

...them. The important agencies are  
Election Commission (article 324)  
Comptroller and Auditor General (article 148)  
Union and State Public Service Commission (article 315)  
Finance Commission (article 280)

#### **(xiv) Emergency provisions**

The framers of our constitution had realized that there could be certain dangerous situations when government could not be run as in ordinary time. Hence our constitution contains certain emergency provisions. During emergency the fundamental rights of the citizens can be suspended and our government becomes a unitary one.

The Constitution makes provisions for the proclamation of National Emergency under Article 352, State Emergency under Article 356 and Financial Emergency under Article 360.

#### **Constitutional Amendment**

Amending the Constitution of India is the process of making changes to the nation's fundamental law or supreme law. The procedure of amendment in the constitution is laid down in Part XX (Article 368) of the Constitution of India. This procedure ensures the sanctity of the Constitution of India and keeps a check on arbitrary power of the Parliament of India.

However, there is another limitation imposed on the amending power of the constitution of India, which developed during conflicts between the Supreme Court and Parliament, where Parliament wants to exercise discretionary use of power to amend the constitution while the Supreme Court wants to restrict that power. This has led to the laying down of various doctrines or rules in regard to checking the validity/legality of an amendment, the most famous among them is the Basic structure doctrine as laid down by the Supreme Court in the case of Kesavananda Bharati vs State of Kerala types of Amendments in Indian Constitution.

The list of types of amendments can be found below. There are three ways in which the Constitution can be amended:

1. Amendment by simple majority of the Parliament
2. Amendment by special majority of the Parliament
3. Amendment by special majority of the Parliament and the ratification of at least half of the state legislatures

A brief description of the above types of amendments of the Indian Constitution has been laid down below:

##### **1. by Simple Majority of Parliament**

A number of provisions in the Constitution can be amended by a simple majority of the two houses of Parliament outside the scope of Article 368. These provisions include:

##### **Admission or establishment of new states:**

- a. Formation of new states and alteration of areas, boundaries or names of existing states
- b. Abolition or creation of legislative councils in states
- c. Second Schedule-emoluments
- d. Allowances, privileges and so on of the president, the governors, the Speakers, judges,

etc

- e. Quorum in Parliament
- f. Salaries and allowances of the Members of Parliament
- g. Rules of procedure in Parliament
- h. Privileges of the Parliament, its members and its committees
- i. Use of the English language in Parliament
- j. Number of judges in the Supreme Court
- k. Conferment of more jurisdiction on the Supreme Court
- l. Citizenship-acquisition and termination
- m. Elections to Parliament and state legislatures
- n. Delimitation of constituencies
- o. Union territories
- p. Fifth Schedule-administration of scheduled areas and scheduled tribes
- q. Sixth Schedule-administration of tribal areas

## **2. By Special Majority of Parliament**

The majority of the provisions in the Constitution need to be amended by a special majority of the Parliament, that is, a majority (that is, more than 50 percent) of the total membership of each House and a majority of two-thirds of the members of each House present and voting. The expression 'total membership' means the total number of members comprising the House irrespective of the fact whether there are vacancies or absentees.

The special majority is required only for voting at the third reading stage of the bill but by way of abundant caution, the requirement for the special majority has been provided for in the rules of the Houses in respect of all the effective stages of the bill.

The provisions which can be amended by this way include: (i) Fundamental Rights; (ii) Directive Principles of State Policy; and (iii) All other provisions which are not covered by the first and third categories.

## **3. by Special Majority of Parliament and Consent of States**

Those provisions of the Constitution which are related to the federal structure of the polity can be amended by a special majority of the Parliament and also with the consent of half of the state legislatures by a simple majority. If one or some or all the remaining states take no action on the bill, it does not matter; the moment half of the states give their consent, the formality is completed. There is no time limit within which the states should give their consent to the bill. The following provisions can be amended in this way:

- a. Election of the President and its manner
- b. Extent of the executive power of the Union and the states
- c. Supreme Court and high courts
- d. Distribution of legislative powers between the Union and the states
- e. Any of the lists in the Seventh Schedule
- f. Representation of states in Parliament
- g. Power of Parliament to amend the Constitution and its procedure (Article 368 itself)

## **Indian Federal System**

Federalism in India describes the distribution of legal authority across national, state



and local governments in India. It is embedded from the Canadian model of federalism.

The Constitution of India establishes a federal structure to the Indian government, declaring it to be a "Union of States". Part XI of the Indian constitution specifies the distribution of legislative, administrative and executive powers between the union government and the States of India. The legislative powers are categorized under a Union List, a State List and a Concurrent List, representing, respectively, the powers conferred upon the Union government, those conferred upon the State governments and powers shared among them.

This federalism is asymmetric in that the devolved powers of the constituent units are not all the same. Historically, the state of Jammu and Kashmir was accorded a higher degree of autonomy than other States under Article 370 (which was revoked by the union government in 2019). Union territories are unitary type, directly governed by the Union government. Article 1 (1) of the constitution stipulates two tier-governance with an additional local elected government. Delhi and Puducherry were accorded legislatures under Article 239AA and 239A, respectively.

The fundamental rights of citizens vary by state per Article 31 (B), as changes are added to Constitution schedule IX by constitutional amendments. Legislative power

The division of powers is defined by the constitution and the legislative powers are divided into three lists:

#### **Union List**

Union List consists of 100 items (earlier 97) on which the parliament has exclusive power to legislate including: defence, armed forces, arms and ammunition, atomic energy, foreign affairs, war and peace, citizenship, extradition, railways, shipping and navigation, airways, posts and telegraphs, telephones, wireless and broadcasting, currency, foreign trade, inter-state trade and commerce, banking, insurance, control of industries, regulation and development of mines, mineral and oil resources, elections, audit of Government accounts, constitution and organization of the Supreme Court, High courts and union public service commission, income tax, custom duties and export duties, duties of excise, corporation tax, taxes on capital value of assets, estate duty and terminal taxes.

#### **State List**

State List consists of 61 items (earlier 66 items). Uniformity is desirable but not essential on items in this list: maintaining law and order, police forces, healthcare, transport, land policies, electricity in the state, village administration, etc. The state legislature has exclusive power to make laws on these subjects. In certain circumstances, the parliament can make laws on subjects mentioned in the State List, but to do so the Rajya Sabha (Council of States) must pass a resolution with a two-thirds majority that it is expedient to legislate in the national interest. Though states have exclusive powers to legislate with regards to items on the State List, articles 249, 250, 252, and 253 mention situations in which the Union government can legislate.

