NCBC) was established.

The Constitution (One Hundred Twenty-third Amendment) Bill, 2017 has been passed to elevate the position of the National Commission for Backward Classes (NCBC) to a Constitutional body. It is notified as the Constitution (One Hundred and Second Amendment) Act, 2018. The following are the important provisions of the Act

(a) Article 338B - Amended

- The reference to the backward classes in the article is omitted.

(b) Article 338B - Inserted

- The Act inserted Article 338B which reads as "There shall be a Commission for the socially and educationally backward classes to be known as the National Commission for Backward Classes."

(c) Composition of the Commission:

- The Commission shall consist of five members – a Chairperson, a Vice-Chairperson and three other Members. They will be appointed by the President by a warrant under his hand and seal.
- The term of office and conditions of service shall be determined by the President by making rules in that regard.

(d) Duties of the Commission:

With regard to the socially and educationally backward classes the NCBC shall

- investigate and monitor all matters relating to the safeguards under the Constitution or any law
- evaluate the working of such safeguards
- inquire into specific complaints of the deprivation of rights and safeguards
- advise on the socio-economic development and evaluate the progress of their development
- present to the President reports upon the working of the safeguards. The report may be either an annual report or at such other times as the Commission may deem fit
- make recommendations for the effective implementation of the safeguards and other measures for the protection, welfare and socioeconomic development of the socially and educationally backward classes and
- discharge such other functions in relation to the protection, welfare and development and advancement as the President may, by rule specify.
- Obligation on the President and the Governors of the State

- The President shall cause all such reports to be laid before each House of Parliament along with a memorandum explaining the action taken or proposed to be taken on the recommendations relating to the Union and
- the reasons for the non-acceptance, if any, of any of such recommendations
- In case the report contains anything pertaining to the States, the President shall forward that to the Governor of the States.
- Upon receiving such reports the Governor shall cause all such reports to be laid before each House of State Legislature along with a memorandum explaining the action taken or proposed to be taken on the recommendations and the reasons for the non-acceptance of any of such recommendations

(f) Powers of the Commission

The Commission shall have all the powers of a civil court trying a suit and in particular the power to

- summon and enforce the attendance of any person from any part of India and examine him on oath
- require the discovery and production of any document
- receive evidence on affidavits
- requisition any public record or copy thereof from any court or office
- issue commissions for the examination of witnesses and documents and
- any other matter which the President may, by rule, determine
- Clause 26C to Article 366 – Determination of backward classes – Inserted

The Act inserts Clause 26C in article 366 – Definitions. The Clause 26C provides that “socially and educationally backward classes” means such backward classes as are so deemed under article 342A for the purposes of this Constitution.

(h) Article 342A – Inserted

- It confers upon the President to draw up the list of socially and educationally backward classes and notify. The President shall consult the Governor of the States before notifying.
- Any caste may be included in or excluded from the Central List of socially and educationally backward classes specified in a notification by the Parliament by a law.

COMMISSION OF PARLIAMENT ON OFFICIAL LANGUAGE: ARTICLE 344

The power to constitute the commission for official language is vested in the President. President shall constitute a commission at the expiration of five years from the commencement of the constitution and thereafter at the expiration of ten years.

The commission shall consist of a Chairman and such other members representing the different languages specified in the Eighth Schedule. The Chairman and the members are appointed by the President.

Duties of the Commission

According to Article 344, the duty of the commission is to make recommendations to the President as to:

- (i)** The progressive use of the Hindi language for the official purposes of the Union.
- (ii)** Restrictions on the use of the English language for all or any of the official purposes of the Union.
- (iii)** The language to be used for all or any of the purposes mentioned in Article 348.
- (iv)** The form of numerals to be used for any one or more specified purposes of the Union.
- (v)** Any other matter referred to the commission by the President as regards the official language of the Union and the language for communication between the Union and a State or between one State and another and their use.

While making its recommendations, the commission must have due regards to industrial, cultural and scientific advancement of India and take the just claims and interests of non-Hindi speaking people into considerations.

Committee of Parliament on Official Language

Article 344 provides for the constitution of a committee of Parliament on Official Language. The Committee shall have thirty members by drawing 20 members from Lok Sabha and 10 members from Rajya Sabha.

The members of the committee are to be elected respectively by the members of the Lok Sabha and the members of the Rajya Sabha in accordance with the system of proportional representation by means of the single transferable vote. The members of the Committee elect the Chairman. As a convention, the Union Home Minister has been elected as Chairman of the Committee from time to time.

The committee is entrusted with the duty to review the progress made in the use of Hindi for the official purposes of the Union and make recommendations. The committee makes its review in the background of the provisions relating to official language as provided by the constitution and the Official Language Act, 1963.

The President shall cause the report to be laid before each House of Parliament and send it to all the State government.

Official Language: Part XVII of the constitution from Article 343 deals with the Official Language. Official language is the language used for 'official purpose of the Union, for transaction of business in Parliament, for Central and State Acts and for certain purpose in high courts'.⁽⁶⁾ Hindi in Devanagari script is the official language of the Union government. However, English is used as the link language.

Article 345 provides for the official language of the State. The State can adopt any one of the languages in use in the State or Hindi as its official language by a law.

According to Article 346 the communication between two States or between States and the Union government shall be made in the language authorized by the Union government. However, the States are free to use Hindi as an official language for communication between them.

Similarly, if a substantial proportion of the population of a State demand for the recognition for the use of the language spoken by them in that State, the President may direct the State to recognize the language.

Special Officer for Linguistic Minorities

Article 350B provides for the Special Officer for Linguistic Minorities. This is one of the Special Directives to the State that are binding. The President shall appoint the special officer.

It shall be the duty of the Special Officer to investigate all matters relating to the safeguards provided for linguistic minorities under this constitution and report to the President (Article 350B).

