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Union Executive consists of:

- President, Vice-President, Prime Minister, Council of Ministers, and the Attorney General of India.

President

Election

- Done by a system of proportional representation by means of single transferrable vote.
- The **elected members** of Lok Sabha, Rajya Sabha and the State legislative assemblies (not councils), and **elected members** of the assemblies UTs of Delhi and Pondicherry
- Hence, nominated members do not participate
- Only SC has the jurisdiction in case the election of President is challenged. Acts done by President before declaration of SC to disqualify her are not invalidated and continue to remain in force
- The election of an individual to the President's post cannot be invalidated on the ground of incomplete electoral college
- Value of vote of 1 MLA = (Population of state as per 1971 census) / (Total number of elected MLAs) X (1/1000). UP has highest vote value per MLA and Sikkim has lowest.
- Value of 1 MP vote = Total value of all MLA votes of all states / Total number of elected members of the parliament
- Electoral quota = [Total number of valid votes polled / (1+1) = (2)] +1

Qualifications

- Citizen of India
- >35 years in age
- Qualified for elections to the Lok Sabha
- No office of profit in the Union government or any state government or local authority or any public authority
- Nomination subscribed by >50 electors as proposers and 50 electors as seconders

Immunities

- Immunities from any legal proceedings for his official acts
- Immune from criminal proceedings even in respect of personal acts
- Cannot be arrested or imprisoned
- Immune from civil proceedings unless 2 months notice if given to start such proceedings

Term

- 5 years
- Resignation can be tendered to Vice President

- Can be reelected any number of times
- Removal only by impeachment
- Continues in office before next President takes over

Removal/Impeachment

- Removed only by process of impeachment or “violation of the constitution” — constitution does not define this.
- Charges can be initiated by **either House of the Parliament**
- Charges should be signed by 1/4th members of the House and 14 days notice served to the President
- After this, impeachment resolution can be passed by majority of the 2/3rd of total membership of the House, and goes to the next house.
- This house now investigates the charges, where President has right to appear and be represented
- If the other house passes the resolution by 2/3 rd of the total membership, the President stands impeached
- Note: ***nominated members of the Houses can participate in the impeachment*** and only Houses of Parliament participate in the process; the elected members of the legislative assemblies of the states and the UTs of Delhi and Pondicherry do not participate in the impeachment of the President though they participate in his election (both the elected and nominated members of Parliament can participate in impeachment of the President).

Powers

1. *Executive (Administrative)*
 - All executive actions taken under his name
 - He can make rules specifying the manner in which the orders and other instruments made and executed in his name shall be authenticated
 - **He has the right to be informed of the affairs of the Union [Article 78(b)]**
 - He can make rules for convenient transaction of business of the Union government and for allocation of the said business among the ministers
 - Appoint the PM and Council of Ministers. Hold office **during his pleasure**
 - Appoints the Attorney General of India. Hold office **during his pleasure**
 - Appoints Governors of States - **hold office during his pleasure**
 - Appoints:
 1. CAG
 2. Chief Election Commissioner, and other election commissioners
 3. Chairman and members of the UPSC
 4. Water supplies commission
 5. A special officer for Linguistic minorities
 6. The members of the Finance Commission
 7. (also judges of High Courts and Supreme Court appointed by him after necessary proceedings by the collegium)
 - Removals made by president
 - Attorney-general
 - Chairman or member of UPSC or SPSC (on report of Supreme Court)
 - CAG, Judge of SC or HCs, CEC or ECs (on address of parliament)

- SC/ST appointments:
 - Appoint a commission to investigate into the conditions of SC and STs and OBCs
- Unlike the American System, the Indian President cannot appoint inferior officers of the Union. The Indian constitution thus seeks to avoid the undesirable 'spoils system' of American, under which about 20% of the federal civil officers are filled in by the President, without consulting the Civil Services Commission, and as a reward to party allegiance. Indian system avoids this 'spoils system' by having UPSC as a legislative subject and making it obligatory for the President to consult the UPSC in matters relating to appointment, except in certain cases.
- Can appoint any inter-state council to promote centre-state and inter-state relations
- Directly administers the UTs through administrators selected by him
- Can declare any area as scheduled area and has powers with respect to the administration of scheduled areas and tribal areas
- The President must exercise his powers according to the Constitution. **Article 75(1)** explicitly requires that he appoints the Ministers only on the advice of the Prime Minister.
- Executive powers are exercised by the President in accordance with the advice of his Council of Ministers [**Art. 74(1)**]. Hence, he must act only on advice of the Council of Ministers to exercise his executive powers. The president may require the Council of Ministers to reconsider their advice, however, after such recommendation is tendered, he shall act in accordance with the advice of the Council of Ministers.

2. *Legislative*

- Can summon and prorogue the Parliament and can dissolve the LS
- Can summon joint sitting of both the Houses which is presided over by the speaker of the LS
- Can address the Parliament at the commencement of the first session after each general election and the first session of each year
- Can send any message to LS and RS and can appoint presiding Speaker (and Deputy Speaker) of the LS and presiding Chairman (and Vice Chairman) in the RS in case the spot falls empty
- Nominates 12 members in RS (special knowledge of literature, science, art, social service -lsas) and 2 members in LS (anglo Indians)
- Decides the question of **disqualification** of the members of the House in consultation with the Election Commission (Anti defection is decided by the Speaker and the Chairman)
- Previous Sanction of President or Recommendation to Legislation:
 - **Bills involving the alteration of boundaries of states or creation of new state** require his prior recommendation before introduction in the House. This power of recommending such legislation is given so that the President could obtain the views of affected states before initiating such legislation.
 - **A Money Bill**
 - **Bills involving any expenditure from the CFI** (Financial Bills I and Money Bills; Note: not Financial Bills II which do not need his recommendation for introduction in the parliament)
 - A Bill affecting taxation in which State are interested

- State Bills imposing restrictions upon freedom of trade, or affecting the principles laid down for distributing moneys to the States, or varying the meaning of the expression of 'agricultural income' for the purpose of taxation of income, or imposing a surcharge for the purposes of the Union under Chapter I of Part XII [Art 274(1)]
- A Bill providing for any of the matters specified in Art. 31A(1)
- *Bills from the House:*
 - Sent to President for his assent
 - May give his assent, withhold it or sent back the bill with recommendations to the House
 - If sent back to House with recommendations, and the bill comes back for his assent, he must give his assent to bill regardless of changes made by the House
- *Bills of the Legislative Assemblies of States:*
 - Governor may refer a bill for President's consideration
 - May give his assent, withhold it or sent back the bill through governor with recommendations to the legislature
 - This time he is not required to give assent to a bill if it comes back again through the state legislature to him (opposite to the case in the Houses of Parliament)
- Can promulgate Ordinances when Houses are not in session (Article 123)
- Lays Reports before the Parliament of:
 - CAG
 - UPSC
 - Finance Commission
 - Report of the special officer for SC/ST
 - Report of the commission on backward classes
- Can make regulations for the good governance of Andamans, Dadra and Nagar Haveli, Lakshdeep, Daman and Diu
- Same in case of Pondicherry but only when legislature is dissolved
- 3. *Judicial*
 - Appoints the CJI, judges of the Supreme Court, judges of the High Court (in consultation with the Governor)
 - Grants pardon, reprieve, respite, and remission of punishment, or suspend, remit or commutation the sentence of any person convicted of any offense:
 - was made through court martial
 - was an offense against the Union of India law
 - sentence of death
- 4. *Financial*

- Bills involving any expenditure from the CFI (Financial Bills I and Money Bills) can be introduced only on his recommendation
- Annual Financial Statement (Budget) laid by him in front of the Parliament
- **No demand for grant** can be made without his recommendation
- Can make advances from **Contingency** Fund of India
- Constitutes Finance commission to plan on distribution of revenues between States and Centre

5. *Diplomatic*

- Foreign treaties etc. done on his behalf (the negotiations are started by his office and the executive) but later approved by the Parliament
- 6. *Military*
 - Supreme commander of the defense forces of India. Appoints Chief of Air, Army and Navy. Can declare war and conclude peace - requires approval of the Parliament
- 7. *Emergency*
 - National Emergency - Article 352
 - President's Rule - 356 and 365
 - Financial Emergency - 360

Veto Powers

1. Give his assent to the Bill
 2. Withhold his assent to the Bill
 3. Return the bill to the House
- **Absolute Veto** - power to withhold assent is absolute veto.
 - Can withhold assent to any bill, except Constitutional Amendment Bills
 - *Usually, not necessarily constitutionally:* Can do so in cases of a private member's bill or Government bill if the cabinet resigns after passage of such bill through the two houses and the new cabinet advises the president not to give his assent to such a bill
 - **Suspensive Veto** - exercised when he **returns** the Bill for reconsideration of the Parliament
 - If passes again, must give his assent to the Bill
 - Does not have suspensive veto in case of **Money bills**.
 - **Pocket Veto** - Neither ratifies, nor rejects, nor returns the bill
 - Keeps the bill pending for an indefinite period of time
 - Can exercise this power since no limit is given in the constitution
 - Exercised by Zail Singh in 1986 when Rajiv Gandhi government tried to pass the Post Office Bill to restrict the freedom of press
 - **No Veto power in case of the Constitutional Amendment Bills - SHOULD give his assent in this case**
 - **No Suspensive Veto power in case of the Money Bills, i.e. he cannot return them for reconsideration of the LS. However, he can withhold his assent in such case if needed**
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Ordinance Making Powers

- Article 123 of the Constitution empowers President to promulgate ordinances when House is not in session
- *Conditions:*

- Can only be promulgated when **one of the Houses is not in session, or both not in session or the announcement for being prorogued has been made by the President**
- Can only do so when he is satisfied that such need exists due to circumstance. However, his judgment in this case can be justiciable in court on grounds of malafide (to bypass the authority of the Parliament)
- An ordinance can only be on those subjects in which Parliament can make a law and has the same limitations as an Act of the parliament - no special treatment or differentiation between an Ordinance and an Act
- Ordinance should be laid before the Houses when they assemble back. In this case:
 - The Bill can be made into an Act if passed through the Houses
 - If no action is taken by the Parliament, it ceases to exist after 6 weeks of assembly of the Houses
 - The Ordinance can cease before 6 weeks if both the Houses disapprove it
 - Maximum life of an ordinance is 6 months and 6 weeks unless rejected
 - If the ordinance is allowed to lapse without being placed before the Parliament, then it remains fully valid and effective
- DC Wadhwa Case 1987
 - Supreme Court pointed out that between 1967-81, the Governor of Bihar promulgated 256 ordinances with the same text.
 - Court ruled that such repromulgation of ordinances would amount to violation of the constitution and is liable to be struck down

Pardoning Powers

- **Article 72** allows President to grant pardons to persons in following cases:
 1. Sentence in case of offenses against the Union law
 2. Court Martial
 3. Death Sentence
- SC has ruled that such power be exercised on the advice of the union cabinet
- President's decision not subject to judicial review unless in cases of arbitrary decision, irrational, mala fide or discriminatory

Types of Pardons:

Constitutional Position of the President:

Vice President Election

- Done by a system of proportional representation by means of single transferrable vote. Secret ballot.
- Only by the members of Lok Sabha and Rajya Sabha (all members including both elected and nominated). Not the members of state assemblies.
- Citizen of India
- >35 years in age

- Qualified for elections to the Rajya Sabha
- No office of profit in the Union government or any state government or local authority or any public authority
- Nomination subscribed by >20 electors as proposers and 20 electors as seconders
 - Impeachment not required. Can be removed by a absolute majority (i.e. majority of total members of the House) resolution moved in the RS and then approved by the LS. 14 days notice must be given before introduction of such a resolution.