#### **Concurrent List**

Concurrent List consists of 52 (earlier 47) items. Uniformity is desirable but not essential on items in this list. The list mentions: marriage and divorce, transfer of property other than agricultural land, education, contracts, bankruptcy and insolvency, trustees and trusts, civil



procedure, contempt of court, adulteration of foodstuffs, drugs and poisons, economic and social planning, trade unions, labor welfare, electricity, newspapers, books and printing press NS stamp duties.

### **Other (residuary) subjects**

Subjects not mentioned in any of the three lists are known as residuary subjects. However, many provisions in the constitution outside these lists permit parliament or state Legislative assembly to legislate. Excluding the provisions of the constitution outside these lists per Article 245, the power to legislate on such subjects, rests with the parliament exclusively per Article 248. Parliament shall legislate on residuary subjects following the Article 368 procedure as constitutional amendments.

In case the above lists are to be expanded or amended, the legislation should be done by the Parliament under its constituent power per Article 368 with ratification by the majority of the states. Federalism is part of the basic structure of the Indian constitution which cannot be altered or destroyed through constitutional amendments under the constituent powers of the Parliament without undergoing judicial review by the Supreme Court.

### **Executive powers**

The Union and States have independent executive staff controlled by their respective governments. In legislative and administrative matters, the union government cannot overrule the constitutional rights/powers of a state government except when presidential rule is declared in a State. The Union's duty is to ensure that the government of every State is carried on in accordance with the provisions of the Constitution as per Article 355 and Article 256. The State governments cannot violate the Central laws in administrative matters. When a State violates the Constitution, Presidential rule is imposed under Article 356 and the President takes over the State's administration with ex post facto consent of the Parliament per Article 357.

### **Financial powers**

Article 282 accords financial autonomy in spending financial resources available to the states for public purpose. Article 293 allows States to borrow without limit without consent from the Union government. However, the Union government can insist upon compliance with its loan terms when a state has outstanding loans charged to the consolidated fund of India or a federally-guaranteed loan.

The President of India constitutes a Finance Commission every five years to recommend devolution of Union revenues to State governments.

Under Article 360, the President can proclaim a financial emergency when the financial stability or credit of the nation or of any part of its territory is threatened. However, no guidelines define "financial emergency" for the country or a state or a union territory or a panchayat or a municipality or a corporation.

An emergency like this must be approved by the Parliament within two months by a simple majority and has never been declared. A state of financial emergency remains in force indefinitely until revoked by the President. The President can reduce the salaries of all government officials, including judges of the Supreme Court and high courts, in cases of a financial emergency. All money bills passed by the state legislatures are submitted to the President for approval. He can direct the state to observe economy measures.

## **Citizenship**

### **How is Citizenship Defined?**

Citizenship signifies the relationship between the individual and the state. Like any other modern state, India has two kinds of people - citizens and aliens. Citizens are full members of the Indian State and owe allegiance to it. They enjoy all civil and political rights. Citizenship is an idea of exclusion as it excludes non-citizens.

### **There are two well-known principles for the grant of citizenship:**

- a. While 'jus soli' confers citizenship on the basis of place of birth, 'jussanguinis' gives recognition to blood ties.
- b. From the time of the Motilal Nehru Committee (1928), the Indian leadership was in favour of the enlightened concept of jus soli.
- c. The racial idea of discriminations was also rejected by the Constituent Assembly as it was against the Indian ethos.
- d. Constitutional Provisions
- e. Citizenship is listed in the Union List under the Constitution and thus is under the exclusive jurisdiction of Parliament.
- f. The Constitution does not define the term 'citizen' but details of various categories of persons who are entitled to citizenship are given in Part 2 (Articles 5 to 11).
- g. Unlike other provisions of the Constitution, which came into being on January 26, 1950, these articles were enforced on November 26, 1949 itself, when the Constitution was adopted.

#### **Article 5:**

It provided for citizenship on commencement of the Constitution. All those domiciled and born in India were given citizenship. Even those who were domiciled but not born in India, but either of whose parent was born in India, were considered citizens. Anyone who had been an ordinary resident for more than five years, too, was entitled to apply for citizenship.

#### **Article 6:**

It provided rights of citizenship of certain persons who have migrated to India from Pakistan. Since Independence was preceded by Partition and migration, Article 6 laid down that anyone who migrated to India before July 19, 1949, would automatically become an Indian citizen if either of his parents or grandparents was born in India. But those who entered India after this date needed to register themselves.

#### **Article 7:**

Provided Rights of citizenship of certain migrants to Pakistan. Those who had migrated to Pakistan after March 1, 1947 but subsequently returned on resettlement permits were included within the citizenship net.

The law was more sympathetic to those who migrated from Pakistan and called them refugees than to those who, in a state of confusion, were stranded in Pakistan or went there but decided to return soon.

#### **Article 8:**

Provided Rights of citizenship of certain persons of Indian origin residing outside India. Any Person of Indian Origin residing outside India who, or either of whose parents or



grandparents, was born in India could register himself or herself as an Indian citizen with Indian Diplomatic Mission.

**Article 9:**

Provided that if any person voluntarily acquired the citizenship of a foreign State will no longer be a citizen of India.

**Article 10:**

It says that every person who is or is deemed to be a citizen of India under any of the foregoing provisions of this Part shall, subject to the provisions of any law that may be made by Parliament, continue to be such citizen.

**Article 11:**

It empowers Parliament to make any provision with respect to the acquisition and termination of citizenship and all matters relating to it.

**Acts and Amendments**

- a. The Citizenship Act, 1955 provides for the acquisition and determination of Indian citizenship.
- b. Acquisition and Determination of Indian Citizenship
- c. There are four ways in which Indian citizenship can be acquired: birth, descent, registration and naturalization. The provisions are listed under the Citizenship Act, 1955.

**By Birth:**

Every person born in India on or after 26.01.1950 but before 01.07.1987 is an Indian citizen irrespective of the nationality of his/her parents.

- a. Every person born in India between 01.07.1987 and 02.12.2004 is a citizen of India given either of his/her parents is a citizen of the country at the time of his/her birth.
- b. Every person born in India on or after 3.12.2004 is a citizen of the country given both his/her parents are Indians or at least one parent is a citizen and the other is not an illegal migrant at the time of birth.