ADMINISTRATIVE TRIBUNALS

The original constitution did not contain any provision relating to the administrative tribunals. The Constitution (42nd Amendment) Act added Part XIVA and inserted Articles 323A and 323B providing for the Administrative Tribunals. Article 323A provides for setting up of Administrative Tribunals and Article 323B for other tribunals. Administrative tribunals are quasi-judicial bodies. The reasons for setting up of administrative tribunals are:

6 The Official Languages Act, 1963

- (a) To provide speedy and inexpensive justice
- (b) To lessen the burden of the courts
- (c) To simplify the procedures as the legal procedures in the regular courts are cumbersome and time consuming
- (d) The regular courts do not have the expertise to deal with the administrative issues.
- (e) The regular courts take legal approach in deciding the cases whereas the administrative tribunals comprising both administrative judicial members can be more rational in adjudicating the administrative matters.

Article 323A

Parliament is empowered to establish administrative tribunal for 'adjudication of disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services' by a law.

Article 323B

Both Union Parliament and State legislature can establish tribunal 'for the adjudication or trial by tribunals of any disputes, complaints, or offences with respect to all or any of the matters relating to':

- (a) Levy, assessment, collection and enforcement of any tax
- (b) Foreign exchange, import and export across customs frontiers
- (c) Industrial and labour disputes
- (d) Land reforms by way of acquisition by the State of any estate as defined in Article 31A

ALTERNATIVE DISPUTES RESOLUTION MECHANISMS (ADRS)

ADRs are those dispute settlement mechanisms other than the courts. Since the courts are overburdened and there are several disputes which are not predominantly legal in nature the ADRs are set-up to deal with them. Administrative tribunals are included in the concept of Alternative Disputes Resolution Mechanisms.

Need for ADRs

Abraham Lincoln said 'Litigation does not always lead to a satisfactory result. It is expensive in terms of time and money. A case won or lost in court of law does not change the mind-set of the litigants who continue to be adversaries and go on fighting in appeals after appeals. Alternate Dispute Resolution systems enable the change in mental approach of the parties.' The need for ADRs arise out of the following reasons:

- (a) Congestion in courts due to numerous litigations
- (b) Lack of adequate manpower and resources and the consequent delay
- (c) High cost involved in litigation
- (d) The rigidity of procedure in the courts
- (e) Lack of opportunity for participatory roles

ADRs: Advantages^[7]: The ADRs have several advantages. According to World Intellectual Property Organization, (WIPO) the following are the most important advantages of ADRs:

7 <http://www.wipo.int/amc/en/center/advantages.html>

- **A Single Procedure:** Through ADR, the parties can agree to resolve in a single procedure a dispute involving intellectual property that is protected in a number of different countries, thereby avoiding the expense and complexity of multijurisdictional litigation, and the risk of inconsistent results.
- **Party Autonomy:** Because of its private nature, ADR affords parties the opportunity to exercise greater control over the way their dispute is resolved than would be the case in court litigation.

In contrast to court litigation, the parties themselves may select the most appropriate decision-makers for their dispute. In addition, they may choose the applicable law, place and language of the proceedings.

Increased party autonomy can also result in a faster process, as parties are free to devise the most efficient procedures for their dispute. This can result in material cost savings.

- **Neutrality:** ADR can be neutral to the law, language and institutional culture of the parties, thereby avoiding any home court advantage that one of the parties may enjoy in court-based litigation, where familiarity with the applicable law and local processes can offer significant strategic advantages.
- **Confidentiality:** ADR proceedings are private. Accordingly, the parties can agree to keep the proceedings and any results confidential.

This allows them to focus on the merits of the dispute without concern about its public impact, and may be of special importance where commercial reputations and trade secrets are involved.

- **Finality of Awards:** Unlike court decisions, which can generally be contested through one or more rounds of litigation, arbitral awards are not normally subjected to appeal.
- **Enforceability of Awards:** The United Nations Convention for the Recognition and Enforcement of Foreign Arbitral Awards of 1958, known as the New York Convention, generally provides for the recognition of arbitral awards on par with domestic court judgments without review on the merits. This greatly facilitates the enforcement of awards across borders.

Disadvantages of ADR: ADRs do not guarantee complete resolution of the disputes. In such circumstances there is a possibility of moving the courts which results in the wasting of time and money. This brings the credibility of the ADRs to question.

In case of Arbitration as an ADR the decisions are final and cannot be appealed. But the decisions of a court can be appealed to a higher court. So, it is sometimes ADRs are considered rigid.

At times the participation becomes as weakness of ADRs. The participation leads to confusion as the parties to dispute do not want to negotiate. Instead they would want to move the court.

ADRs in India^[8]: Although there are many types of ADRs, in India three types are used. Such ADRs in practice are arbitration, mediation and conciliation.

Arbitration^[9]: Arbitration is a process in which a neutral third party provides a decision based on the merits of the case. In the Indian context the scope of the rules for the arbitration process are set out broadly by the provisions of the Arbitration and Conciliation Act, 1996 and in the areas uncovered by the statute the parties are free to design an arbitration process appropriate and relevant to their disputes.

Mediation^[10]: The process of mediation aims to facilitate the development of a consensual solution by the disputing parties. The mediation process is overseen by a non-partisan third party, the mediator. The authority of the mediator vests on the consent of the parties that he should facilitate their negotiations.

8 <http://www.archive.india.gov.in/citizen/laworder.php?id=12->.

9 *Ibid.*

10 *Ibid.*

Conciliation⁽¹¹⁾: This is a process by which resolution of disputes is achieved by compromise or voluntary agreement. In contrast to arbitration, the conciliator does not render a binding award. The parties are free to accept or reject the recommendations of the conciliator. The conciliator is in the Indian context, often a government official whose report contains recommendations.