Emergency Provisions

- Provided by Articles 352-360 in the Constitution
- Three Types of Emergencies:
 1. National Emergency
 - As per **Article 352**, the President can declare a national emergency when the security of the nation is under imminent threat due to war or external aggression or armed rebellion.
 - National Emergency can be declared even before the commencement of the war
 - President can also issue different proclamations on grounds of war, external aggression or armed rebellion or imminent danger thereof, whether or not there is a proclamation already issued by him and such proclamation is in operation.
 - Emergency due to War or external aggression is known as external emergency and that due to armed rebellion is known as internal emergency.
 - Can be declared in entire country or a part of it
 - **Written recommendation required from the cabinet** to declare a National Emergency (not just the PM)
 - Declaration of National Emergency can be **challenged in the court on the ground of malafide or that the declaration was based on wholly extraneous and irrelevant facts** or is absurd or perverse
 - **Parliamentary Approval:**
 - Must be approved by both the Houses within 1 month of commencement
 - If LS has been dissolved before announcement of such proclamation or it was dissolved before its approval, then the proclamation must be approved within one month of the first sitting of the Lok Sabha's reconstitution, provided that Rajya Sabha has already approved the proclamation
 - If approved, **continues for 6 months and can be approved for indefinite time every 6 months** on approval of both the houses
 - Must be passed in either House separately through **special majority** i.e. a majority of total membership of the House and also 2/3rd of those present and voting.
 - **Revocation:**
 - Can be revoked by a proclamation of such by the President at any time and does not require a parliamentary approval

- Further, if the Lok Sabha passes a resolution by simple majority to disprove the continuation, it must be revoked
- Also, if **1/10th of the members of the Lok Sabha give a written notice to the Speaker or the President, a special sitting of House should be held within 14 days for the purpose of considering disapproving the continuation of the proclamation**
- **Impact of National Emergency:**
 - **Centre-State Relations**
 - State Executive comes under direct control of the Centre Executive for any matters, however it is not suspended
 - Parliament becomes empowered to make laws on any state subject (list). These laws made by the Parliament on state list become ***inoperative 6 months*** after the emergency ceases to exist.
 - This is in case of any state, regardless whether emergency is declared there or not
 - President can modify the distribution of revenue between Centre and the State during such time as necessary
 - **Rights:**
 - Article 358 deals with the suspension of Fundamental Rights as per article 19 and 359 deals with other rights
 - However, right under Article 19 only suspend in case of war or external aggression, not in case of armed rebellion and only those laws related to the emergency are protected from being challenged from judicial review. Not other laws.
 - 20, 21 always remain operational
- 2. President's Rule
 - Article 356 and 365
- 3. Financial Emergency
 - Article 360

The Governor:

Appointment and Removal of the Governor: (may be removed at any time by the President as he holds the office in President's pleasure and this is not justiciable)

- **Appointment:** As per the Articles 155 and 156 By the President and enjoys the tenure "during the pleasure of the President".
 - The Governor is appointed by the President **on the advice of council of ministers nomination on CoM or chief minister is more of a convention than a rule).**
 - Same person can be appointed the governor of two or more states also.
 - Under Article 74, the President is bound to act on the aid and advice of the Council of Ministers, hence effectively the Council of Ministers can also decide the removal or appointment of Governors.
- **Removal:** No mechanism in the constitution for removal of a governor

- Historical, VP Singh's National Front Government in 1989 asked all governors to resign as they were appointed by the Congress government
- Some were allowed to continue and some were replaced
- Same in 1991 when the PV Narsimhan Rao's government changed 14 governors appointed by the VP Singh and Chandra Sekhar Government
- Same in 2004 and 2014 under Modi's government
- **Supreme Court Interpretation:** In 2010, a constitutional bench of the Supreme court laid down some binding principles in this matter. (**BP Singhal v. Union of India**)
 - The power of the President to remove the Governor cannot be **exercised arbitrarily, in an unreasonable manner.**
 - This should be done **only in rare and exceptional cases.**
 - The mere factor that the Governor does not confirm with the **political ideology or policies of the Government does not form a ground for the removal of the Governor.**
 - Such a decision to remove the Governor can be challenged in the court of law. To do so, the petitioner first has to make a prima facie case of arbitrariness or bad faith on part of the Central government. If the prima facie case is established, the court can require the Central Government to produce documentation on the basis of which such a recommendation was made.
- **Commissions and their Recommendations:**
 - **Sarkaria Commission (1988)** - recommended that removal of governor should be extremely rare in reasonable cases and if it happens, Governors should be able to make their case.
 - **Venkatachaliah Commission (2002)** - same as Sarkaria commission
 - **Punchhi Commission (2010)** - suggested that *"during the pleasure of the President"* phrase should be removed from the Constitution all together. Governor should not be removed at the will of the central government but by a resolution of the State Legislature.
- **Why an appointed Governor?**
 - It would save the country from yet another round of elections
 - Governor elected by votes may consider himself superior to the CM, and this might lead to frequent friction between the two
 - Through appointment by the Union, the Central Government shall be able to exercise reasonable control over the States through the office of the Governor
 - *Real Outcomes:*
 - From experiences in Indian democracy, it can be said that Governor has acted as an impartial and constitutional head as required in cases where government in the State is formed by one single party by majority
 - However, in states with coalition governments, central government has used the office to inviting the person they prefer to form a government, to meet their own political motives.

- Regardless, the post of Governor has played a binding role of the Centre with the State and promote federalism in many aspects of administration

- **Powers of the Governor**

- *Executive Powers*

- He appoints SPSC members. But he can't remove them and their removal is only by the president on the report of SC on a reference made by the president.
- He appoints the Advocate General of the State who must have qualifications to be the judge of the High Court
- He can't appoint judges of HC but has to be **consulted by the president** in doing so.
- He can nominate **1 member of Anglo-Indian community to the State Legislature - Vidhan Sabha.**
- He can nominate **1/6 members of Legislative Council** for Isacs (literature, science, art, cooperatives, social service).
- If a dispute arises over the qualification of any member for state legislature, his decision will be final and has to be based on the *opinion of election commission.*

- *Legislative Powers*

- Money bills, demands for grants, annual financial statement have to receive his sanction to be laid down in state legislature.
- As opposed the President, who is bound to act on the advice of the Council of Ministers by Article 74(1), the **Governor is not bound to act on the advice of the State council of ministers.** As per Article 163(1) of the constitution (which was not amended by the 42nd amendment as was article 74), the **Governor shall act in his own discretion and the decision of the Governor shall be final** and the validity shall not be brought into question.

- *Veto Powers*

- He can't return a **money bill** for reconsideration of the assembly. But he can reserve a money bill for the consideration of the president. **The president has to either agree or reject the bill (can't send it back for reconsideration).**
- In case of other bills, he can send it back to the assembly for reconsideration with a message. Or he may reserve it for presidential consideration and the president in addition to agreeing or rejecting may also refer it back to the legass for reconsideration. **The president may also refer the bill for SC's advice.**

- *Ordinance Powers*

- In a concurrent list, the governor's ordinance shall prevail if it has been made on president's instructions.
- A president's instruction for promulgating an ordinance is needed when
 - (a) such a matter would have needed presidential assent after being passed by state legislature. (b) such a matter would have needed presidential sanction to be introduced as a bill in the state legislature. e.g. imposing restrictions on inter-state commerce under Art 304. (c) such a matter would have been reserved by the governor in his discretion for presidential consideration.

- *Discretionary Powers of the Governor: Article 163 reads: "163. Council of Ministers to Aid and Advise Governor.-*
 - There shall be a Council of Ministers with the Chief Minister as the head to aid and advise the Governor in the exercise of his functions, except in so far as **he is by or under this Constitution required to exercise his functions or any of them in his discretion.**
 - If any question arises whether any matter is or is not a matter as respects which the Governor is by or under this Constitution required to act in his discretion, the decision of the Governor in his discretion shall be final, and the validity of anything done by the Governor shall not be called in question on the ground that he ought or ought not to have acted in his discretion.
 - The question whether any, and if so what, advice was tendered by Ministers to the Governor shall not be inquired into in any court."
- *Judicial Powers of the Governor*
 - Under Article 192 of the Constitution the power to determine whether any member of the legislative assembly has become subject to any of the disqualifications has been conferred on the **Governor and his decision is final.**
 - The Governor, in consultation with the High Court, **is also given the power to frame rules in relation to the recruitment of the subordinate judiciary as well appointing the members of the subordinate judiciary.**
- *Special Powers (Art 371)*
 - Governors of Maharashtra and Gujarat have to pay special attention to development of **Vidharbha and Saurashtra.**
 - Governor of Nagaland has special responsibility for **law and order in the state.**
 - Governor of Manipur has special responsibility to ensure proper functioning of committee of the legass comprising of members from the **hill areas of the state.**
 - Governor of Sikkim has special responsibility for **social and economic advancement of people of the state.**
- Cannot dismiss the CM and the government subjectively as done by Governors in UP (to Kalyan Singh government in 1998) and in 1967 in West Bengal to the Ajoy Mukherjee United Front government. The Supreme Court has taken the stand (SR Bommai v. Union of India) that the strength of the government must be tested on the floor of the House. Only a no-confidence motion or censure or by defeat of an important measure can empower the governor to suspend the Assembly. Private opinion of the Governor has no power in such cases.

State Legislature

- **Abolition / Creation of Leg Co (Art 168, 169)**
- The state legislative assem. has to pass such a resolution with a special majority. Then the parliament has to ratify the resolution by a simple majority. Such an act will not be deemed to be a CA Act.
- **Composition of LegCo**
 - 1/3 members elected by legass from non MLAs.