**By Registration:**

Citizenship can also be acquired by registration. Some of the mandatory rules are:

- a. A person of Indian origin who has been a resident of India for 7 years before applying for registration
- b. A person of Indian origin who is a resident of any country outside undivided India
- c. A person who is married to an Indian citizen and is ordinarily resident for 7 years before applying for registration

Minor children of persons who are citizens of India

**By Descent:**

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

A person born outside India on or after December 10, 1992, but before December 3, 2004 if either of his/her parent was a citizen of India by birth.

If a person born outside India on or after December 3, 2004 has to acquire citizenship,

his/her parents have to declare that the minor does not hold a passport of another country and his/her birth is registered at an Indian consulate within one year of birth.

### **By Naturalization:**

- a. A person can acquire citizenship by naturalization if he/she is ordinarily resident of India for 12 years (throughout 12 months preceding the date of application and 11 years in the aggregate) and fulfils all qualifications in the third schedule of the Citizenship Act.
- b. The Act does not provide for dual citizenship or dual nationality. It only allows citizenship for a person listed under the provisions above ie: by birth, descent, registration or naturalization.
- c. The act has been amended four times — in 1986, 2003, 2005, and 2015.
- d. Through these amendments Parliament has narrowed down the wider and universal principles of citizenship based on the fact of birth.
- e. Moreover, the Foreigners Act places a heavy burden on the individual to prove that he/she is not a foreigner.
- f. 1986 amendment: Unlike the constitutional provision and the original Citizenship Act that gave citizenship on the principle of jus soli to everyone born in India, the 1986 amendment to Section 3 was less inclusive.
- g. The amendment has added the condition that those who were born in India on or after January 26, 1950 but before July 1, 1987, shall be Indian citizen.
- h. Those born after July 1, 1987 and before December 4, 2003, in addition to one's own birth in India, can get citizenship only if either of his parents was an Indian citizen at the time of birth.
- i. 2003 amendment: The amendment made the above condition more stringent, keeping in view infiltration from Bangladesh.
- j. Now the law requires that for those born on or after December 4, 2004, in addition to the fact of their own birth, both parents should be Indian citizens or one parent must be Indian citizen and other should not be an illegal migrant.
- k. With these restrictive amendments, India has almost moved towards the narrow principle of jus sanguinis or blood relationship.
- l. This lays down that an illegal migrant cannot claim citizenship by naturalization or registration even if he has been a resident of India for seven years.
- m. Citizenship (Amendment) Bill 2019: The amendment proposes to permit members of six communities — Hindus, Sikhs, Buddhists, Jains, Parsis and Christians from Pakistan, Bangladesh and Afghanistan — to continue to live in India if they entered India before December 14, 2014.
- n. It also reduces the requirement for citizenship from 11 years to just 6 years.
- o. Two notifications also exempted these migrants from the Passport Act and Foreigners Act.
- p. A large number of organizations in Assam protested against this Bill as it may grant citizenship to Bangladeshi Hindu illegal migrants.
- q. The justification given for the bill is that Hindus and Buddhists are minorities in Bangladesh, and fled to India to avoid religious persecution, but Muslims are a majority in Bangladesh and so the same cannot be said about them.
- r. Now the law requires that for those born on or after December 4, 2004, in addition to the fact of their own birth, both parents should be Indian citizens or one parent must be Indian citizen and other should not be an illegal migrant.
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- SEMESTER III/IV
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## **Fundamental Rights**

### **What are Fundamental Rights?**

Fundamental Rights are those Rights which are mentioned under Part III of the Indian Constitution.

There are certain Rights which are mentioned in the Constitution, but not under Fundamental Rights. Such Rights are called Constitutional Rights. (E.g. Right to Vote)

There are certain Rights which are available to citizens through laws passed by Legislatures (Centre or State). Such Rights are called Statutory Rights. (E.g. Right to Information)

### **Nature of Fundamental Rights**

- a. Most of the Rights are Negative Obligations on the State (E.g. Article 14), with certain exceptions (E.g. Article 21A). Negative Obligations means that the State cannot do something that hurts or curtails people's rights.
- b. Majority of Rights mentioned in Part III are enjoyed by citizens against the State.
- c. These Rights are Justiciable.
- d. Fundamental Rights are not absolute i.e. certain reasonable restrictions can be imposed upon them.
- e. Fundamental Rights can be suspended during emergency.
- f. Fundamental Rights of people occupying sensitive positions (Armed Forces, Intelligence Agencies etc.) can be restricted or even denied by Parliament by law.
- g. Most of the Right is self-executor i.e. the parliament need not make laws to implement these Rights. There are certain exceptions e.g. For Right to Education under Article 21A, a law was required by the parliament.
- h. Some of these Rights are available to aliens (Foreigners).

### **Article 12 – Definition of State**

### **Article 13 - Laws inconsistent with or in derogation of the fundamental rights**

### **Classification of Fundamental Rights**

- 1. Right to Equality (Article 14 to 18)
- 2. Right to Freedom (Article 19 to 22)
- 3. Right against Exploitation (Article 23 to 24)
- 4. Right to Freedom of Religion (Article 25 to 28)



300-A, gives protection against executive action but not against legislative action.

## **6. (Articles 32-35): Right to Constitutional Remedies**

Rights, in order to be meaningful, must be enforceable and backed by remedies in case of violation. This article guarantees the right to move the Supreme Court by appropriate proceedings for the enforcement of Fundamental Rights and deals with the Supreme Court's power to issue order or writs for the enforcement of Fundamental Rights.

Empowers Parliament to modify the application of Fundamental Rights to the armed forces or forces charged with the maintenance of public order. On the other hand, Article 35 lies down that the power to make laws to give effect to certain specified Fundamental Rights shall vest only with the Parliament and not with State Legislatures.

Therefore, Fundamental Rights play a significant role because they are most essential for the attainment of the full intellectual, moral, and spiritual status of an individual. Therefore, the objective behind the inclusion of Fundamental Rights in the Constitution was to establish a government of Law to preserve individual liberty, building an equitable society, and establish a welfare state.

### **Articles Related to Fundamental Rights at a Glance**

#### **General**

- a. Definition of State
- b. Laws inconsistent with or in derogation of the Fundamental Rights

#### **Right to Equality**

- a. Equality before law
- b. Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth
- c. Equality of opportunity in matters of public employment
- d. Abolition of untouchability
- e. Abolition of titles

#### **Right to Freedom**

1. Protection of certain rights regarding freedom of speech, etc
2. Protection in respect of conviction for offences
3. Protection of life and personal liberty
4. Right to education
5. Protection against arrest and detention in certain cases

#### **Right against Exploitation**

1. Prohibition of traffic in human beings and forced labor
2. Prohibition of employment of children in factories, etc.

#### **Right to Freedom of Religion**

1. Freedom of conscience and free profession, practice and propagation of religion
2. Freedom to manage religious affairs
3. Freedom as to payment of taxes for promotion of any particular religion
4. Freedom as to attendance at religious instruction or religious worship in certain educational institutions.