International Centre for Alternative Dispute Resolution (ICADR)⁽¹²⁾: It is an autonomous body registered under the Societies Registration Act, 1860. It was set-up by the Department of Legal Affairs. The Minister for Law and Justice is the Chairman of ICADR. The main object of the ICADR is to promote popularize and propagate Alternative Dispute Resolution to facilitate early resolution of disputes so as to reduce the burden of arrears in the courts.

Its headquarters is in New Delhi. It has two regional centres in Bengaluru and Hyderabad.

IMPORTANT TERMINOLOGIES

There are certain important terminologies to be understood. Such terms are explained in the following paragraphs.

Remunerative Political Post

According to Article 361B⁽¹³⁾, 'remunerative political post' means any office under:

- (i) The government where the salary or remuneration for such office is paid out of the public revenue of the government or;
- (ii) A body which is wholly or partially owned by the government and the salary or remuneration for such office is paid by such body, except where such salary or remuneration paid is compensatory in nature.

Annual Financial Statement

The constitution uses the term 'Annual Financial Statement' for the budget. The Annual Financial Statement is 'a statement of the estimated receipts and expenditure of the Government of India for that year'.

Charged Expenditures

Charged expenditures are those expenditures that are 'standing' in nature pertaining to certain expenditures of basic nature. Certain expenditures are kept away from the annual voting of the Parliament considering the importance of the office related to which the expenditure is made. For instance, considering the constitutional importance of the office of the President, the salary and allowances of the President cannot be left to the annual voting of the Parliament. Similarly, in order to protect the independence of the judiciary, the salary and allowances of the judges are made charged expenditures.

These expenditures are not subjected to vote in the Parliament every year. The Parliament has the powers only to discuss the estimates of the charged expenditure. Hence, they are known as 'non-votable' expenditures. Any expenditure can be declared as charged on consolidated fund by a law. A bill to declare any expenditure as charged expenditure or alter the expenditure is a Money Bill.

11 <http://www.archive.india.gov.in/citizen/laworder.php?id=12>.

12 Ibid.

13 Inserted by the Constitution (Ninety-first Amendment) Act, 2003

The following expenditure shall be expenditure charged on the Consolidated Fund of India:

1. The emoluments and allowances of the President and other expenditure relating to his office.
2. The salaries and allowances of the Chairman and the Deputy Chairman of the Council of States and the Speaker and the Deputy Speaker of the House of the People.
3. Debt charges for which the Government of India is liable including interest, sinking fund charges and redemption charges, and other expenditure relating to the raising of loans and the service and redemption of debt.
4. The salaries, allowances and pensions payable to or in respect of judges of the Supreme Court.
5. The pensions payable to or in respect of judges of the Federal Court.
6. The pensions payable to or in respect of judges of any high court which exercises jurisdiction in relation to any area included in the territory of India or which at any time before the commencement of this constitution exercised jurisdiction in relation to any area included in a Governor's Province of the Dominion of India.
7. The salary, allowances and pension payable to or in respect of the Comptroller and Auditor General of India.
8. The administrative expenses of the office of the Comptroller and Auditor General, including all salaries, allowances and pensions payable to or in respect of persons serving in that office, shall be charged upon the Consolidated Fund of India.
9. Any sums required to satisfy any judgment, decree or award of any court or arbitral tribunal.
10. Article 273: Grants *in lieu* of export duty on jute and jute products. There shall be charged on the Consolidated Fund of India in each year as grants-in-aid of the revenues of the States of Assam, Bihar, Odisha and West Bengal, *in lieu* of assignment of any share of the net proceeds in each year of export duty on jute and jute products to those States, such sums as may be prescribed.
11. Article 275: Grants from the Union to certain States. Such sums as Parliament may by law provide shall be charged on the Consolidated Fund of India in each year as grants-in-aid of the revenues of such States as Parliament may determine to be in need of assistance, and different sums may be fixed for different States
12. Article 322: The expenses of the Union or a State Public Service Commission, including any salaries, allowances and pensions payable to or in respect of the members or staff of the commission, shall be charged on the Consolidated Fund of India or, as the case may be, the Consolidated Fund of the State.

The following expenditure shall be expenditure charged on the Consolidated Fund of each State:

- (a) The emoluments and allowances of the Governor and other expenditure relating to his office.
- (b) The salaries and allowances of the Speaker and the Deputy Speaker of the Legislative Assembly and, in the case of a State having a Legislative Council, also of the Chairman and the Deputy Chairman of the Legislative Council.
- (c) Debt charges for which the State is liable including interest, sinking fund charges and redemption charges, and other expenditure relating to the raising of loans and the service and redemption of debt.
- (d) Expenditure in respect of the salaries and allowances of judges of any high court.
- (e) Any sums required to satisfy any judgment, decree or award of any court or arbitral tribunal
- (f) Any other expenditure declared by the constitution or by the legislature of the State by law, to be so charged.

Demand for Grants^[14]

Earmarking of budgetary allocation for meeting the plan and non-plan expenditure of a Ministry/Department is known as demand for grants. While voting the demands for grants the House may pass cut motions. The details of the cut motions are given in chapter 14 on Union legislatures.

¹⁴ For Cut Motions: Refer Chapter 14: Union legislature.

Appropriation Bill (Article 114)

It is a Money Bill voted by Lok Sabha, providing for the withdrawal or appropriation of moneys from and out of the Consolidated Fund of India. It has to be passed for appropriation of moneys to meet grants made by the Parliament and the expenditure charged on the Consolidated Fund for the services of a financial year or a part of a financial year. It can be passed once annually or at various times of the year.

Supplementary Grants

Article 115 provides for the Supplementary Grants, Additional Grants and Excess Grants. If the amount authorized by the Appropriation Act (Article 114) of the Parliament, for the expenditure of a particular service during the current financial year is found to be insufficient, then a supplementary grant is made.

Additional Grants

In case a need for spending upon some new service which was not contemplated in the annual financial statement for that year arises, an additional grant is made.