- 1/3 members elected by local self governing bodies.
- 1/12 members elected by graduates of 3 years standing residing in the state.
- 1/12 members elected by teachers of 3 years standing residing in the state.
- 1/6 members nominated by the governor based on Isacs (literature, science, art, cooperatives, social service).
- It is a permanent body and 1/3 of members retire after every 2 years.
- **Legislative Ass.**
 - Strength: Strength of legass ≤ 500 and ≥ 60 . Only Mizoram and Goa may have 40 member legass.
 - Duration: In case of emergency, its term may be extended. Such an extension can be for up to 1 year at a time and ≤ 6 months after the lapse of proclamation of emergency.
 - Qualifications: A person has to be a voter in the state to be qualified.
- **Legislative Procedures**
- **Money Bills**
 - Same as parliament.
- **Other Bills**
 - Legco may hold a bill for a maximum period of 3 months from the date of receipt in the first round. It may also move amendments to a bill passed by Legass. The amended bill goes back to legass. If the legass rejects the amendments and passes the bill for a second time then in whatever form it is passed, comes back to legco. Legco may hold it for a maximum period of 1 month. So total holding period is 4 months and legco has mere advisory powers. There is no provision of joint sitting.
 - If the bill originated in LegCo is rejected by the LegAss, that is the end of it. If LegAss moves amendments such amendments shall prevail.
- **Privileges - State legislatures vs parliament**
 - While parliament by law may create additional privileges, legass can't create additional privileges for itself.
 - While courts have no jurisdiction over privileges of parliament, in states, courts can determine whether the legislature had such privileges or not. But once it holds that it has such a privilege, it can't interfere.
 - In case of breach of FRs by state legislature privilege, FRs will hold unlike the parliament case.

Jammu & Kashmir

- Articles of constitution applying to J&K
 - Art 1: J&K is a part of the territory of India.
 - Art 370: It was to be of a temporary measure until the people of J&K ratify the accession. It says that the applicability of other articles of © would be determined by president in consultation with the state government. Art 370 can be terminated / amended by a presidential notification only on the recommendation of the state legislature.
- **Constitutional Order of 1950**
 - Art 370 had said that the parliament would be competent to make laws on matters which had been agreed to in the instrument of accession until ratified by the constituent assembly of the state. This order specified defence, foreign affairs and communications as those subjects.
- **Delhi Agreement, 1952 / Constitutional Order of 1954**

- It extended the parliamentary competence over J&K to all matters in union list as against only the 3 specified in the CO, 1950. Such an understanding was reached in Delhi in 1952 and was ratified by constituent assembly of J&K in 1954 following which the CO, 1954 was notified.
- J&K's special position vis a vis other states
 - Own state: Constitution says the territory of state comprises of PoK also and this is immune from amendment. The state © can be amended by 2/3rd of total strength of each house. Territory, relationship with India (extent of executive and legislative power of centre as applicable to state, Indian © as applicable to state) cannot be amended. But an amendment seeking to impact the powers of governor or EC will have to be reserved for presidential consideration who shall not be bound.
 - Presidential orders: Any CA Act will be applicable to J&K only on presidential order.
 - State legislature: Legass consists of 100 members - 24 seats vacant for PoK. LegCo consists of 36 members. 11 out of 36 come from Jammu, 9 from Kashmir, 1 from Kargil, 1 from Ladakh and are elected by Legass. Remaining 14 are elected by different electorates.
 - Concurrent list: Only few matters in concurrent list lie with the parliament, rest with the state.
 - Residuary powers: They lie with the state.
 - Preventive detention: Only state can make a law on preventive detention.
 - Alteration of boundary, names: No such law can be made by the parliament without the consent of the state legislature.
 - International treaties: Parliamentary law enforcing such treaties shall not be applicable to the state.
 - Art 365: Union can't suspend the constitution of the state or government for failing to comply with the directives given under Art 365.
 - Art 356: It shall be applicable only if the breakdown has occurred as per state constitution and not union constitution.
 - Governor's rule: Governor's rule can be proclaimed under the state constitution.
 - Financial emergency: Can't be declared on the state.
 - FR & DPSP: DPSP are not applicable. Art 19 has some restrictions. Right to property is still enjoyed by the permanent residents of the state.
- *Points of similarities*
 - Governor is appointed by the president in the usual way.
 - Judges of HC and SPSC are appointed in the usual way.
 - Art 249: It extends the jurisdiction of parliament on state list as well (on a resolution of CoS) for 1 year. This is applicable to J&K as well in national interest.
 - President's rule: It can be imposed upon the state.
 - Jurisdictions of SC, CAG, EC extend to J&K.

UTs

Delhi

- Delhi was constituted as the National Capital Region of Delhi (special status) according to the 69th constitutional amendment act in 1991

- Lt. Governor was designated as the administrator. Council of Ministers was created along with a legislative assembly with 70 members.
- The assembly can make laws in the State and Concurrent list (except public order, land and police) with regards to Delhi. However, the Parliament has the power to make laws in State and Concurrent list with regards to Delhi, and such laws override those made by the assembly. This means that laws of the parliament prevail over those of the assembly.
- Chief minister is appointed by the President, not the Lt. Governor. The other ministers are also appointed by the President.
- The CoM is headed by the CM to aid and advice the Lt. Governor in his functions except in so far as he is required to act in his discretion.
- In case of difference of opinions, the Lt. Governor can refer the matter to the President for decision and act accordingly.
- The president can suspend the above portions and make necessary incidental or consequential provisions for administering the territory, if conditions arise for such need. Therefore, in case of failure of the constitutional machinery, the President can impose his rule in the territory. This can be done on the report of the Lt. Governor or otherwise. The provision resembles Article 356 which deals with President's rule in other states.
- Lt. Governor can promulgate ordinances during the recesses of the assembly, however not when the assembly is dissolved or suspended.
- Lt. Governor or the administrator is an agent of the President, not a constitutional position.

Parliament vs President

- **Parliament** has exclusive legislative power over all matters (including state list) over a UT. But in A&N, Lakshadweep, D&D, D&N Haveli, Pondicherry the president's legislative powers override parliament.
- But president's power to make regulations for such UTs shall remain suspended while the legislature of these UTs is in operation and has not been dissolved / suspended.

The Judiciary in India

- Single integrated system of judiciary unlike the US where it has double system of courts.
- This single system was adopted from the Government of India Act 1935 and enforces both Central laws and State laws.
 - In US however, Federal laws are enforced by federal judiciary and state law by state judiciary.
- *Supreme Court of India*
 - History:
 - Est. in 1950 and replaced the Federal Court
 - However, has larger jurisdiction than its predecessor as it the SC replaced the British Privy Council as the highest court of appeal.

- Parliament has all the powers to regulate the **constitutional organization, jurisdiction and powers of the Supreme court.**
 - However, notice that the Parliament does not have the power to “CURTAIL” the jurisdiction of the SC (Article 138).
 - It can only “further” the jurisdiction of the courts and not limit or reduce it.
- Supreme Court consists of maximum 31 judges, including the Chief Justice of India
- CJI has the power to appoint any retired judges of the SC and also qualified judges of the High Court as ad hoc judge of the SC for a temporary period if there is a lack of quorum of the permanent Judges. (from previous consent of the president and also from the permission of the concerned High Court chief Justice)
- *Appointment:*
 - Every Judge of the SC is appointed by the President of India
 - President consults other persons including the Council of Ministers in such decision
 - If senior most judge of the SC is considered fit to hold the office then he must be appointed to the office of CJI.
 - In appointment of the CJI, the President shall consult (which means concurrence) such Judges of the SC and of the High Courts as he may deem necessary.
 - The consultation of CJI is compulsory in appointment of these judges by the President. Hence, the Executive has to compulsorily consult the judiciary to elect the new judicial appointments.
 - *The Collegium:*
 - Therefore, so far, the collegium system was used where the CJI would consult the other **4 senior most judges** from the Supreme Court on appointment of new judges in the SC.
 - Their views are obtained in writing.
 - Additionally, views of senior most Judges of the Supreme Court, who hail from high courts where the persons to be recommended are functioning as Judges, if not part of the collegium, must also be obtained in writing.
 - These are conveyed by the CJI to the Government of India.
 - The substance of the views of the others consulted by the CJI or on his behalf, particularly those of non-Judges (Members of the Bar) should be stated in memorandum and be conveyed to the Govt. of India.
 - The decisions should be taken on consensus only. If CJI dissents, no one shall be appointed. If two or more members dissent, CJI shall not persist with the recommendation.
 - In case of non-appointment by the Government of a person nominated, the collegium shall consider whether such recommendation shall be withdrawn or reiterated. If it's unanimously reiterated, such appointment must be made.
 - However, recently, the NJAC Bill has been passed, and as soon as the rules and guidelines are issued, the new commission shall appoint the judges to Supreme Court.

Supreme Court and Independence of Judiciary and the election of the CJI and Supreme Court Judges (Collegium Experiment?) and High Court

- System of courts established in India by the Government of India Act 1935
- India, although a federal country like the USA, has a unified judiciary unlike that of the US. It has one system of fundamental law and justice.
- Supreme Court of India established in 1950 and succeeded the Federal Court that was established by the Government of India Act 1935
- Articles 124 to 147 deal with the organization, independence, jurisdiction, powers, procedures and so on for the Supreme Court.
- **Judges:**
 - 31 Judges in the Supreme Court
 - **Appointment:**
 - By the President
 - CJI is elected by the President on advice of other judges in the Supreme court and High courts
 - Other judges are elected after consultation with the CJI and such other judges of the Supreme Court and high courts as he may deem necessary
 - Consultation with the CJI is obligatory except in case of the nomination CJI himself.
 - **Tenure**
 - Up to 65 years of age
 - Resign by writing to the President
 - **Controversy over Consultation:**
 - Three Judges Case which highlight and give historical background of this controversy
 - **First Judges Case (1982)**
 - SC held that consultation does not mean concurrence and it only implies exchange of views
 - **Second Judges Case (1993)**
 - Reversed the previous ruling and changed the meaning of the word consultation to concurrence
 - Hence it ruled that the advice tendered by the CJI to the President of India is binding in matters of appointment of judges of the SC
 - But the CJI must consult with two of his senior most colleagues in such matter
 - **Third Judges Case (1998)**
 - The SC opined that the process of consultation involves “consultation of plurality judges” by the CJI and CJI’s opinion alone cannot be constitutional
 - Hence, the CJI must consult with the collegium of four senior most judges of the SC and if the judges give an adverse opinion, she must not send it to President as a recommendation.
 - **Appointment of the CJI**
 - The senior most judge of the Supreme Court must be appointed as the CJI by the government