### **Cultural and Educational Rights**

1. Protection of interests of minorities
2. Right of minorities to establish and administer educational institutions
3. Compulsory acquisition of property—(Repealed)

### **Saving of Certain Laws**

- 31A. saving of laws providing for acquisition of estates, etc.
- 31B. Validation of certain Acts and Regulations
- 31C. saving of laws giving effect to certain directive principles
- 31D. saving of laws in respect of anti-national activities—(Repealed)

### **Right to Constitutional Remedies**

32. Remedies for enforcement of rights conferred by this part
- 32A. Constitutional validity of State laws not to be considered in proceedings under Article 32(Repealed)
33. Power of Parliament to modify the rights conferred by this part in their application to forces, etc.
34. Restriction on rights conferred by this part while martial law is in force in any area
35. Legislation to give effect to the provisions of this part.



## UNIT - II

### FUNDAMENTAL DUTIES

#### **PART IVA – FUNDAMENTAL DUTIES**

##### **Part IVA consists of Article 51A**

It was added by 42nd Amendment Act, 1976, based on the recommendations of Swaran Singh committee.

Fundamental Duties for citizens are in nature of a code of conduct.

These fundamental duties are inspired by the Constitution of the former Soviet Union.

It is the Constitutional sanction being given to the Indian way of life.

Since, the Fundamental Duties are included in Part IV of the Constitution, these cannot come into force automatically, and neither can these duties be enforced by judicial process.

The Constitution does not make any provision to enforce these duties automatically or any sanction to prevent the violation of these duties by the citizens. However, it is expected that if a law is enacted by the legislature to enforce these provisions, it shall not be declared unconstitutional on the ground of its inconsistency with the provisions of Article 14 or that of 19.

In the year 2000, the Government of India set up a National Committee to review the working of the Constitution.

It was headed by former CJI M N Venkatachalaiah. The committee submitted its report in 2002.

The committee recommended the government to take active steps to increase awareness of Fundamental Duties among citizens.

It also stated that the list of duties is not exhaustive. It said that duties like duty to vote, pay taxes etc. could be added

##### **51A. Duty of every citizen of India**

- a. To abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem.
- b. To cherish and follow the noble ideals which inspired our national struggle for freedom;
- c. To uphold and protect the sovereignty, unity and integrity of India.
- d. To defend the country and render national service when called upon to do so.
- e. To promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities, to renounce practices derogatory to the dignity of women.
- f. To value and preserve the rich heritage of our composite culture.
- g. To protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures.
- h. To develop the scientific temper, humanism, and the spirit of inquiry and reform.
- i. To safeguard public property and to abjure violence.
- j. To strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of Endeavour and achievement.
- k. To provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years. Note--(k) was added by the 86th Constitution amendment Act, 2002.

##### **Some acts passed to enforce Fundamental Duties**

- a. The Emblems and Names (Prevention of Improper use) Act, 1950
- b. The Prevention of Insult to National Honor's Act, 1971

- c. The Untouchability (Offences) Act, 1955
- d. The Representation of Peoples Act, 1951

### **The Directive Principles of State Policy**

Part IV of Indian Constitution deals with Directive Principles of our State Policy (DPSP). The provisions contained in this Part cannot be enforced by any court, but these principles are fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws.

The concept of Directive Principles of State Policy was borrowed from the Irish Constitution. While most of the Fundamental Rights are negative obligations on the state, DPSPs are positive obligations on the state, though not enforceable in a court of law.

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- Article 36: Definition
- Article 37: Application of the principles contained in this Part
- Article 38: State to secure a social order for the promotion of the welfare of the people
- Article 39: Certain principles of policy to be followed by the State
- Article 39A: Equal justice and free legal aid
- Article 40: Organization of Village Panchayats
- Article 41: Right to work, to education and to public assistance in certain cases
- Article 42: Provision for just and humane conditions of work and maternity relief
- Article 43: Living wage, etc., for workers
- Article 43A: Participation of workers in management of industries
- Article 44: Uniform civil code for the citizen
- Article 45: Provision for free and compulsory education for children
- Article 46: Promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections
- Article 47: Duty of the State to raise the level of nutrition and the standard of living and to improve public health
- Article 48: Organization of agriculture and animal husbandry
- Article 48A: Protection and improvement of environment and safeguarding of forests and wildlife
- Article 49: Protection of monuments and places and objects of national importance
- Article 50: Separation of judiciary from the executive
- Article 51: Promotion of international peace and security

### **Classification of the Directive Principles**

The Constitution does not contain any classification of Directive Principles. However, on the basis of their content and direction, they can be classified into three broad categories, viz., socialistic, Gandhian and liberal-intellectual.

### **Socialistic Principles**

These principles reflect the ideology of socialism. They lay down the framework of a democratic socialist state, aim at providing social and economic justice, and set the path towards welfare state.

They direct the state:

1. To promote the welfare of the people by securing a social order permeated by justice—social, economic and political—and to minimize inequalities in income, status, facilities



and opportunities (Article 38).

2. To secure (a) the right to adequate means of livelihood for all citizens; (b) the equitable distribution of material resources of the community for the common good; (c) prevention of concentration of wealth and means of production; (d) equal pay for equal work for men and women; (e) preservation of the health and strength of workers and children against forcible abuse; and (f) opportunities for healthy development of children<sup>5</sup> (Article 39).
3. To promote equal justice and to provide free legal aid to the poor (Article 39 A)
4. To secure the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement (Article 41).
5. To make provision for just and humane conditions for work and maternity relief (Article 42)
6. To secure a living wage, a decent standard of life and social and cultural opportunities for all workers (Article 43)
7. To take steps to secure the participation of workers in the management of industries (Article 43 A)
8. To raise the level of nutrition and the standard of living of people and to improve public health (Article 47)

### **Gandhian Principles**

These socialistic 9 principles are based on Gandhian ideology. They represent the programme of reconstruction enunciated by Gandhi during the national movement. In order to fulfill the dreams of Gandhi, some of his ideas were included as Directive Principles.