Excess Grants

If the money is spent in excess of the amount granted by the Parliament on any service during a financial year then, an excess grant is made. The excess grant is made only after the expiry of the financial year. It is made only after the approval of the Public Accounts Committee.

Vote on Account

Article 116 provides for the vote on account, vote of credit and the exceptional grant. A Vote on account is a lump sum grant made by the Parliament to the government. It is made to enable the government to meet the operational expenditures during when the budget is pending in the Parliament.

Usually, the vote on account is granted for two months. Hence, one-sixth of the total estimates are granted as vote on account. However, during an election year the vote on account may be granted for a period longer than two months, say for three months. Since it is a lump sum grant no detailed discussion of the estimates of the expenditure takes place.

Interim Budget

An interim budget is a full-fledged budget but for a period lesser than one year. Usually a budget is made and sanctioned for one year. An interim budget is made for a period less than one year. In case of an election year the new government formed in the mid-year presents an interim budget. An interim budget is different from vote on account.

Interim Budget	Votes on account
It is a full budget but for a period less than a year	It is a lump sum grant to meet operational expenditure
Subjected to discussion of the Parliament	Not subjected to discussion of the Parliament
Cut motions are permitted	Cut motions are not permitted

Vote of Credit

A grant made for meeting an unexpected demand upon the resources of India when on account of the magnitude or the indefinite character of the service the demand cannot be stated with the details ordinarily given in an annual financial statement is known as a vote of credit.

For example, the expenditure relating to intelligence or war is not definite and so a vote of credit is given. It is granted by the Parliament on the trust it has on the government. It is also known as a 'blank cheque' granted to the government.

Exceptional Grant

An exceptional grant is made for an expenditure that does not form part of any financial year. For example, an expenditure relating to celebrating any anniversary such as the golden jubilee of enactment of the constitution as it occurs only once and will not be part of the expenditure of any financial year.

Consolidated Fund

Article 266 provides for the Consolidated Fund of India and the Consolidated Fund of each State. As the name suggests it is a fund formed by consolidating:

- (i) All revenues received by the government
- (ii) All loans raised by that government by the issue of Treasury bills
- (iii) All loans or ways and means advances and
- (iv) All moneys received by that government in repayment of loans

Authorization of the legislature (Article 266(3)), Parliament in case of Consolidated Fund of India and State legislature in case of Consolidated Fund of a State, is required to withdraw or appropriate any money from the consolidated fund. An Appropriation Act is to be enacted.

Public Accounts

All other public moneys than those form the Consolidated Fund, received by or on behalf of the government are paid into the public accounts. There is a Public Account of India and public account for each State. To withdraw from the public accounts, an appropriation act is not needed.

Contingency Fund

Article 267 provides for the Contingency Fund. It is an 'imprest' in nature kept at the disposal of the President in case of Union and Governor in case of State. Hence, it is a rechargeable corpus which can be used in case any contingency when the money forms the consolidated fund could not spent. To spend the money from the contingency fund prior authorization of the legislature is not required.

'Finance Bill'

It is a Bill ordinarily introduced every year to give effect to the financial proposals of the government for the following financial year and includes a Bill to give effect to supplementary financial proposals for any period. Thus, it refers to the bill that deals with the finances of the government.

Finance Bill and Financial Bill

Finance Bill	Financial Bill
It is a Money Bill	It is an Ordinary Bill
Deals with government finance. Part of Budget. Contains the tax proposals of the government	A bill that contains matters in Article 110 (Money Bill) but not solely dealing with them
Can be introduced only in Lok Sabha	Can be introduced in both Houses

Finance Bill	Financial Bill
Rajya Sabha has no powers with regard to these Bills.	Rajya Sabha has equal powers
Joint sitting not permitted	Joint Sitting is permitted

Grants-in-aid (Article 273, 275 and 282)

Grants in aid are an assistance that is paid out of Consolidated Fund of India to the States for certain purposes. The constitution provides for grants in three different articles and they relate to different types of grants.

- (i) Grants in lieu of export duties on Jute and Jute products to Assam, Bihar, Orissa and West Bengal. This provision has become inoperative with effect from 26 January 1960. It was to survive for ten years from the commencement of the constitution (Article 273).
- (ii) Article 275 provides for grants-in-aid to the States. Different sums may be fixed for different States depending on the assessment of their need. Special grants may be given for promoting the welfare of the Scheduled Tribes or for raising the level of administration of the Scheduled Areas.
- (iii) Article 282 empowers the Union and the States to make grant for any public purpose. It may even give grant for a purpose for which it may not have power to make laws.

Tax and Fee

The constitution recognizes that taxes are different from fees. The prohibition in Article 265 is in respect of taxes. Fees are not covered by it. The distinction between the two is that a tax is a compulsory exaction for the general benefit. It is levied as a part of common burden. Its purpose is to collect revenue.

Fee is also a compulsory exaction but it has some relation to a special benefit or privilege accruing to the individual who pays.

Tax	Fees
1. A compulsory exaction from all persons who fall in tax net	1. A compulsory exaction from all persons who derive a benefit or obtain a service
2. Taxation is an imposition for public purpose	2. Fees are related to specific purposes and objects
3. There is no quid pro quo between the tax payer and the public authority	3. There must be some quid pro quo. The relation may be tenuous or thin. It may be absent in case of license fee
4. Taxation is part of common burden	4. Fees are regarded as charge for specific service rendered by the government or its agency
5. Taxes are credited to the Consolidated Fund	5. Fees are generally kept separate but may be credited to the Consolidated Fund. It does not affect its validity. Creation of separate fund not necessary

Power to Levy Tax: Article 265 provides that 'no tax may be levied or collected except by authority of law'. So, any tax cannot be imposed by executive order. It can be levied only by an Act of appropriate legislature. Thus, the constitution provides for the principle of 'No taxation without representation'.

resentation'. Hence, it demands that there must be a valid law for imposing a tax. Imposing any tax is subjected to judicial review as to:

- (a) Whether the law is within the legislative competence of the legislature related to an entry in the relevant list.
- (b) Whether the law is not prohibited by any specific provision of the constitution, e.g., Articles 276, 285, 286, 287, etc.
- (c) Whether the law is void under Article 13 for violating a fundamental right.