- Two instances where this didn't happen:
 - 1973 when AN Ray was appointed the CJI superseding three other judges in the SC - all the 3 judges resigned
 - 1977 when MU Beg was appointed as the CJI superseding the then senior most judge.
 - The second Judges case in 1993 curtailed this by where it ruled that only the senior most judge of the Supreme Court must become the CJI of India.
- *Qualifications:*
 - Citizen
 - Judge of High Court >5 years or Advocate of High Court >10 years or
 - A Distinguished Jurist in opinion of the President
- *Removal:*
 - Only by President who must present such resolution in an address to the Parliament
 - Must be passed in each House of the Parliament by Special majority - i.e. majority of the total membership and 2/3rd of the members present and voting.
 - Grounds: proved misbehavior and incapacity
 - A removal motion signed by 100 members in case of LS and 50 members in case of RS is given to the Speaker or the Chairman
 - Speaker may admit or refuse this motion
 - If accepted, 3 member committee to be formed by the Speaker
 - Committee should consist of the 1) CJI or judge of the Supreme Court (2) Chief justice of a high court (3) distinguished jurist
 - Then passed by each house if consideration is made to the House by the committee
- **Appointment of Ad-Hoc Judges and Retired Judges**
 - In case of lack of quorum, ad-hoc judges can be appointed by CJI from the High Court as long as that HC judge is qualified to be a judge of the SC and such action has been approved by the President (consent of the President)
 - CJI can also appoint a retired judge of the high court as long as that HC judge is qualified to be a judge of the SC and such action has been approved by the President (consent of the President)
- **Seat of the Supreme Court**
 - Delhi, however, the Constitution declares that CJI is authorized to appoint another place or places as seat of the Supreme Court of India
 - He takes such decision only on the approval of the President of India
- Constitutional cases referred by the President are decided by a bench consisting of at least 5 judges
- Others decided by at least 3 judges
- *Procedures assuring Independence of Supreme Court*
 - Mode of Appointment
 - Tenure of the Judges
 - Jurisdiction of the Supreme Court cannot be curtailed

- **Original Jurisdiction**

- Exclusive jurisdiction in cases of legal nature (not political) between:
 - Centre and one or more states, or
 - Centre and any state or states on the one side and one or more states on the other side, or
 - Between two or more states
- However, original jurisdiction does not apply in the following cases:
 - Ordinary disputes of **commercial nature** between the centre and the states
 - **Inter-state water disputes** (Excluded by the Inter-State Water Disputes Act 1956)
 - Matters referred to the **Finance Commission**
 - Adjustment of **certain expenses and pensions** between the centre and the state
 - **Recovery of damages by a state against the Centre**
 - A dispute arising from a **pre-constitution treaty, agreement, covenant, engagement**, and or other similar instrument

- **Appellate Jurisdiction**

- Appeals in constitutional matters
- Appeals in civil matters
- Appeals in Criminal matters
- Appeals by special leave (SPL)

- **Writ Jurisdiction**

- Can issue writs including **habeas corpus, mandamus, prohibition, quo-warrento, and certiorari**
- However, these writs are limited to be issued in cases of violation of Fundamental Rights only
- However, the Parliament can confer the power of issuing other writs to SC as well
- Note that the High Court can also issue writs regarding fundamental rights of the citizens as well as other matters. However, the SC cannot issue writs regarding matters other than fundamental rights. Hence the writ jurisdiction of the SC is less than that of the HCs.

- **Advisory Jurisdiction**

- Advisory jurisdiction in case President seeks opinion of the SC as per article 143 of the constitution
- Two major categories:
 - That of public importance (arisen or likely to arise)
 - SC **not obligated** to give its opinion
 - Disputes regarding **pre-independence treaties** and such
 - SC **obligated** to give its opinion
- It must be noted that while the propositions of the SC are not binding on the government, they are binding on

the subordinate courts. They have been frequently referred to and followed by the subordinate courts.

- **Judicial Review**

- Power of SC to examine the constitutionality of legislative enactments and executive orders of both the Central and State Governments.
- Provided by the provisions of several articles of the constitution — Article 13, 32, 131, 132, 133, 134, 135, 136, 143, 145, 226, 246, 256 etc.
- Required to establish:
 - The supremacy of the constitution
 - To maintain federal equilibrium of the Centre and the States
 - To protect Fundamental Rights of people
- Examples: Golaknath Case (1967), the Bank Nationalisation case (1970), the Privy Purses Abolition Case (1971), Kesavanand Bharti Case (1973) and the Minerva Mills case (1980)
- The constitutional validity of an executive order or an Act of the Parliament can be challenged in the SC on the following three grounds:
 - it infringed the Fundamental Rights in Part III
 - it is outside the competence of the authority which has framed it, and
 - it is repugnant to the constitutional provisions.
- This seems narrower than the American provision which provides for “due process of law” as against “procedure established by law” of the Indian constitution.
 - The “due process of law” provides wide powers to the American constitution and it can declare a law unconstitutional on both substantial grounds and procedural grounds. (being unreasonable)
 - However, our Supreme court can view it only in terms of substantial question, i.e., whether the law is within the powers of the authority concerned or not. It is not expected to go into the questions of reasonableness, suitability or policy implications.
- Note that we do not have British system of parliamentary supremacy either, and the judicial supremacy of the American system either. What we have is a synthesis of both.
- Other Powers:
 - Only authority to decide upon the constitutionality and other disputes of the election of a President or Vice President. In this regard, it has the original, exclusive and final authority
 - It enquires into the conduct of the members and chairman of the UPSC on a reference made by the

President. Its recommendation regarding their removal (in case found guilty) is binding on the President.

- **Court of Record**

- All the records of proceedings and judgments are kept for perpetuity and recognized as legal precedents and legal references.
- Can punish for contempt of court — both civil punishment or criminal or both combined.

- **Curative Petition**

- The Supreme Court may entertain a curative petition and reconsider its judgment/order, in exercise of its inherent powers in order to prevent abuse of its process, to cure gross miscarriage of justice, and such a petition can only be filed if a Senior Advocate certifies that it meets the requirements of the case.

- Fixed Service Conditions
- Expenses charged to the CFI
- Ban on Practise after Retirement
- Power to Punish for its contempt
- Freedom to appoint its staff
- Separation from the Executive

- **The Controversy over the Collegium and the Judicial Appointments Commission**

- *As long as the process of judicial appointments remains opaque, selection of judges on considerations other than merit will continue*
- *Problems:*
 - Too many vacancies in the High courts in India
 - As of June 2013, there were 276 vacancies out of a total sanctioned strength of 904 permanent and additional judges in all the High Courts of India. With almost a third of the vacancies to be filled,
 - Canvassing for other criteria rather than meritocracy
 - Most States are witnessing major canvassing on caste, community, political and other considerations for appointment as judges.
 - As allegations and counter-allegations over the appointment of favourites fly thick and fast, the debate over the process of judicial appointments is once again heating up.
- Judicial Appointment Commission 2013 set by the government to create a process for selection of the Judges of the SC
 - Focuses not on “how” but “who” in the question of appointment of judges
 - Lays down rules on “who” or the committee that can nominate the judges in the SC, but does not really focus on on what merits those nomination decisions be based on
- **Collegium experiment (Who appoints, How appointed, and also from whom they should be appointed)**
 - The government proposes to come up with a Bill for the appointment of judges to the higher judiciary replacing the current collegium system.

- The political executive is of the view that the collegium system hasn't worked well; hence a **Judicial Appointment Commission**, in which the executive will have a say in the appointment of judges, is necessary to achieve the objective of appointing the best people as judges in a transparent fashion. >>> The Union Minister of Law and Justice, along with the CJI and other senior most Judges of the SC would be members of this new JAC
- There is growing evidence that the current system of judicial appointments has resulted in incompetent, inefficient, ethically compromised individuals being appointed as judges.
- Protests over judicial appointments have been seen in Punjab and Haryana High Court, Madras High court over judicial appointments
- **Another issue----->>>>>>>** Today the greatest concern is the secrecy shrouding the appointments
- The **real issue is not who appoints judges but how they are appointed.** Irrespective of whether it is the executive, the judiciary or a Judicial Commission that appoints judges, as long as the process is opaque and appointments are made on personal considerations, we will have variations of the same problem of favouritism, nepotism and appointments on criteria other than merit and capability.
- Another issue- While “who” should appoint judges can be debated endlessly, the need is to broaden the debate on the appointment of judges by focusing on other relevant issues **like having jurists as judges of the Supreme Court.** There has never been much debate on this issue.
 - Article 124 (3) of the Constitution, broadly, provides for three categories of persons who are “eligible” to be appointed to the Supreme Court — a High Court judge with five years experience; an advocate in the High Court with 10 years experience; a “distinguished jurist.”
 - A “distinguished jurist” refers to academic lawyers or law professors: people who have challenged and expanded the existing frontiers of legal knowledge through cutting edge research and teaching.
 - This requires a certain ability to theorise and conceptualise. Law professors are academically trained to theorise and conceptualise. Industrious law professors improve upon this training, through years of painstaking research and teaching in their specialised domains, often employing empirical and interdisciplinary tools. These well developed and nuanced theorising and conceptualising abilities have the potential of raising the bar of legal reasoning up by several notches.
 - Regrettably, 63 long years after the Constitution was adopted, both the judiciary and the executive have consistently ignored this clear constitutional mandate. In the history of the Indian Republic, never ever has a “distinguished jurist,” i.e. a law professor, been appointed as a judge of the Supreme Court, although India has produced some outstanding law professors worthy of the “distinguished jurist” tag. In last 63 years, all appointments to the Court have been made from the first

“eligible” category i.e. High Court judges, barring four instances, where practising lawyers (the second category) were directly appointed as Supreme Court judges

○ **Reforms**

- The crucial need, therefore, is to evolve objective criteria to assess a candidate and make appointments on the basis of assessments against such stated criteria.
- We may usefully refer to the system adopted by the Judicial Appointments Commission in the United Kingdom to assess candidates.
- *Other Judicial Reforms for better judiciary reforms*
 - Only some cases can be put for repeal in higher courts
 - Time allotted for oral argument (30 minutes in USA)
 - Conduct legal audit- why cases took so long
 - Repeal archaic laws

○ **UK Process**

- The JAC in the UK assesses candidates against five merit criteria:
 1. Intellectual capacity: Nominated candidates ought to demonstrate (a) a high level of expertise in chosen areas or profession with the (b) ability to quickly absorb and analyse information. They should have (c) appropriate knowledge of the law and its underlying principles or the ability to acquire this knowledge where necessary.
 2. Personal qualities: ranging from (a) integrity and independence of mind, (b) sound judgment, (c) decisiveness, (d) objectivity, (e) ability and willingness to learn and develop professionally and (f) ability to work constructively with others.
 3. An ability to understand and deal fairly: This includes (a) the ability to treat everyone with respect and sensitivity whatever their background and (b) willingness to listen with patience and courtesy.
 4. Authority and communication skills: The nominated person is expected to have (a) the ability to explain the procedure and any decisions reached clearly and succinctly to all those involved with the further (b) ability to inspire respect and confidence and (c) maintain authority when challenged.
 5. Efficiency: The ability to work at speed and under pressure and the ability to organise time effectively and produce clear reasoned judgments expeditiously

○ **US Process**

- The ‘public’ senate hearings for appointments of judges to superior courts in the U.S. are another example of transparency. We may not find the U.S. system implementable as it is; but nothing prevents us from incorporating the key principles of transparency, accountability and citizen participation underlying the U.S. system for selection of judges.