They require the State:

1. To organize village panchayats and endow them with necessary powers and authority to enable them to function as units of self-government (Article 40)
2. To promote cottage industries on an individual or co-operation basis in rural areas (Article 43)
3. To promote voluntary formation, autonomous functioning, democratic control and professional management of co-operative societies (Article 43B)
4. To promote the educational and economic interests of SCs, STs, and other weaker sections of the society and to protect them from social injustice and exploitation (Article 46)
5. To prohibit the consumption of intoxicating drinks and drugs which are injurious to health (Article 47)
6. To prohibit the slaughter of cows, calves and other milk and draught cattle and to improve their breeds (Article 48)

### **Economic Principles**

The State is expected to formulate its policy with the following objectives:

1. To minimize the inequalities of income of the people
2. To secure adequate means of livelihood to all citizens
3. To provide equal pay for equal work
4. To protect strength and health of workers and avoiding circumstances which force citizens to enter avocations to their age or strength
5. To provide opportunities to the needy poor to get free legal aid
6. To secure the right to work to all
7. To provide public assistance in cases of unemployment, old age and sick.

8. To provide a living wage and a decent standard of life
9. To prevent concentration of wealth in the hands of a few
10. To provide within ten years from the commencement of the constitution, free compulsory education to all children up to the age of 14 years of age

**Table 8.1 Distinction between Fundamental Rights and Directive Principles**

<b>Fundamental rights</b>	<b>Directive principles</b>
1. These are negative as they prohibit the State from doing certain things.	1. These are positive as they require the State to do certain things
2. These are justiciable, that is, they are legally enforceable by the courts in case of their violation	2. These are non-justiciable, that is, they are not legally enforceable by the courts for their violation
3. They aim at establishing political democracy in the country.	3. They aim at establishing social and economic democracy in the country.
4. These have legal sanctions	4. These have moral and political sanctions.
5. They promote the welfare of the individual. Hence, they are personal and individualistic.	5. They promote the welfare of the community. Hence, they are sociitarian and socialistic
6. They do not require any legislation for their implementation. They are automatically enforced.	6. They require legislation for their implementation. They are not automatically enforced
7. The courts are bound to declare a law violate of any of the Fundamental Rights as unconstitutional and invalid.	7. The courts cannot declare a law violate of any of the Directive Principles as unconstitutional and invalid.

## **THE PRESIDENT**

The Executive broadly covers the President, Council of Ministers and position of the Prime Minister. President is the head of the Union Executive. Article 52 creates the position of the President.

### **Single Transferable Vote System:**

The election of the President is held through single transferable vote system of proportional representation. Under this system names of all the candidates are listed on the ballot paper and the elector gives them numbers according to his/her preference. Every voter may mark on the ballot paper as many preferences as there are candidates. Thus the elector shall place the figure 1 opposite the name of the candidate whom he/she chooses for first preference and may mark as many preferences as he/she wishes by putting the figures 2, 3, 4 and so on against the names of other candidates. The ballot becomes invalid if first preference is marked against more than one candidate or if the first preference is not marked at all.

### **Conditions of President's office**

- a. Article 59 of the constitution lays down the conditions
- b. The President cannot be a member of either of House of Parliament or State Legislature when holding the office of President
- c. The President cannot hold any other office of profit
- d. Parliament by law will determine the salary of the President



## **Time of holding Presidential Elections**

- a. An election to fill a vacancy caused by the expiration of the term of office of President shall be completed before the expiration of the current term.
- b. An election to fill a vacancy in the office of President occurring by the reasons of death, resignation or removal, or otherwise, should be held within 6 months from the date of occurrence of vacancy.

## **Privileges and Immunities**

- a. The President cannot be asked to be present in any court of law during his tenure.
- b. A prior notice of two months' time is to be served before instituting a civil case against him
- c. The President can neither be arrested nor any criminal proceedings be instituted against him in any court of law during his tenure.
- d. The President is not answerable to any court of law for the exercise of his functions.

## **Qualifications**

**The qualifications for the office of President are:**

- I. Should be a citizen of India.
- II. Should have completed the age of 35 years.
- III. Should be qualified to be elected as a member of Lok Saba.
- IV. Should not hold any office of profit i.e. the candidate should not be a government servant. However the office of the President, the Vice-President, the Governor or the Minister of the Union or the State is not considered as an office of profit for this purpose.

## **Election of President**

**Electoral College which elects President consists of.**

- a. Elected members of both the Houses of Parliament (does not include nominated members)
- b. Electoral College which elects the President consists of elected MP's and elected MLA's at the state level
- c. MLA of National Capital Territory of Delhi and the Union territory of Pondicherry are also included
- d. The election is held by means of single transferable vote system of proportional representation. The voting is done by secret ballot.
- e. The term of President is five years.

## **Removal of the President:**

The President can only be removed from office through a process called impeachment. The Constitution lays down a detailed procedure for the impeachment of the President.

## **Procedure:**

The resolution to impeach the President can be moved in either House of Parliament. Such a resolution can be moved only after a notice has been given by at least one-fourth of the total number of members of the House. Such a resolution charging the President for violation of the Constitution must be passed by a majority of not less than two-third of the total

membership of that House before it goes to the other House for investigation. The charges leveled against the President are investigated by the second House. President has the right to be heard or defended when the charges against him are being investigated. The President may defend himself in person or through his counsel. If the charges are accepted by a two-third majority of the total membership of the second House, the impeachment succeeds. The President thus stands removed from the office from the date on which the resolution is passed.

### **Executive Powers of the President**

The executive powers and functions of the President are:

- a. All executive actions of the Government of India are formally taken in his name.
- b. He can make rules specifying the manner in which the orders and other instruments made and executed in his name shall be authenticated.
- c. He can make rules for more convenient transaction of business of the Union government, and for allocation of the said business among the ministers.
- d. He appoints the prime minister and the other ministers. They hold office during his pleasure.
- e. He appoints the attorney general of India and determines his remuneration. The attorney general holds office during the pleasure of the President.
- f. He appoints the comptroller and auditor general of India, the chief election commissioner and other election commissioners, the chairman and members of the Union Public Service Commission, the governors of states, the chairman and members of finance commission, and so on.
- g. He can seek any information relating to the administration of affairs of the Union, and proposals for legislation from the Prime Minister.
- h. He can require the Prime Minister to submit, for 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.
- i. He can appoint a commission to investigate into the conditions of SCs, STs and other backward classes.
- j. He can appoint an inter-state council to promote centre-state and inter-state cooperation.
- k. He directly administers the union territories through administrators appointed by him.
- l. He can declare any area as scheduled area and has powers with respect to the administration of scheduled areas and tribal areas.