Based on the above provisions the taxes are imposed by the State are grouped as follows:

- Article 268: Taxes levied by Union but collected and appropriated by States
- Article 268A: Service tax levied by Union and collected and appropriated by Union and States
- Article 269: Taxes levied and collected by Union and assigned to State
- Article 270: Taxes levied and collected by Union and distributed between Union and States
- Article 271: Surcharge for the Union

Taxes levied by the Union but collected and appropriated by the States: Some taxes are levied by the Union but collected and appropriated by the States. These are collected by the States and are assigned to the States. They are to be levied by the Union but the Union has no share in the proceeds (Article 268). They are:

- Stamp duties mentioned in the Union list
- Duties of excise on medicinal and toilet preparations

Service tax^[15] levied by the Union and collected and appropriated by the Union and the States (Article 268A): Article 268A has been inserted by the 88th Amendment in the year 2003. By inserting this article, it has been provided that taxes on services shall be levied by the Government of India. Service tax shall be collected by the Government of India and the States. The proceeds of service tax shall be divided between the Union and the States in accordance with the principles formulated by Parliament by law.

Article 269A: Power of Parliament to impose Goods and Service Tax: Parliament is empowered to enact law to impose Goods and Service tax on interstate trade and commerce in accordance with the recommendations of the GST Council. The Parliament also has the power to formulate the principles for determining the place of supply, and when a supply of goods, or of services, or both takes place in the course of interstate trade or commerce.

In this regard, supply of goods, or of services, or both in the course of import into the territory of India shall be deemed to be supply of goods, or of services, or both in the course of interstate trade or commerce. Such portion of the tax amount apportioned to a State shall not form part of the Consolidated Fund of India.

Similarly, if an amount collected as tax levied under Article 269A (1) has been used for payment of the tax levied by a State under Article 246A,^[16] such amount shall not form part of the Consolidated Fund of India. Also, if an amount collected as tax levied by a State under Article 246A has been used for payment of the tax levied under Clause (1), such amount shall not form part of the Consolidated Fund of the State.

15 After the GST Act comes into force the service tax will be abolished

16 'Article 246A. (1) Notwithstanding anything contained in Articles 246 and 254, Parliament, and, subjected to clause (2), the legislature of every State, have power to make laws with respect to goods and services tax imposed by the Union or by such State. (2) Parliament has exclusive power to make laws with respect to goods and services tax where the supply of goods, or of services, or both takes place in the course of interstate trade or commerce.'



Taxes levied and collected by the Union and assigned to the State (Article 269): Some taxes are levied by the Union and collected by the Union but are assigned to the States. Two taxes fall in this category:

- (a) Interstate Sales tax
- (b) Consignment tax

These taxes will be levied and collected by the Union but assigned to the States in accordance with the principles formulated by the Parliament by law (Article 269).

Taxes levied and collected by the Union and distributed between the Union and the States (Article 270): Article 270 lays down that all taxes and duties referred to in the Union list levied and collected by the Union (except those mentioned in Articles 268, 268A and 269) are distributable between the Union and the States.

The manner of sharing of the proceeds shall be determined by a Presidential order after considering the recommendations of the Finance Commission.

This new Article 270 inserted in 2000 with effect from 1996 has augmented the resources of the States.

TABLE 25.1 Taxes and Duties Fast Recap

Tax/Duty	Levied by	Collected by	Appropriated by	Assigned to	Shared between
Stamp Duty Article 268	Union	States	States	-	-
Excise duty on medicinal and toilet preparations Article 268	Union	States	States	-	-
Service Tax Article 268A (Provide by 88th Amendment)	Union	<ul style="list-style-type: none"> • Union in cases of services falling under the union list • States in cases of services falling under the State's list 	<ul style="list-style-type: none"> • Union in cases of services falling under the union list • States in cases of services falling under the State's list 	-	-
Taxes on the sale or purchase of goods in the course of interstate trade or Commerce, other than newspapers Article 269	Union	Union	-	States	-
Taxes on the consignment of goods in the course of interstate trade or Commerce Article 269	Union	Union	-	States	-

(Continued)

TABLE 25.1 Taxes and Duties Fast Recap (Continue)

Tax/Duty	Levied by	Collected by	Appropriated by	Assigned to	Shared between
All taxes and duties referred to in Union List, except duties and taxes referred to in Articles 268, 268A and 269, respectively Article 270	Union	Union	-	-	Union and States
Surcharge on taxes and duties referred to in Article 271 Article 270	Union	Union	-	-	Union and States
Any cess levied for specific purposes under any law made by Parliament Article 270	Union	Union	-	-	Union and States
Surcharge on certain duties and taxes Article 271	Union	Union	Union	-	-

Surcharge for the Union (Article 271): Article 271 provides for levy of surcharges on duties and taxes. The proceeds of such surcharges go to the Union exclusively. From time to time the government imposes a surcharge on Income tax, Corporate tax, etc. It has also levied surcharge and additional surcharge for the purposes of the Union on Customs and Excise duties. The States have no share in the surcharges.

'Net Proceeds' of Taxes and Duties: 'Net Proceeds' means the proceeds, amount collected from tax and duty, reduced by the cost of collection—the amount of money spent for the collection of the tax. The CAGI certifies the net proceeds.

'Crossing the floor'

Passing between the member addressing the House and the Chair is known as 'crossing the floor'. It is considered breach of parliamentary etiquette.