High Court of India

- Qualifications

- Citizen
- Advocate of the High Court >10 years or he should have held a judicial office in India for more than 10 years
- **Unlike the Supreme Court, No provision** for a distinguished Jurist in opinion of the President to be selected as High Court Judge
- Appointment
 - Appointed by the President
 - CJ of High court appointed in consultation with the CJI and two senior-most judges of the SC, and the Governor of the State
 - For appointment of other judges of the HC, chief justice and other judges of the HC also consulted
 - In case of common court in two or more states, the governors of all the states are consulted by the President
- Tenure
 - *Up to 62 years of age*
 - *Resign by writing to the President*
- Transfer
 - Transfer by President on **consultation with the CJI**
 - CJI must also consult other SC judges and high court judges
- Removal
 - **Same as that for a judge of the Supreme Court**
 - Only by President who must present such resolution in an address to the Parliament
 - Must be passed in each House of the Parliament by Special majority - i.e. majority of the total membership and 2/3rd of the members present and voting.
 - Grounds: proved misbehavior and incapacity
 - A removal motion signed by 100 members in case of LS or 50 members in case of RS is given to the Speaker or the Chairman
 - Speaker may admit or refuse this motion
 - If accepted, 3 member committee to be formed by the Speaker
 - Committee should consist of the 1) CJI or Judge of the Supreme Court (2) Chief justice of a high court (3) distinguished jurist
 - Then passed by each house if consideration is made to the House by the committee
- High Court Powers
 - Original Jurisdiction
 - Disputes reporting to the election of MPs and MLAs
 - Writ Jurisdiction
 - Habeas Corpus, Mandamus, Certiorari, Prohibition and Quo-Warranto
 - Both for FRs and ordinary legal rights as well
 - Supervisory Jurisdiction
 - Except for military and tribunal courts
 - Administrative and judicial superintendence
 - Can be suo-moto
 - Control over sub-ordinate courts
 - Court of Record

Fast Track courts

- FTCs were to be established by the state governments in consultation with the respective High Courts. An average of five FTCs were to be established in each district of the country. The judges for these FTCs were appointed on an adhoc basis. The judges were selected by the High Courts of the respective states. There are primarily three sources of recruitment. First, by promoting members from amongst the eligible judicial officers; second, by appointing retired High Court judges and third, from amongst members of the Bar of the respective state.

PM, Council of Ministers, and the Cabinet

According to the Constitution, President appoints the PM

- *However, not just randomly, but generally the leader of the majority party in the Parliament is elected as the PM by the President*
 - Sometimes, when no majority exists, the leader of the largest single party is elected the PM by the President - here the President could use his discretion in electing a PM
 - He may appoint a PM even before the government has proved its majority in the Parliament. He may do so by appointing the PM (leader of the largest party) and ask him to prove majority within 1 months or stipulated amount of time.
 - Hence, the PM can be elected on discretion of the President in this case.
 - Holds office during pleasure of the President
 - **He is the principal channel of communication between the President and the council of ministers.**
 - Advices the President on appointment of CAG, UPSC Chairman and members, Attorney General of India, Election Commissioners, Chairman and members of the finance commission.
 - Advices the President in summoning and proroguing the Parliament.
 - Chairman of the Planning Commission, NDC, National Integration Council, Inter-state Council and National Water Resources Council
 - He is the **"first among equals"** and "the lynchpin" of the government.
 - PM is the Chairman of:
 - NDC
 - NITI Aayog
 - Inter-State Council
 - National Integration Council
 - National Water Commission
-
- **Total Number of ministers in the council of ministers shall not exceed 15% of the total strength of the Lok Sabha — 91st CA in 2003**
 - A minister can be appointed to the Council of Ministers or the Cabinet outside the legislature, however, such person must be appointed to either house of the parliament within 6 months after such appointment.

- Advice tendered to the President by the Council of Ministers is binding on her according to the 42nd and 44th Amendments and it is not justiciable
- The SC has held that, even after the dissolution of the LS, the council of ministers does not cease to hold office. The President cannot exercise executive power without the aid of Council of Ministers and any such advice would be unconstitutional as per Article 74. Whenever the constitution requires satisfaction of the President, it's not his personal satisfaction but that of the council of ministers with whose aid and advice the President exercises his powers and functions.
- **Collective Responsibility:** This has two implications:
 - (1) All the members of the government are unanimous in support of the government policies and exhibit this unanimity on public occasions although while formulating the policies, they might have differed in cabinet meetings. Council of Ministers is collectively responsible to the Lok Sabha. They must swim and sink together, i.e. their decisions as a council must be uniform and even if they disagree, they cannot do so publicly. They must resign if they are not prepared to collectively support the council of ministers and their decisions. Article 75 clarifies this position of the Council of Ministers.
 - (2) Ministers who had an opportunity to speak for or against the policies in the Cabinet are thereby personally and morally responsible for their success and failure.
- **Individual Responsibility:** Ministers are individually responsible to the Executive and shall be liable to dismissal even when they have the confidence of the Legislature. Ministers hold office during the pleasure of the President, which means that the President can remove a minister (on advice of the PM) even when the Council of Ministers enjoys the confidence of the Lok Sabha. Article 75 clarifies this position of the Council of Ministers.
- **No Legal Responsibility:** Ministers have no legal responsibility for their advice tendered to the President.
- **Composition of the CoM:**
 - (1) Cabinet Ministers
 - (2) Ministers of State — not cabinet ministers and hence don't attend the meetings
 - (3) Deputy Ministers (+Parliamentary Secretaries — these are ministers as well but not have been appointed since a long time)
- Cabinet Ministers and CoM been outlined in the constitution but role of Cabinet ministers not provided.

Basic Structure of the Constitution

Types of Majority

1. Absolute majority: This means > 50% of total membership of the house (without subtracting vacancies).
2. Functional majority: This is the simple majority. Censure motions, resolutions passed by HoP for discontinuation of a national emergency need simple majority.
3. Effective majority: This means > 50% of (total strength of the house - vacancies). This is needed in the removal of speaker, deputy speaker, vice-chairman etc.

Special majority

1. 2/3 members present and voting (no minima requirement). For this majority, RS can pass the following:
 - Special Power to the RS under this special majority: Art 249: RS can pass a resolution authorizing the parliament to legislate on a state subject for ≤ 1 year. Art 312: RS can pass a resolution authorizing the parliament to create a new all India service.
2. 2/3 members present and voting + absolute majority. Art 368, removal of a judge of SC / HC / CAG / CEC, approval for continuing national emergency (in both houses), Art 169: in state assembly seeking to create / abolish vidhan parishad.
3. 2/3 of total strength of the house. Impeachment of president.

Constitutional Amendment

- Consent of 50% of states needed
- On a matter of distribution of executive or legislative powers between center and states.
- On a matter involving SC and HC.
- On a matter involving any list in 7th schedule.
- Representation of states in parliament.
- Election of president.
- Art 368 itself.

Is any part of Constitution unamendable?

- Until Golak Nath case, SC held that no part was unamendable. The word 'law' in Art 13 referred to ordinary laws made by parliament in its legislative capacity and not constitutional amendment acts made under its constituent capacity.
- In Golak Nath case, SC held that constitutional amending power was a legislative power conferred upon the parliament by Art 245. So a constitutional amendment act is also a law under Art 13. This means that FRs can't be amended by parliament as they have been given a transcendental position under the constitution.
- After Golak Nath the parliament sought to supersede it via 24th Constitutional Amendment Act, 1971 by putting in Art 368 that a constitutional amendment act under Art 368 will not be a 'law' wrt Art 13.
- Validity of 24th constitutional amendment Act was challenged in Kesavananda case where it was held valid. But the doctrine of basic features was propounded.
- 42nd CA Act, 1976
 - *Judicial review of ordinary laws*: For the first time a distinction was made between union laws and state laws for challenging their validity on grounds of unconstitutionality. It was provided that a HC can't pass judgement on a

central law and SC can't pass judgement on a state law unless a central law had also been questioned in the same proceedings.

- *Judicial review of constitutional amendment acts:* It was provided that a constitutional amendment act will be completely immune from judicial review whether on substantive or procedural grounds. The procedural provision was absurd.
- It introduced fundamental duties.
- It devalued FRs by expanding the scope of Art 31C to include any law to implement any of the directive.

Other constitutional Rights

- Art 300A: Right to property.
- Art 301: Right to interstate trade and commerce.
- Art 326: Right to adult franchise.

Who are citizens?

- Citizenship Act, 1955 lays down following types of citizenship:
- By birth: If one is born in India and ≥ 1 parent is Indian.
- By descent: If either of one's parents had Indian citizenship @ time of birth. The birth has to be registered in embassy of India. Descent citizenship is as of right.
- By registration: (a) PIO: (1 + 8/7). (b) Persons married to Indian citizens: (1 + 8/7). (c) Minor children of Indian parents who became Indian citizens after the birth. (d) OCI: Of ≥ 5 year standing with 1 year residence in India.
- By naturalization: One can apply for citizenship if (1 + 12).
- By incorporation of a territory: If India acquires some new territory then those people will be given a choice.
- Overseas Citizens of India
- *Who can become citizen?*
 - PIOs except those living in Pakistan and Bangladesh can apply.
 - Benefits
 - Can travel to India without visa, will get a travel document similar to passport.
 - Educational institutions benefits.
 - Property and investment in India will get domestic treatment.

Limitations

- Can't hold a constitutional office / vote / contest any election.
- Doesn't get equality in treatment under Art 16 for public offices.

Status of FRs

Issues in Fundamental Rights, DPSPs, and Fundamental Duties

Judicial Review — Article 13, 32

- The power of the court to declare legislative enactments invalid is expressly provided by the Constitution under Article 13, which declares that every law in force, or

every future law inconsistent with or in derogation of the Fundamental Rights, shall be void.

- Other Articles of the Constitution (131-136) have also expressively vested in the Supreme Court the power of reviewing legislative enactments of the Union and the States.
- Principles of Judicial Review
 - If there are more than one conflicting interpretations of the law, one of which is in consonance with constitution, court will give effect to that reading.
 - JR is applicable only after the law comes into force and is ordinarily not suo moto.
 - *Evolution of JR*
 - By 25th constitutional amendment Act, 1971 parliament amended Art 31B to include that no law in schedule 9 shall be subject to judicial review if it seeks to implement a directive principle. Since judicial review was a basic feature of the constitution, the parts of 25th constitutional amendment Act which gave blanket immunity from judicial review were struck down (thus Art 31A and 31C survived while 31B had to go).
 - In 42nd constitutional amendment Act, 1976 Parliament amended Art 368 to say that any constitutional amendment act can't be challenged in a court and parliament's power to amend constitution is unlimited. In the *Minerva Mills* case, the court struck down these provisions.