### **Article 53 – Executive power of the Union**

53. (1) the executive power of the Union shall be vested in the President and shall be exercised by him either directly or through officers subordinates to him in accordance with this Constitution.

53. (2) without prejudice to the generality of the foregoing provision, the supreme command of the Defence Forces of the Union shall be vested in the President and the exercise thereof shall be regulated by law.



53. (3) Nothing in this article shall— (a) be deemed to transfer to the President any functions conferred by any existing law on the Government of any State or other authority; or (b) prevent Parliament from conferring by law functions on authorities other than the President.

Indian Government is following the Westminster system of Parliamentary democracy. In India, the President is the nominal head. The President is empowered to exercise executive powers either directly or through officers subordinate to him who means through the Prime Minister and Council of Ministers. This is mentioned in Article 74 of the Indian Constitution.

### **Administrative Powers of the President**

Under Article 77, all the actions of the government are taken under the name of the President.

Under Article 78, the President has the right to seek any information from the Centre and the State.

Under Article 310, every officer of the government occupies his/her position during the pleasure of the President.

### **Legislative Powers of the President**

- a. President summons both the Houses of the Parliament for sessions.
- b. President also prorogues the sessions.
- c. President is also responsible for dissolving the LokSaba.
- d. The first session of each year and the first session of newly elected LokSaba after the general elections begin with the address of the President.
- e. President can nominate two members in the LokSaba belonging to the Anglo Indian community.
- f. President has the power to send messages to the Parliament.
- g. President can nominate 12 members to the RajyaSaba.
- h. President submits the reports of UPSC, Finance Commission etc. to the Parliament.
- i. No bill can become a law without the assent of the President. To introduce certain bills in the Parliament, prior permission of the President is required. E.g. Money bills.
- j. President possesses Veto power.
- k. President has Ordinance making power under Article 123.

### **Judicial Powers of the President**

The President, as head of state, can pardon a criminal or reduce the punishment or suspend commute or remit the sentence of a criminal convicted by the Supreme Court or High Courts for an offence against the federal laws.

President's pardoning power comprises of pardon, reprieve, remission, respite and commutation.

The President can pardon a person convicted by a Court Martial. His/her power of pardon includes granting of pardon even to a person awarded death sentence. But, the President performs this function on the advice of Law Ministry.

Advisory Jurisdiction under Article 143 also comes under judicial powers of the President.

### **Emergency powers of the President**

President has the power to declare National emergency under Article 352 on the

grounds of war, external aggression and armed rebellion.

President also has the power to declare Constitutional Emergency under Article 356.

President can also declare financial emergency under Article 360.

### **Areas where the President can act independently**

- Can reject the advice of the Prime Minister if the PM has lost majority in the house
- Power to send messages to the Parliament
- Power of suspense veto
- If the general elections to the Lok Sabha throw up a 'Hung House'
- Under Article 78 – President's Right to Information
- Under Article 74 – Send an advice back to the Council of Ministers for reconsideration.
- Receive memorandum from the opposition, study the situation and speak to the PM privately.
- Entitled to comment on the affairs of the state

### **Financial Powers**

The financial powers and functions of the President are:

- a. Money bills can be introduced in the Parliament only with his prior recommendation.
- b. He causes to be laid before the Parliament the annual financial statement (i.e., the Union Budget).
- c. No demand for a grant can be made except on his recommendation.
- d. He can make advances out of the contingency fund of India to meet any unforeseen expenditure.
- e. He constitutes a finance commission after every five years to recommend the distribution of revenues between the Centre and the states.

### **Diplomatic Powers**

The international treaties and agreements are negotiated and concluded on behalf of the President. However, they are subject to the approval of the Parliament. He represents India in international forums and affairs and sends and receives diplomats like ambassadors, high commissioners, and so on.

### **Military Powers**

He is the supreme commander of the defense forces of India. In that capacity, he appoints the chiefs of the Army, the Navy and the Air Force. He can declare war or conclude peace, subject to the approval of the Parliament.

### **Emergency Powers**

In addition to the normal powers mentioned above, the Constitution confers extraordinary powers on the President to deal with the following three types of emergencies.

- a. National Emergency (Article 352).
- b. President's Rule (Article 356 & 365).
- c. Financial Emergency (Article 360)

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

A bill passed by the Parliament can become an act only if it receives the assent of the President. When such a bill is presented to the President for his assent, he has three alternatives (under Article 111 of the Constitution):

1. He may give his assent to the bill, or
  2. He may withhold his assent to the bill, or
  3. He may return the bill (if it is not a Money bill) for reconsideration of the Parliament.
- However, if the bill is passed again by the Parliament with or without amendments and again presented to the President, the President must give his assent to the bill.

Thus, the President has the veto power over the bills passed by the Parliament<sup>10</sup>, that is, he can withhold his assent to the bills. The object of conferring this power on the President is two-fold—(a) to prevent hasty and ill-considered legislation by the Parliament; and (b) to prevent legislation which may be unconstitutional.

The veto power enjoyed by the executive in modern states can be classified into the following four types:

- a. Absolute veto that is, withholding of assent to the bill passed by the legislature
- b. Qualified veto, which can be overridden by the legislature with a higher majority
- c. Suspense veto, which can be over ridden by the legislature with an ordinary majority
- d. Pocket veto that is, taking no action on the bill passed by the legislature of the above four, the President of India is vested with three—absolute veto, suspense veto and pocket veto. There is no qualified veto in the case of Indian President; it is possessed by the American President.

### **Vice President**

The Vice-President occupies the second highest office in the country. He is accorded a rank next to the President in the official warrant of precedence. This office is modeled on the lines of the American Vice-President.

### **Election**

The Vice-President, like the president, is elected not directly by the people but by the method of indirect election. He is elected by the members of an Electoral College consisting of the members of both Houses of Parliament. Thus Electoral College is different from the Electoral College for the election of the President in the following two respects:

- a. It consists of both elected and nominated members of the Parliament (in the case of president, only elected members).
- b. It does not include the members of the state legislative assemblies (in the case of President, the elected members of the state legislative assemblies are included).

### **Qualifications**

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

1. He should be a citizen of India.
2. He should have completed 35 years of age.
3. He should be qualified for election as a member of the RajyaSaba.
4. He should not hold any office of profit under the Union government or any state government or any local authority or any other public authority.

### **Powers and Functions**

The functions of Vice-President are two-fold:

1. He acts as the ex-officio Chairman of RajyaSaba. In this capacity, his powers and functions



are similar to those of the Speaker of LokSaba. In this respect, he resembles the American vice-president who also acts as the Chairman of the Senate the Upper House of the American legislature.