Majority Required in the Indian Parliament

In the Parliament to pass the Legislative Bills, certain motions and resolutions certain majority is prescribed. They can be classified as simple or ordinary majority and special or extraordinary majority.

Simple Majority (Ordinary Majority): According to Article 100, 'all questions at any sitting of either House or joint sitting of the Houses shall be determined by a majority of votes of the members present and voting'. This means the majority of members who are present and voting.



For instance, on a given day in Lok Sabha let us assume 350 out of 543 members are present while the House is debating on a Bill. Of the 350 say 24 are participating in the debate and remaining 326 are only participating in voting, then the majority required to pass the bill is $326/2$ plus 1 that is 164.

Special Majority (Extraordinary Majority): The constitution prescribes certain special majority for the passage of certain bills or carrying on certain motions. Such special majority are:

(i) Impeachment of President

This is the highest majority prescribed in the constitution for any proceeding. The resolution to remove the President needs to be supported by the two-thirds of the total membership of the House.

For instance, in Lok Sabha the motion has to be supported by 364 members. The total membership of Lok Sabha is 543. Two-thirds of 543 means, 543 divided by 3 and the quotient multiplied by 2.

(ii) Passage of Constitution Amendment Bills

Article 368 (2) says a constitution amendment bill has to be passed by 'a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting'.

Here the constitution prescribes two-thirds of the total membership of the House present and voting as the special quorum for the House to take the bill for voting. If only the quorum is present the bill can be taken for voting. Then the Bill has to be supported by the majority of total membership of the House.

For instance, an amendment bill is in Lok Sabha, then $543 \times 2/3$ that 364 members of Lok Sabha must be present and participate in voting. Only then the bill can be taken for voting by the House. Of that at least 273 members, the majority of total membership must support the Bill.

(iii) Rajya Sabha resolutions

The constitution prescribes that Rajya Sabha resolution is needed to be passed for say authorizing the Parliament to enact law on a matter in State subject and creation of a new All India Service. Such a resolution has to be passed by a majority of not less than two-thirds of the members present and voting.

For instance, while considering such a resolution in the Rajya Sabha of the total 250 members 150 are present and voting, then out of them two-thirds that is $250 \times 2/3 = 100$ members must support.

(iv) Removal of Speaker, Deputy Speaker of Lok Sabha and Deputy Chairman Rajya Sabha

Effective Strength of the House = Total Strength of the House – Vacancy

Majority of all the then members = Majority of the Effective Strength

The Speaker or Deputy Speaker or Deputy Chairman of Rajya Sabha may be removed from office by a resolution of the House passed by a majority of all the then members of the House.

Practice Questions

1. Consider the following statements:

1. Passing between the member addressing the House and the Chair, which is considered breach of parliamentary etiquette, known as 'crossing the floor'.
2. Earmarking of budgetary allocation for meeting the plan and non-plan expenditure of a Ministry/Department is known as Estimates of Expenditure.

Correct statements

- | | |
|------------|---------------------|
| (a) 1 only | (c) Both 1 and 2 |
| (b) 2 only | (d) Neither 1 nor 2 |

2. Consider the following statements:

1. Zonal Councils have been set-up under a provision of the Constitution of India.
2. Parliament may by law provide for the exclusion of the jurisdiction of all courts, except the Supreme Court for the adjudication of any dispute with respect to use, distribution or control of waters of, or in, any interstate river or river valley.

Correct statements

- | | |
|------------|---------------------|
| (a) 1 only | (c) Both 1 and 2 |
| (b) 2 only | (d) Neither 1 nor 2 |

3. Consider the following statements regarding service tax:

1. The power to levy service tax is vested in the Union government
2. Service tax is levied by the Union government and collected and appropriated by the Union and the State governments.

Correct statements

- | | |
|------------|---------------------|
| (a) 1 only | (c) Both 1 and 2 |
| (b) 2 only | (d) Neither 1 nor 2 |

4. Which of the following is/are correctly matched?

1. Mediation – Development of consensual solution overseen by a non-partisan third party
2. Arbitration – Decision based on merits of the case provided by a neutral third party.

Correct Statements

- | | |
|------------|---------------------|
| (a) 1 only | (c) Both 1 and 2 |
| (b) 2 only | (d) Neither 1 nor 2 |

5. Consider the following about Alternative Dispute Resolutions (ADR):

1. ADRs do not guarantee complete resolution of disputes.
2. Arbitral awards can be appealed at the higher judiciary normally.

Correct statements

- | | |
|------------|---------------------|
| (a) 1 only | (c) Both 1 and 2 |
| (b) 2 only | (d) Neither 1 nor 2 |

6. Consider the statements regarding service tax:

1. The impeachment of the President requires a majority of two-thirds of total membership of the House.
2. The passage of Constitutional Amendment Bills require a majority of two-thirds of members of that House present and voting.

Correct statements

- | | |
|------------|---------------------|
| (a) 1 only | (c) Both 1 and 2 |
| (b) 2 only | (d) Neither 1 nor 2 |

7. Who among the following has the duty to determine the limits of the jurisdiction of any tribunal or statutory authority?