Historical Precedence and Evolution of Fundamental Rights in India

- In England, there's no written constitution and no Bill of Rights. The Fundamental Rights are more negative in the UK, in that a citizen enjoys all the basic human rights, as long as she does not violate any ordinary law of the land. The judiciary protects the legal rights of citizens in the UK, and protects their rights from the tyranny of the Executive. However, the judiciary has no power over the Legislature. The Legislature has full power to thwart any of the rights as it pleases. Hence, the supremacy of Parliament or its "omnipotence" exists in the UK. Therefore, there is no right which can be said to be "fundamental" in the proper sense of the word.
 - Another vital consequence of the supremacy of the Parliament is that the English Court has no power of judicial review over legislation at all.
- In the US, a Bill of Rights guarantees the fundamental rights to citizens. Here, unlike the UK, the makers of the constitution were apprehensive not only with the tyranny of the executive but also the legislature. Therefore, both the executive and the legislative cannot change any features of the fundamental rights there. Hence, while in UK there is "Parliamentary supremacy", in the US, there lies the "Judicial supremacy". Only the judiciary is empowered to change the Bill of Rights in face of any emergency or danger to the state.
- In India, the Fundamental Rights (Part III) are ensured by the constitution and they are explicitly written down.
 - The Indian constitution affects a compromise between the judicial supremacy and the Parliamentary sovereignty.
 - The fact that India has a written constitution and its Parliament is subject to limitations imposed by this written constitution, make it different from the British practice. Additionally, there are provisions enshrined in the

constitution of India that enable the judiciary to declare any transgressions of the Parliament as unconstitutional and void.

- This is laid out in Article 13(2), which says: “The State shall not make any law which takes away or abridges the rights conferred by the Part and any law in contravention of this clause shall, to the extent of the contravention, be void.”
- The American Bill of Rights does not lay down any limitations to fundamental rights within the Bill itself. The limitations are governed by the judiciary for which it has given doctrines such as the Police Power of the State. Unlike that, in India, the constitution lays down various limitations to fundamental rights next to the rights themselves.
- Hence, our Constitution follows the American model rather than the English.
 - However, still Judicial Supremacy weaker than American model because:
 - Fundamental Rights to Property was made a legal right by the 44th Amendment Act in 1978, hence bringing it under the authority of the Legislature, not the Judiciary.
 - Introduction of Fundamental Duties by the 42nd Amendment Act in 1976 (Article 51A). Though these are not enforceable in the court, however, a court, in front of which a fundamental right is sought to be enforced, has to read all parts of the Constitution. This means that the court may refuse to enforce the fundamental right at the instance if that individual has patently violated any of the Duties specified in Article 51A. Therefore, the original provision of Fundamental Rights has been effectively minimized.
 - The American Constitution expressly says that the enumeration of certain rights in the Bill of Rights shall not be construed to deny or disparage others retained by the people. Therefore, it introduces the concept of natural rights that people have regardless of whether mentioned in the Bill of Rights. There is no such provision in the Indian constitution.
 - This means that Article 32 can be applied only to seek judicial review of Fundamental Rights mentioned in Part III, and this article cannot be applied to other interpretations of “rights” if brought to the court.

- Amendability:

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- Classification of Fundamental Rights:
- The constitution classifies FRs in seven groups: EFERCPC
 1. **Right to Equality (Article 14-18)**
 2. **Right to particular Freedoms (Article 19-22)**
 3. **Right Against Exploitation (Article 23-24)**
 4. **Right to Religion (Article 25-28)**
 5. **Cultural and Educational Rights (Article 29-30)**
 6. **Right to Property (Article 31 repealed)**
 7. **Right to Constitutional Remedies (Article 32)**

- **Right to Equality**

- Article 14: Equality Before Law — "The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India."
 - *Equality Before the Law*: Every person is equal before the law regardless of their class, caste, social status, government office and position etc.
 - *Equal Protection of the Law*: Among the equals, the law should be equal and equally administered, that likes should be treated alike.
 - This required affirmative action towards the unequals by providing facilities and opportunities
 - "Substantive Equality" and "Distributive Justice" are at the heart of understanding "Equal Protection of the Law"
 - Exceptions:
 - President / governor in discharging their constitutional duties.
 - President / governor can't see criminal case while they are in office.
 - President / governor have to be given 2 month notice before launching a civil case which seeks compensation from them.
- Article 15: Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth
 - This article also ensures that State prohibits discrimination by making special provision for women and children and making special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and Scheduled Tribes.
 - Hence, this article, both prohibits any discriminations on grounds of religion, race, cause, sex or place of birth, but also provides provisions in Clauses (3) and (4) to enable State to promote the position of women in the society and use reservations for promotion of backward and discriminated communities.
- Article 16: Equality of opportunity in matters of public employment
- Article 17: Abolition of Untouchability
- Article 18: Abolition of Titles

- **Right to Particular Freedoms: "The Six Freedoms" Article 19 (1)**

- Freedom of Speech and Expression
- Freedom of Assembly
- Freedom of Association
- Freedom of Movement
- Freedom of Residence and Settlement
- Freedom of Occupation, Trade or Business

Some other important notes on these rights (freedoms)

1. "The indispensable condition of nearly every other form of freedom."
2. "Well-spring of civilization and without it liberty of thought would shrivel"
3. Since public decency and moralist is outside its purview, a balance needs to be maintained between freedom of speech and expression and public decency and morality to promote democracy and protect this right. Hence, this right can be subjected to reasonable restrictions on grounds such as decency and morality.
4. Therefore, constitution tries to strike a balance between individual liberty and social control.
5. Common good, collective interest given preference over pure laissez faire philosophy because our country is based on the principles of 'welfare state'.
6. Limitations to the Six Freedoms
 - Speech and Expression:
 - Subject to reasonable restrictions imposed by the State relating to defamation, contempt of court, decency or morality (not confined just to sexual misconduct but also to following current standards of behavior or propriety), security of the State, friendly relations with foreign State, incitement of an offense, public order, maintenance of sovereignty and integrity of India.
 - Assembly
 - Must be peaceful and without arms and subject to such reasonable restrictions as may be imposed by the State in the interests of Public Order.
 - Association
 - Subject to reasonable restrictions imposed by the State in the interests of Public Order or morality or the sovereignty or integrity of India.
 - Residence and Movement
 - Subject to reasonable restrictions imposed by the State in the interests of general public or for the Protection of any Scheduled Tribes.
 - Occupation, Trade or Business
 - Subject to reasonable restrictions imposed by the State in the interests of general public and subject to any law laying down qualifications for carrying on any profession or technical

occupation, or enabling the State itself to carry on any trade or business to the exclusion of the citizens.

- **Test of Reasonableness of a Restriction:** Note here that the phrase “reasonable restriction” governs the infringement of this right. It seeks to strike a balance between the freedom guaranteed by any of the subclauses of Article 19(1) and the social control permitted by any of the exceptions in Cls.(2) to (6).
- *Freedom of the Press:*
 - No specific guarantee for Freedom of Press within the constitution but it is guaranteed through Freedom of Speech and Expression
 - Freedom of expression doesn’t mean freedom to express our own views but also those of others and by any means, including printing.
 - The same restrictions that apply to Freedom of speech and expression also apply to that enjoyed by the Press by this arrangement.
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- **Protection in respect of conviction for Offences — Article 20**
 - Prohibits:
 - Retrospective criminal legislation (ex post facto)
 - Double jeopardy
 - Compulsion to give self-incrimination evidence
- **Protection of life and personal liberty— Article 21 (Right to Life and Liberty)**
 - No person is deprived of his liberty except according to law
 - Specific safeguards against arbitrary arrest or detention
 - “No person shall be deprived of his life or personal liberty except according to the procedure established by law”
 - This means that no person shall be subjected to any physical coercion that does to admit legal justification. By “law” it means that it should be constitutionally enacted law and in order to be a valid law it must be just, fair and reasonable.
 - By adopting the phrase "procedure established by law", Article 21 of our constitution had embodied the English concept of personal liberty in preference to that of American ‘Due Process.’ This means, that Courts have no power to invalidate a law made by the Parliament on account of its reasonableness and fairness. However, the Supreme Court held in *Maneka v, Union of India* that procedure that state prescribes to deprive an individual of his or her personal liberty *must not be arbitrary, unfair or unreasonable*.

- - Hence, while Right to Life was construed somewhat narrowly in the beginning (As in Gopalan Case), it was extended later on by the Supreme Court by adding new dimensions to it. Its scope is not limited by “procedure established by the law” but such procedure now must be fair, reasonable, not arbitrary, fanciful and whimsical and guided by the principles of natural law.
 - *"Right to Die"*
 -
 - Reasons for De-Criminalizing Right to Die
 - Reasons for not De-Criminalizing and maintaining the status quo on Right to Die
- **Right to Education— Article 21A**
- **Protection against arrest and detention in certain cases — Article 22**
 - Right to be defended by legal practitioner of his or her choice
 - Must be produced before the magistrate with 24 hours of arrest excluding time of travel
 - Not available to - an enemy alien and persons arrested under the law providing for preventive detention
 - Not applicable to a person pursuant to a judicial order, only to police detention
 - The constitution clearly provides that a Law must exist that allows preventive detention. Without a law clearly outlining the provisions of such detention, no preventive detention can take place.
 - The Preventive Detention Act of 1950 was first such Act but it expired 1969. MISA (Maintenance of Internal Security Act) 1971 was such legislation that had provisions broadly similar to those of The Preventive Detention Act of 1950. Another such legislation passed at the same time, which had preventive detention powers in matters of economic activities such as inflation, smuggling black marketing etc. was the COFEPOSA (the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act).
 - MISA was repealed by Janata Government in 1978, but COFEPOSA was sustained.
 - Later, TADA and POTA were acts with similar provisions, all repealed.
 - Described as “necessary evil”
- **Right Against Exploitation**
 - Article 23: Prohibition of traffic in human beings and forced labour
 - Prohibits begar, trafficking of men, women and children for illegal work and slavery

- Does not prohibit military conscription and forced labour as punishment for a criminal offense
 - Article 24: Prohibition of employment of children in factories, etc.
 - Includes “hazardous employment” and “mines” as well
- **Right to Freedom of Religion**
 - India is a secular state and observes an attitude of neutrality and impartiality in all religions. The State shall treat all religions and faiths equally, without in any manner interfering with their individual right to religion, faith and worship.
 - This is ensured by the Constitution by the following means:
 - There’s no State Religion in India.
 - Article 27: Freedom as to payment of taxes for promotion of any particular religion. The State will not compel any citizen from paying any taxes for promotion or maintenance of any particular religion or religious institution.
 - No religious instructions will be provided in any educational institution *wholly* provided by State funds.
 - Religious education is totally banned in state owned schools and in no person shall be forced to study religious education in religious denomination schools.
 - Article 25: Freedom of conscience and free profession, practice and propagation of religion.
 - *Subject to*: Every person has the right to freedom of conscience and the freedom to profess, practice and propagate his own religion subject to some restrictions in favor of public order, morality and health or contravenes any law of social, economic or political regulation.
 - Article 26: Freedom to manage religious affairs
 - Article 28: Freedom as to attendance at religious instruction or religious worship in certain educational institutions
 - **Propagation and Conversion:**
 - Some Christian leaders asserted that the word propagate in Article 25 (1) gives them a fundamental right to convert people into other Faiths into Christianity *by any means.*
 - Laws were passed in MP and Orrisa against ‘forced’ and ‘fraud’ conversions through allurement or inducement.
 - The Supreme Court upheld these legislations remarking that right to propagate provided the right to every person to spread or disseminate the tenets of his or her religion but it would not include the right to convert another because each man has the freedom of conscience guaranteed by that very provision.