2. He acts as President when a vacancy occurs in the office of the President due to his resignation, removal, and death or otherwise. He can act as President only for a maximum period of six months within which a new President has to be elected. Further, when the sitting President is unable to discharge his functions due to absence, illness or any other cause, the Vice-President discharges his functions until the President resumes his office.

While acting as the President or discharging the functions of the President, the Vice-President does not perform the duties of the office of the chairman of RajyaSaba. During this period, those duties are performed by the Deputy Chairman of RajyaSaba

### **PRIME MINISTER**

The Prime Minister of India is the leader of the executive of the Government of India. The prime minister is also the chief adviser to the president of India and head of the Council of Ministers. They can be a member of any of the two houses of the Parliament of India the LokSaba (House of the People) and the RajahSaba (Council of the States) but has to be a member of the political party or coalition, having a majority in the LokSaba.

The Prime Minister is the senior-most member of cabinet in the executive of government in a parliamentary system. The Prime Minister selects and can dismiss members of the cabinet; allocates posts to members within the government; and is the presiding member and chairperson of the cabinet.

The Union Cabinet headed by the Prime Minister is appointed by the President of India to assist the latter in the administration of the affairs of the executive. Union cabinet is collectively responsible to the LokSaba as per article 75(3) of the Constitution of India. The prime minister has to enjoy the confidence of a majority in the LokSaba and shall resign if they are unable to prove majority when instructed by the president.

### **Origins and history**

India follows a parliamentary system in which the Prime Minister is the presiding head of the government and chief of the executive of the government. In such systems, the head of state, or, the head of state's official representative (i.e., the Monarch, President, or Governor-general) usually holds a purely ceremonial position and acts on most matters only on the advice of the Prime Minister.

(The Prime Minister if they are not already shall become a member of parliament within six months of beginning his/her tenure.) A prime minister is expected to work with other central ministers to ensure the passage of bills by the parliament.

### **Eligibility**

According to Article 84 of the Constitution of India, which sets the principal qualification for the Member of Parliament, and Article 75 of the Constitution of India, which sets the qualifications for the minister in the Union Council of Ministers, and the argument that the position of Prime Minister has been described as *primus inter pares* (the first among equals), A Prime Minister must:

- a. Be a citizen of India.
- b. Be a member of the LokSaba or the Rajah Saba. If the person chosen as the prime minister is neither a member of the LokSaba nor the Rajah Saba at the time of selection, they must become a member of either of the houses within six months.
- c. Be above 25 years of age if they are a member of the LokSaba, or, above 30 years of age if they are a member of the RajyaSaba.
- d. Not hold any office of profit under the government of India or the government of any state or under any local or other authority subject to the control of any of the said governments.

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

### **Executive powers**

The Prime Minister leads the functioning and exercise of authority of the government of India. The President of India—subject to eligibility—invites a person who is commanding support of majority members of LokSaba to form the government of India—also known as the central government or Union government—at the national level and exercise its powers. In practice the Prime Minister nominates the members of their council of ministers to the president. They also work upon to decide a core group of ministers (known as the cabinet), as in charge of the important functions and ministries of the government of India.

The Prime Minister is responsible for aiding and advising the president in distribution of work of the government to various ministries and offices and in terms of the Government of India (Allocation of Business) Rules, 1961. The co-ordination work is generally allocated to the Cabinet Secretariat. While the work of the government is generally divided into various Ministries, the Prime Minister may retain certain portfolios if they are not allocated to any member of the cabinet.

The Prime Minister—in consultation with the cabinet—schedules and attends the sessions of the houses of parliament and is required to answer the question from the Members of Parliament to them as the in-charge of the portfolios in the capacity as Prime Minister of India. Some specific ministries/department is not allocated to anyone in the cabinet but the prime minister themselves. The prime minister is usually always in charge/head of Ministry of Personnel, Public Grievances and Pensions (as Minister of Personnel, Public Grievances and Pensions)

1. Cabinet Secretariat
2. Appointment Committee of the Cabinet
3. Cabinet Committee on Security
4. Cabinet Committee on Economic Affairs
5. NITI AAYOG
6. Department of Atomic Energy
7. Department of Space
8. Nuclear Command Authority

The Prime Minister represents the country in various delegations, high level meetings and international organizations that require the attendance of the highest government office, and also addresses to the nation on various issues of national or other importance. As Per Article 78 of the constitution, the official communication between the union cabinet and the president are through the prime minister. Otherwise constitution recognizes the prime minister as a member of the union cabinet only outside the sphere of union cabinet.



## **Administrative and Appointment Powers**

The Prime Minister recommends to the President—among others—names for the appointment of:

- a. Chief Election Commissioner of India (CEC) and other Election Commissioners of India (ECs)
- b. Comptroller and Auditor General of India (C&AG)
- c. Chairperson and members of the Union Public Service Commission (UPSC)
- d. Chief Information Commissioner of India (CIC) and Information Commissioners of India
- e. Chairperson and members of the finance commission (FC)
- f. Attorney General of India (AG) and Solicitor General of India (SG)

## **Legislative Powers**

The Prime Minister acts as the leader of the house of the chamber of parliament—generally the LokSaba—he/she belongs to. In this role, the prime minister is tasked with representing the executive in the legislature, he/she is also expected to announce important legislation, and is further expected to respond to the opposition's concerns. Article 85 of the Indian constitution confers the President with the power to convene and end extraordinary sessions of the parliament, this power, however, is exercised only on the advice of the prime minister and his/her council, so, in practice, the Prime Minister does exercise some control over the affairs of the parliament.

dissolves. However, the President is authorized to dissolve the Lok Saba at any time even before the completion of five years and this cannot be challenged in a court of law.

Further, the term of the Lok Saba can be extended during the period of national emergency by a law of Parliament for one year at a time<sup>7</sup> for any length of time. However, this extension cannot continue beyond a period of six months after the emergency has ceased to operate.

## **Membership of Parliament**

### **Qualifications**

The Constitution lays down the following qualifications for a person to be chosen a member of the Parliament:

1. He must be a citizen of India.
2. He must make and subscribe to an oath or affirmation before the person authorized by the election commission for this purpose. In his oath or affirmation, he swears
  - i. To bear true faith and allegiance to the Constitution of India
  - ii. To uphold the sovereignty and integrity of India
3. He must be not less than 30 years of age in the case of the Rajya Saba and not less than 25 years of age in the case of the Lok Saba.
4. He must possess other qualifications prescribed by Parliament.