- (a) President by order
- (b) Parliament by law
- (c) Supreme Court
- (d) Parliament by law on the resolution passed by the aggrieved States

8. Which of the following statements is not correct?

1. The Advocate General is appointed by the Governor and holds office during the pleasure of the Governor.
 2. The duties and remuneration of the Advocate General are decided by the State government.
- | | |
|------------|---------------------|
| (a) 1 only | (c) 1 and 2 |
| (b) 2 only | (d) Neither 1 nor 2 |

9. Match: List I (Fund)

- A. Consolidated Fund
- B. Contingency Fund
- C. Public Account
- D. National Renewal Fund

List II (Explanation)

- Unforeseen expenditure
 - Safety net to workers in sick enterprises and to finance their training
 - Receipts through provident fund, small savings and other deposits
 - All revenue receipts, loans raised and recovery of loans

A	B	C	D
(a) 2	3	1	4
(b) 2	1	3	4
(c) 4	3	1	2
(d) 4	1	3	2

10. Charged expenditure upon the Consolidated Fund of India is:

- (a) Submitted to the vote of Parliament
 - (b) Not submitted to the vote of Rajya Sabha
 - (c) Not submitted for the sanction of the President
 - (d) Not submitted to the vote of Parliament

11. Which of the following statements is correct?

- (a) The Consolidated Fund of India and the Contingency Fund of India are created by the constitution
 - (b) While the Contingency Fund is created by the constitution the Consolidated Fund is created by the law of the Parliament
 - (c) While the Consolidated Fund is created by the constitution the Contingency Fund is created by the law of the Parliament
 - (d) No money from the Consolidated Fund of India or the Contingency Fund of India

12. Which of the following is NOT charged expenditure on the consolidated Fund of India?

- (a) Expenditure on Five-year Plans
 - (b) Expenditure on the Chairman and members of UPSC
 - (c) Expenditure on the judges of the Supreme Court
 - (d) Debt charges of the Government of India

13. Article 343 of the constitution declares Hindi as the

- (a) National language
 - (b) State language
 - (c) Official language of the Union
 - (d) Administrative language of the Union

14. The duty of the Official Languages Commission to make recommendations to the President include those relating to:

1. The progressive use of the Hindi language for the official purposes of the Union.
 2. Restrictions on the use of the English language for all or any of the official purposes of the Union.
 3. Language to be used in the Supreme Court and in the high courts.
 - (a) 1 only
 - (b) 2 only
 - (c) 2 and 3 only
 - (d) 1,2, 3

15. The Report of the Official Languages Commission is scrutinized by the:

- (a) President
 - (b) Council of Ministers
 - (c) Committee of Parliament constituted for the purpose
 - (d) Departmentally Related Standing Committee

16. Consider the following statements:

1. The Constitution of India provides that the official language of the Union and the States shall be Hindi in *Devanagari* script.
 2. The constitution provides that the legislature of a State may by law adopt Hindi as the language or languages to be used for all or any of the official purposes of that State.

Correct statements

17. The duties envisaged by the Constitution for the Interstate Council are to:

1. Inquire into and advise on disputes between States
 2. Investigation of matters of common interest for two or more States
 3. Make recommendation for coordination of policy and action relating to any subject
 4. Enforce provisions relating to the freedom of trade and commerce

(B) 1, 2, 3

- Match: List I**

 - A. Vote on account
 - B. Vote on credit
 - C. Supplementary demand for grants
 - D. Excess demand for grants

List II

1. Lump sum money granted without detailed estimates
2. Additional expenditure not covered in approved budget
3. Amount spent in the excess of the grants
4. Grants in advance pending budgetary approval

A	B	C	D
(a) 1	4	3	2
(b) 1	4	2	3
(c) 4	1	2	3
(d) 4	1	3	2

19. Which one of the following statements is not correct about the Advocate General of the State?

- (a) The Advocate General holds office during the pleasure of the Governor
- (b) The Advocate General of the State is appointed by the Governor
- (c) The Advocate General advises the State government on legal matters
- (d) The Advocate General cannot take part in the proceedings in the State legislature

20. Assertion: The Finance Commission depends mainly on the data and information of the financial needs of the States, supplied by the States themselves

Reason: This information and data may not be free from the hidden unrealities and an attempt to secure more financial assistance and window dressing of the financial position of the States cannot be ruled out

Direction:

- (a) Both A and R are true and R is the correct explanation of A
- (b) Both A and R are true but R is NOT the correct explanation of A
- (c) A is true but R is false
- (d) A is false but R is true

21. In India who among of the following can only be removed from the office in like manner and on the like grounds as a judge of the Supreme Court?

1. Comptroller and Auditor General of India
2. Chief Election Commissioner
3. Chairman, Union Public Service Commission
4. Attorney General for India

Correct answers

- (a) 1, 2, 3, 4
- (b) 1, 2, 4
- (c) 1 and 2
- (d) 2 and 3

**22. Match: List I
(Institutions)**

- | | |
|---|-----------------|
| A. Comptroller and Auditor General of India | 1. Article 315 |
| B. Finance Commission | 2. Article 280 |
| D. Administrative Tribunals | 3. Article 148 |
| E. Union Public Service Commission | 4. Article 323A |

A	B	C	D
(a) 3	4	2	1
(b) 1	2	4	3
(c) 3	2	4	1
(d) 1	4	2	3

23. Which one of the following does not come in the ambit recommendations by the Finance Commission?

- (a) The distribution of net proceeds of taxes between the Union and States.
- (b) The principles to be followed by the Centre while giving grants-in-aid to the States out of the Consolidated Fund of India.
- (c) The amount of money to be allocated to States from the Public Account of India.
- (d) Any other matter referred to the commission by the President in the interest of sound finance

24. Consider the following statements:

1. There is provision under an article of the Constitution of India, that Parliament may by law provide for adjudication of disputes relating to waters of interstate or rivers or river valleys.
2. Administrative Tribunals Act, 1985 has been amended by the Centre to empower States to abolish the State Administrative Tribunals, if they so desire.