- If such right was available to Christianity, it would be available to other religions as well, hence threatening peace in the society.
- **Cultural and Educational Rights**
 - Article 29: Protection of interests of minorities. This means that the State shall not impose upon it any culture other than the community's own culture.
 - Such community shall have the right to **establish and administer educational institutions of its choice** and the State shall not, in granting aid to educational institutions, discriminate against such as educational institution maintained by a minority community on the ground that it is under the management of a religious community (Article 30). Full compensation has to be paid if the State seeks to acquire the property of a minority educational institution [Article 30(1)A]
 - Term minority is used in "*religious and linguistic*" sense - these are not eligible to get any reservations or benefits in government jobs. That would be violation of the Constitutional rights enshrined to all the people in the country.
 - Article 30: Right of minorities to establish and administer educational institutions
- **Art 31: Right to property - repealed**
 - *Evolution*
 - Initially right to property was a FR subject only to - (a) reasonable restrictions to serve emergencies of public welfare. (b) reasonable restrictions to serve welfare of STs. No person could be deprived of his property except according to law and such an acquisition could be made only - (a) for public purpose and (b) paying compensation.
 - The court held the word 'compensation' to mean full compensation which necessitated 4th CA Act, 1955 which clearly specified that the adequacy of such compensation shall not be challengeable before court. But court continued to maintain an adverse position.
 - By 25th CA Act, 1971 the word 'compensation' was replaced by the word 'amount'. But in Keshavananda case the court again held that such an amount can't be illusory and must be determined by a principle which is relevant to the acquisition.
 - By successive amendments changes were introduced in Art 31 A-D to exclude the obligation of paying compensation. (a) Art 31A was amended to state that a law made for land acquisition or temporary takeover shall be valid even if it abridges Art 14 and 19. (b) Art 31B provides for blanket immunity to enactments placed in Schedule 9. (c) Art 31C provides for immunity for any laws made to implement DPSP in Art

39B & 39C even if they contravene Art 14 and 19. When SC in the Keshavananda case gave the doctrine of basic features and judicial review as one among them, 42 CA Act, 1976 sought to give a blanket immunity to all laws passed to implement any DPSP. But in Minerva Mills case, SC struck it down. (d) Art 31D has been repealed by 43rd CA Act, 1977.

- 44th CA Act, 1978 took out the right to property altogether from Part 3 of constitution and placed it under Art 300A, hence it was no longer a fundamental right and now a legal right.
- *Exceptions*
 - If the property belongs to a minority educational institution.
 - If the property is personally cultivated and doesn't exceed the statutory ceiling.
 - In both cases above, full compensation shall be paid on acquisition, which can be done as it is not a fundamental right to own property.
- **Right to Constitutional Remedies**
 - Article 32: "Cornerstone of the entire edifice of the fundamental rights set up by the constitution". **Ambedkar called it the very soul and heart of the Constitution"**
 - The courts have been provided various powers by the constitution to enforce obedience to the fundamental rights.
 - Provisions for enforcement are as follows:
 1. Fundamental rights are guaranteed against the tyranny of both the Executive and the Legislature. Courts are empowered to declare any inconsistencies to the fundamental rights void.
 2. This can be both **suo moto and through PIL**
 3. *Writs: habeas corpus, mandamus, prohibition, certiorari and quo warranto* — Available to Supreme Court and High Courts
 - Prerogative Writs: Refers to extraordinary writs granted by the Sovereign, as fountain of justice, on the ground of inadequacy of ordinary legal remedies.
 - These are *habeas corpus, mandamus, prohibition, certiorari and quo warranto*
 - The High Courts have wider powers than the Supreme Court regarding these writs. While the Supreme Court can only issue this writs for the purpose of enforcement of Fundamental Rights, but the High Courts can do so for redressing any other injury or illegality (outside Part III), owing to the contravention of the ordinary

law, provided certain conditions are satisfied.
(Article 226)

- However, High Courts have geographical jurisdiction of their respective States only.
- Scope of Various Writs:
 - Habeas Corpus
 - Literally means to “have a body”
 - Its an order calling upon the person who has detained another to **produce the latter before the court**, in order to let the court know on what ground he has been confined and to set him free if there is no legal justification for the imprisonment.
 - Mandamus
 - Literally means "***a command***"
 - It demands some activity on the part of the body or person to whom it is addressed. It commands some person to whom it is addressed to **perform some public or quasi-public legal duty** which he has refused to perform and the performance of which cannot be enforced by any other adequate legal remedy.
 - Available against public officials, government, lower courts, and other judicial bodies. Not granted against the President and the Governor and against a private individual.
 - Prohibition
 - Write issued **by the Supreme Court or a High Court to an inferior court forbidding the latter to continue proceedings** therein in excess of its jurisdiction or to usurp a jurisdiction with which it is not legally vested.
 - Prohibition commands **inactivity**, while mandamus commands activity. Further, mandamus is available both against judicial authorities and against administrative and governmental authorities. Not so in the case of prohibition (only for judicial or quasi judicial authorities).
 - Certiorari
 - Certiorari is used to ***quash*** the order or decision of the tribunal while prohibition is issued to prohibit the tribunal from making ultra vires order or decision.
 - Quo warranto
 - Proceeding whereby the court enquires into the legality of the claim which a party asserts to a public office, and to oust him from its enjoyment if the claim be not well found.

- It exists because public has an interest to see that an unlawful claimant does not usurp a public office.
 - This writ questions the authority with which an individual is appointed to a public office.
- **Parliament's Power to modify or restrict fundamental rights**
 - Limitations of enforcement of fundamental rights:
 - Police, Armed forces and intelligence members
 - During martial law
 - During proclamation of an Emergency by Article 352
 - State freed from the limitations imposed by Article 19 as soon as proclamation is made. No remedy available for any inconstant actions against article 19 by the State.
 - During an emergency, the President may order that the right to move a court for the enforcement of any fundamental rights shall remain suspended for the period during which the proclamation remains in force. (exceptions are Articles 20 and 21) - Parliament must approve this order of the president (both houses).
- **Fundamental Duties**
 - Part IVA, Article 51A by 42nd Amendment Act, 1976
 - To abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem;
 - To cherish and follow the noble ideals which inspired our national struggle for freedom;
 - To uphold and protect the sovereignty, unity and integrity of India;
 - To defend the country and render national service when called upon to do so;
 - 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;
 - To value and preserve the rich heritage of our **composite culture**;
 - To protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures;
 - To develop the scientific temper, humanism and the spirit of inquiry and reform;
 - To safeguard public property and to abjure violence;
 - 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;
 - 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.

- “Composite Culture”
 - The Supreme Court has pointed out that the foundation of this composite culture is Sanskrit language and literature which is great binding force “for the different people of this great country and it should be preferred in the educational system for the preservation of that heritage — apart from the duty of the Government under Article 351.”
- No provision in the Constitution for direct enforcement of these duties nor any sanction to prevent their violation
- Serves as warning to reckless citizens against antisocial activities

Directive Principles of State Policy (DPSPs)

- Part IV, Article 36-51 Contains the DPSPs
- Not justiciable in any court.
- Duty of the State in applying the principles of DPSPs in making laws.
- Main goal is to promote economic and social justice, and achieve the socialist nature of India’s polity.
- Provisions such as:
- Equal justice and free legal aid, Organisation of village panchayats, Right to work, to education and to public assistance in certain cases, Provision for just and humane conditions of work and maternity relief, Living wage, etc., for workers, Participation of workers in management of industries, Uniform civil code for the citizens, Provision for free and compulsory education for children, Promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections, Duty of the State to raise the level of nutrition and the standard of living and to improve public health, Organisation of agriculture and animal husbandry, Protection and improvement of environment and safeguarding of forests and wild life, Protection of monuments and places and objects of national importance, Separation of judiciary from executive, Promotion of international peace and security.

DPSP vs FR

- DPSP are also rights just like FRs are rights. No distinction can be made between the two. DPSP were made non-justiciable solely because their implementation depends on the capability of the State. Merely because the Directive Principles are non-justiciable by the judicial process does not mean that they are of subordinate importance.
- FRs are no doubt important for political democracy, but there can be no real democracy without social and economic justice.
- Current position is DPSP and FRs have to be *read harmoniously by the court* instead of giving any general preference to DPSP.
- Until the re Kerala Educational Bill, 1958 case, SC held that DPSP are inferior to FRs and no law implementing DPSP but violating FR shall be constitutional. But in this case it gave the doctrine of harmonious reading i.e. FR and DPSP complement each other and there is no inherent conflict between them. So as far as possible a harmonious reading of both should be carried out and if 2 interpretations of a law are

possible where one is harmonious and other conflicting, the harmonious one should be given effect. But if eventually there is a conflict, FR shall prevail.

Directives contained in other parts of constitution

- Art 350A says state should make arrangement for providing instruction in mother tongue to linguistic minorities at primary stage.
- Art 351 enjoins the union to spread the use of Hindi.
- Art 335 says claims of SC STs shall be taken into consideration consistently with maintenance of efficiency.
- Art 355 and 365
- Art 355 says "It shall be duty of union to ensure that state governments are carried out in accordance with provisions of this constitution". DPSP are a part of the constitution. Art 37 says "it is duty of government to apply these principles in making laws".
- This means central government can coerce the state governments to pass laws implementing the DPSP.