The Parliament has laid down the following additional qualifications in the Representation of People Act (1951).

1. He must be registered as an elector for a parliamentary constituency. This is same in the case of both, the Rajya Saba and the Lok Saba. The requirement that a candidate contesting an election to the Rajya Saba from a particular state should be an elector in that particular state was dispensed with in 2003. In 2006, the Supreme Court upheld the constitutional validity of this change.

2. He must be a member of a scheduled caste or scheduled tribe in any state or union territory, if he wants to contest a seat reserved for them. However, a member of scheduled castes or scheduled tribes can also contest a seat not reserved for them.

### **Disqualifications for membership – Article 102**

102. (1) A person shall be disqualified for being chosen as, and for being, a member of either House of Parliament—

- a. If he holds any office of profit under the Government of India or the Government of any State, other than an office declared by Parliament by law not to disqualify its holder;
- b. If he is of unsound mind and stands so declared by a competent court;
- c. If he is an undischarged insolvent;
- d. If he is not a citizen of India, or has voluntarily acquired the citizenship of a foreign State, or is under any acknowledgment of allegiance or adherence to a foreign State;
- e. If he is so disqualified by or under any law made by Parliament

A Member of Parliament cannot hold office of profit under the Government of India or that of any state as it would lead to conflict of interest. Minister's office is exempted from this. Parliament, by law, determines the offices which are exempted. In accordance, Members of Parliament (Prevention of disqualification) Act 1959 was enacted. This Act was amended in 2006, which added certain offices of profit to list, and was given retrospective effect. There is a Joint Committee on offices of profit in Parliament, which advises the Parliament on the offices which has to be added to the list, as and when new offices are created. Members can also be disqualified under any other laws made by the Parliament. E.g. Representation of People's Act 1951.

### **Decision on questions as to disqualifications of members – Article 103**

103.(1) If any question arises as to whether a member of either House of Parliament has become subject to any of the disqualifications mentioned in clause (1) of article 102, the question shall be referred for the decision of the President and his decision shall be final.

103.(2) Before giving any decision on any such question, the President shall obtain the opinion of the Election Commission and shall act according to such opinion.

If a Member of Parliament is subject to disqualification under grounds mentioned in Article 102, the decision shall be referred to the President and the President shall act in accordance with the opinion of the Election Commission.

### **SPEAKER OF LOK SABHA**

- a. G. V. Mavalankar was the Lok Sabha speaker after independence. Sir Frederick Whyte was the first Lok Sabha speaker of British India. Vittalbhai Patel was the first Indian speaker during British India.
- b. According to Article 93, the Lok Sabha has to choose two members as the Speaker and the Deputy Speaker respectively.
- c. The Speaker or Deputy Speaker shall vacate his office if he ceases to be the member of the House of the People.
- d. If the Speaker wishes to resign, he sends his resignation letter to Deputy Speaker and vice versa.
- e. A Speaker can be removed from his office by passing a resolution with a majority of the then members of the Parliament. A prior notice of 14 days has to be given before moving the resolution.
- f. Speaker need not resign when the Lok Sabha is dissolved. He continues to hold office until the first meeting of next Lok Sabha is held and the next speaker is elected.
- g. If the office of the speaker is vacant; the duties shall be performed by the Deputy Speaker. If the office of Deputy Speaker is also vacant, the President shall appoint a person to take over the proceedings of the House (Pro tem Speaker).

### **Powers of the Lok Sabha Speaker**

- a. He presides over the meeting of Lok Sabha.
- b. He has the final power to maintain order in the House and also to interpret the rules of procedure.
- c. The Speaker decides whether a bill is money bill or not (available only to Lok Sabha speaker).
- d. He presides over the joint sitting of both the Houses of the Parliament.
- e. The Speaker cannot vote in the first instance. If there is a tie in the first instance, then the speaker is allowed to vote to break the deadlock. This is called Casting Vote.
- f. During the removal procedure of the speaker, he is allowed to vote in the first



Instance.

- g. The Speaker has the power to disqualify any member of the house, if the member is held guilty of any wrong doings.
- h. The Speaker has the right to nominate members for certain committees of the Parliament.
- i. It is the speaker who decides who shall hold the floor (speak in the house).
- j. Speaker decides which points of order are accepted and rejected.
- k. Position of the Chairperson of Rajya Saba
- l. Article 63 creates the Position of the Vice President of India.
- m. Vice President is the official chairperson of Rajya Saba, according to Article 63.
- n. The tenure of Members of Rajya Saba is 6 years whereas the tenure of the chairperson of Rajya Saba is 5 years.
- o. If the Vice President is discharging duties of the President; he shall not officiate as the chairperson of Rajya Saba.
- p. The Deputy Chairperson is elected from amongst the members of Rajya Saba.

### **Vacancy in the seat of a Member of Parliament in both the Houses**

- a. Vacancy can occur on account of death, resignation, the Disqualification.
- b. If the MP is not present in the proceedings of the house for a period of 60 days or more, without the permission of the house, the MP can be disqualified.
- c. Dual Membership – the MP is not allowed to hold membership of more than one house simultaneously. He is also not allowed to hold more than one seat in the same house.

### **Legislative Procedures in the Parliament**

Legislative Procedures are the procedures through which bills become laws.

Types of bills introduced in the Parliament;

- a. Ordinary bills
- b. Money bills
- c. Financial bills – Class I and Class II Financial bills
- d. Constitution Amendment bills
- e. Private Member's bill

If a minister wants to introduce a bill, a notice of not more than 7 days is required to be given. A longer notice period is required for a Private Member's bill.

Any bill introduced in the Parliament has to go through 3 stages (Reading of the bills)

### **First Reading - Introduction of the bill**

- a. Bill may be referred to a select committee
- b. Bill may be referred to Joint Committee of both the Houses of the Parliament
- c. Bill may be circulated or elicit public opinion
- d. Bill may be taken for consideration

Generally in the first reading, fundamentals of the bill are discussed.

Second Reading ends after the house considers the bill on a clause-by-clause basis (in detail).

In the third Reading, the concerned MP will request the house (move a motion) to pass the bill.

After the bill is passed in one house (for e.g. Lok Saba) the other house (Rajya Saba) can

- a. Accept the bill and pass it to the President for assent.
- b. It can completely reject it or pass it with amendments.
- c. It might not do anything for a period of 6 months.
- d. If there is a deadlock; a joint sitting will be called by the President to resolve the