Correct statements

- | | |
|------------|---------------------|
| (a) 1 only | (c) 1 and 2 |
| (b) 2 only | (d) Neither 1 nor 2 |

- 25.** The Consolidated Fund of India is made up of:
- The excise duty and the income tax
 - The income tax and the corporate tax
 - The money raised from all loans
 - All revenue receipts of the Government of India
- 26.** Which one of the following is not applicable regarding the purpose of Cut motion?
- Raising questions of urgent public importance
 - Drawing attention to any lapse on part of administration
 - Drawing attention to specific problems
 - Concentration of discussion on some concrete points
- 27.** 'No tax shall be levied or collected except by authority of law'. Which Article of the Constitution of India provides this?
- Article 209
 - Article 215
 - Article 256
 - Article 265

28. Match: List I

- A. Tax levied by the Union of India and assigned to the Centre
- B. Tax levied by the Union of India but assigned to the States
- C. Tax levied by the State and assigned to the State
- D. Tax levied by the Union of India and distributed between the Union and the States

List II

1. Income tax
2. Land revenue
4. Estate duty
6. Surcharge

A	B	C	D
(a) 4	1	2	3
(b) 2	3	4	1
(c) 2	1	4	3
(d) 4	3	2	1

- 29.** Which one of the following statements is not correct?
- The main function of the Public Accounts Committee is to examine the Report of the Comptroller and Auditor General of India.
 - The Public Accounts Committee comprises members of the Lok Sabha only.
 - A member of opposition can also be appointed as the Chairman of the Public Accounts Committee.
 - A member of the Public Accounts Committee can be re-elected for a second term.
- 30.** When the Lok Sabha makes any grant in advance in respect of the estimated expenditure for a part of any financial year pending the completion of the procedure prescribed in the Constitution of India, this is called:
- Vote on account
 - Vote of credit
 - Supplementary grant
 - Additional grant

Answer Key

- | | | | | | | | | | |
|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|
| 1. (a), | 2. (d), | 3. (c), | 4. (c), | 5. (a), | 6. (a), | 7. (b), | 8. (b), | 9. (d), | 10. (d), |
| 11. (a), | 12. (a), | 13. (c), | 14. (d), | 15. (c), | 16. (c), | 17. (b), | 18. (c), | 19. (d), | 20. (b), |
| 21. (c), | 22. (c), | 23. (c), | 24. (a), | 25. (d), | 26. (d), | 27. (d), | 28. (d), | 29. (b), | 30. (a) |

Hints and Explanations

1. (a)

Earmarking of budgetary allocation for meeting the plan and non-plan expenditure of a Ministry/Department is known as Demand For Grants.

Refer Page 25.19 and 25.25

2. (d)

- Zonal Councils have been established by the States Reorganisation in Act, 1956.
- Article 262 provides that Parliament may by law provide for the exclusion of the jurisdiction of all Courts, including the Supreme Court for the adjudication of any dispute with respect to use, distribution or control of waters of, or in, any inter-State river or river valley.

Refer Page 25.8 and Chapter 17

3. (c)

Refer Page 25.23

4. (c)

Refer Page 25.17

5. (a)

- In case of Arbitration as an ADR the decisions are final and cannot be appealed.

Refer Page 25.17

6. (a)

Refer Page 25.26

7. (b)

- Under Article 323B, Parliament has the power to specify the jurisdiction, powers (including the power to punish for contempt) and authority which may be exercised by each of the said tribunals

Refer Page 25.16

8. (b)

- The duties, remuneration of the Advocate General are decided by the Governor.

Refer Page 25.2

9. (d)

Refer Page 25.21

10. (d)

- Certain expenditures are kept away from the annual voting of the Parliament considering the importance of the office related to which the expenditure is made. These are known was charged expenditures.

Refer Page 25.18

11. (a)

- Article 266 provides for Consolidated Fund of India and Article 267 provides for Contingency Fund of India.

Refer Page 25.22

12. (a)

- Expenditures on Five-year Plans are subject to the vote of the Parliament.

Refer Page 25.18 and 25.19

13. (c)

- Part XVII of the constitution from article 343 deals with the Official Language of the Union.

Refer Page 25.15 and 25.16

14. (d)

- By Article 344, the Official Languages Commission has a duty to make certain recommendations to the President.

Refer Page 25.15 and 25.16

15. (c)

- By Article 344, the report of the Official Languages Commission is presented to the President who then issues directions in accordance with the whole or any part of that report.

Refer Page 25.15

16. (c)

- Article 343 provides that the use of Hindi would be in Devanagari script.
- Article 345 allows the States by law, to adopt Hindi or any other language in use or Hindi as official language

Refer Page 25.15

17. (b)

- Article 263 provides that the President may constitute an Inter State Council at any time to serve public interest.

Refer Page 25.7

18. (c)
Refer Page 25.20

19. (d)

- Advocate General has the right to speak and take part in the proceedings of, but no right to vote in, the Houses of the Legislature of the State (Article 177).

Refer Page 25.2

20. (b)

- Finance Commission constituted under Article 280 depends mainly on data from States because it does not have the resources to collect it on its own.

Also refer Page 25.5 and 25.6

21. (c)

- Chairman of UPSC can be removed on grounds of misbehavior after inquiry done by the Supreme Court.
- Attorney General of India holds office in the pleasure of the President.

Refer Page 25.2, 25.3 and Chapter 21

22. (c)
Self-explanatory

23. (c)
Refer Page 25.5 and 25.6

24. (a)

- Article 323B provides that State Administrative Tribunals can be abolished by the State Legislature.

Also Refer Page 25.16 and 25.17

25. (d)
Refer Page 25.21

26. (d)

- Cut motions are generally moved while voting for Demand for Grants in the House.

Refer Page 25.20, 25.21 and Chapter 14

27. (d)

- Article 209: Regulation by law of procedure in the Legislature of the State in relation to financial business
- Article 215: High Courts as court of record
- Article 256: Obligations of States and Union

Refer Page 25.22

28. (d)
Refer Page 25.22-24 and Table 25.1

29. (b)

- Public Accounts Committee consists of 22 members – 15 from Lok Sabha and 7 from Rajya Sabha

Refer Chapter 25.14

30. (a)

- Article 116 provides for vote on account which enables the government to meet the operational expenditures during when the budget is pending in the Parliament.

Refer Page 25.21