Procedure for Amendments to the Constitution

- Article 368 of the Constitution provides for Constitutional Amendment Act in the Parliament and the rules related to it.
- *Conditions:*
 - Can be initiated in any house of the parliament by introduction of a bill - not in state legislatures
 - Can be introduced by any member of the parliament and DOES NOT need prior recommendation of the President
 - Each house must pass the bill separately and no provision for joint sitting is provided under this amendment procedure
 - After passing, President must give his assent. He cannot withhold his assent nor return the bill for reconsideration of the Houses
 - No provision for Joint session of the two houses for constitutional amendment. This is provided for ordinary bills via article 108 (joint sitting) but not for constitutional amendment bills.
 - Obligatory for the President to give his assent to the Constitutional amendment bill under article 368.
- *Types of Amendments:*
 - Article 368 provides for only two types of Amendments:
 - By Special Majority
 - i.e. by majority of the total membership of each House (50% membership) separately and a majority of 2/3rd of those present and voting in each House separately
 - Amendable parts of constitution: Fundamental Rights
 - DPSPs
 - All other provisions which are not covered by the first and third categories (i.e. by simple majority and the other on Article 368)
 - By Special Majority and Consent of at least 50% of the states

- Amendments dealing with Federal nature of the Constitution
- Require special majority of the Houses and also consent of at least 50% of the States. This means that at least 50% of the state legislatures must pass the bill as well but only by simple majority
- No time limit subscribed
- Election of the President
- Extent of the executive powers of the State and Union
- Supreme and High Courts
- Distribution of Legislative powers between states and the union
- Any items on the list in the 7th schedule
- Representation of States in the Parliament
- Power of the Parliament to amend the Constitution and its procures (Article 368 itself)
- **Is Part III or any other part of the constitution amendable?**
 - Until the Golaknath case, the Supreme Court held that no part of the Constitution was unamendable, i.e., any part could be amended by passing the relevant amendment under Article 368 or under ordinary legislation.
 - Until Golak Nath Case, the Supreme Court held that 'law' in Article 13(2) referred to ordinary legislation made by the parliament as a legislative body and would not include an amendment of the Constitution which was passed by the Parliament in its constituent capacity.
 - In Golak Nath case, the Supreme court ruled that Fundamental Rights in Part III cannot be amended by provisions under Article 368.
 - 24th Constitutional Amendment Bill was passed after this which stated that any amendment under article 368 will not fall within the definition of "law" under article 13 and validity of constitutional amendment will not be open to question on ground that it takes away or affects a fundamental right.
 - This was challenged in the Kesavanand Bharti vs. the State of Kerela Case where a full supreme court bench of 13 judges upheld the 24th Constitution Amendment.
 - This meant that fundamental rights in India can be amended by an Act passed under Article 368 and the validity of a Constitution Amending Act cannot be questioned on the ground that Act invades or encroaches upon any fundamental rights.
 - However, this case also asserted the doctrine of Basic Features of the constitution, which cannot be amended by the legislature. These are — sovereignty and territorial integrity of the country, the federal system, judicial review, Parliamentary form of government etc. (not exhaustive).
- **Basic Feature Doctrine of the Constitution**

- Amendment can also be made by Simple Majority of the Houses, but that **does not** fall under Article 368
 - By Simple Majority
 - Admission or establishment of new states
 - Formation of new states and alteration of areas, boundaries or names of existing states
 - Abolition or creation of legislative councils in states
 - Second schedule - emoluments, allowances, privileges, and so on of the President, governor, the Speakers and judges
 - Quorum in the Parliament
 - Salaries and allowances and privileges of the members of Parliament
 - Rules of procedure in Parliament
 - Use of English in the Parliament
 - Number of puisne judges in the SC
 - Conferment of more jurisdiction to the SC
 - Use of official language
 - Citizenship
 - Elections to the Parliament and State legislatures
 - Delimitation
 - Union territories
 - 5th Schedule - Scheduled Areas and STs
 - 6th schedule - Tribal Areas

Local Governance - Panchayati Raj and Municipalities

Panchayats (73rd Amendment, Part IX - Article 243)

- The 73rd Constitutional Amendment drew a framework for the State governments to implement local governance through the Panchayati Raj Institutions
- This is three tier system, namely:
 1. The village level
 2. The District Panchayat at the district level
 3. The Intermediate Panchayat or Block Level Panchayat (between village and the district panchayat) in states where population is > 20 lakhs
- All seats chosen by direct elections from territorial constituencies in the Panchayati area
- The electorate is known as the “Gram Sabha” consisting of persons registered in the electoral rolls relating to a village comprised within the area of a Panchayat.

- Reservations for SCs and STs will be in proportion of their population. > 50% reservation ok when the proportion of SC or ST is >50%. Out of the seats reserved for SC and ST, >33% will be reserved for women of SC and ST. $\geq 33\%$ seats be reserved for women overall in total seats.
- A State may also reserve seats for OBC.
- A state can make provisions by enacting state laws for similar reservations **for the offices of chairpersons** of gram panchayat and above levels. Reservations for other backward classes can be made at any level by state laws enacted by states.
- All members who are qualified to be chosen for state legislature qualify for panchayats apart from age where 21 years old is ok for panchayat (25 years for MLA). Any dispute over qualification will be handled by an authority prescribed in state laws.
- The Act had some innovative provisions such as:
 1. Direct elections at the PRI level for election of representatives
 2. Reservation for Women
 3. Setting up of State Election Commission to conduct these elections
 4. Setting up of State Finance Commission to ensure financial viability of these institutions
- While the Act has been implemented in many States, many of its provisions have been left to the States to design and fulfill. This has caused some issues as many states have not been able to successfully devise frameworks for functioning of these institutions.

Powers

- Their powers are as determined by states by enacting laws. 11th schedule (has 29 items) is merely recommendatory in nature.
- A state may by law empower panchayats to levy taxes. It may also assign some taxes, duties, tolls etc. / state may give grants to PRIs as well.
- It may also provide for following activities:
 1. Preparing plans for economic development and social justice
 2. Implementing of schemes of economic development and social justice
 3. 11th Schedule list — 29 subjects — land improvements, minor irrigation, animal husbandry, fisheries, education, women and child development etc.

The 11th schedule outlines the potential division of powers between the State and the PRIs exactly the same way the 7th Schedule does so between the Union and the States.
- Every 5 years, the State Government shall appoint a finance commission to review the financial position of the Panchayats and to make recommendations as to the distribution of the taxes between the State and the Panchayats, what taxes, duties, tolls etc. should be assigned to the panchayats, grants-in-aid to Panchayats.
- State election commissioner: He is appointed by the governor. He can be removed only like a judge of HC. He shall be bound by the state laws related to elections to PRIs. No court can interfere in matters of delimitation of constituencies, allotments of reserved seats etc.
- An election in PRI can only be brought into question through an election petition which should be presented to such authority and in such manner as may be prescribed by or under any law made by the State Legislature.
- Central Finance Commission: Will receive the recommendations of state finance commissions. Based on these recommendations, he will recommend the measures

needed to augment the consolidated fund of a state to supplement the resources of PRIs in the state.

Municipalities (Part IX - Art 243)

Scope

- Industrial townships, SEZs, NIMZ etc. or other factors criteria by the governor are excluded.

Composition

- Apart from direct election, states can by law provide for representation of people having special knowledge of municipal administration, MPs, MLAs, chairman of planning committee in the municipal committees.
- A municipality having a population of > 3 lacs will have wards committees as well. Delimitation of such wards and composition of such committees shall be as provided by state laws.
- Reservation pattern, qualifications, dispute resolutions similar to panchayats.

Dissolution

- It can be dissolved only according to law and before dissolution a reasonable opportunity of being heard must be given to the municipality. No law can be amended to force a dissolution of a municipality.

Powers

- As mandated in state laws. It can be planning, implementation of schemes, 12th schedule (recommendatory in nature and has 18 items).

Planning Committees (Part IX - Art 243)

1. In every state 2 committees shall be constituted - (a) District planning committee @ district level and (b) Metropolitan planning committee @ metropolitan area level.

Composition

- In DPC, $\geq 80\%$ of members will be elected by elected members of district level panchayat and elected members of municipal committees from amongst themselves. Their proportion would be in accordance to rural:urban population.
- In MPC, $\geq 67\%$ of members will be elected by elected members of municipalities and chairpersons of panchayats in the metropolitan area from amongst themselves. Their proportion will be in accordance to municipality:panchayat population.
- Their chairman will be chosen in a manner as specified by state laws.

Powers

- Their functions would be as provided by state laws + preparing and forwarding the district plan to the state government.

PESA (Panchayat Extension to Scheduled Areas) Act 1996

Powers of Gram Sabha

PESA promotes people-centric governance and provides a central role to the Gram Sabha. The Gram Sabhas under PESA are deemed to be 'competent' to safeguard and preserve the traditions of their people, community resources and customary mode of dispute resolution. The Gram Sabhas further have:

- Mandatory executive functions to approve plans of the Village Panchayats, identify beneficiaries for schemes, issue certificates of utilization of funds,
- Right to mandatory consultation in matters of land acquisition, resettlement and rehabilitation, and prospecting licenses/mining leases for minor minerals,
- Power to prevent alienation of land and restore alienated land;
- power to regulate and restrict sale/consumption of liquor;
- power to manage village markets, control money lending to STs;
- ownership of minor forest produce;
- power to control institutions and functionaries in all social sectors;
- power to control local plans and resources for such plans including TSP, etc.

The Backward Region Grant Fund (BRGF) is a Programme implemented by the Ministry of Panchayati Raj (MoPR) in 272 identified backward districts in all States of the country except Goa.

- The erstwhile Rashtriya Sam Vikas Yojna (RSVY) has been subsumed under BRGF Programme.
- The BRGF Programme is designed to redress regional imbalances in development. The fund provides financial resources for supplementing and converging existing developmental inflows into identified districts to:
 - Bridge critical gaps in local infrastructure and other development requirements that are not being adequately met through existing inflows
 - Strengthen, Panchayat and Municipality level governance with appropriate capacity building, facilitating participatory planning, decision making, implementation and monitoring, to reflect local felt needs,
 - Provide professional support to Local Bodies for planning, implementation and monitoring of their plans,
 - Improve the performance and delivery of critical functions assigned to Panchayats.

BRGF CONSISTS OF TWO FUNDING WINDOWS NAMELY:

1. ***Development Grant*** : BRGF Development Grant are used by Panchayats and Urban Local Bodies (ULBs) by transparent norms and they use these funds to address the critical gaps in integrated development, identified through the participative planning processes cited in BRGF Guidelines. The annual entitlement of per district is fixed by Ministry of Panchayati Raj (MoPR) on identified criteria, from time to time.
2. ***Capacity Building***: The annual entitlement per district is Rs. 1.00 crore. These funds are used primarily to build capacity of Elected Representatives (ERs) and

functionaries of Panchayati Raj Institutes (PRIs) in subjects such as planning, implementing, monitoring, accounting and improving accountability and transparency of developmental works.

3. Funds are released by the MoPR to the Consolidated Fund of the States which need to be disbursed to the Implementing Entities/Agencies within

Lokpal and Lokayuktas

Historical Precedence and Origin of the Idea:

- *The idea of creating Lokpals and Lokayuktas comes from the established system of redressing citizens grievances and allegations in many countries across the world.*
- *First such system was established in Sweden and is called the Ombudsman system. Under the Ombudsman system, a public authority is set up to look after various allegations and grievances of citizens against local government officials, ministers and high-powered administrators and bureaucrats.*
- *After its success in Sweden, it was widely accepted and implemented in various Scandinavian countries like Finland, Denmark, Norway etc. It was also implemented in various European countries in other forms (Administrative Courts system in France and Procurator system in Russia)*
- *Features:*
 - Ombudsman System establishes an independent office of a public authority that receives complaints or acts on his/her own prerogative (suo moto) against corrupt and malpractising public servants or ministers.
 - It defines a time period for resolving such cases and separates the investigative process from the prosecution process, thereby providing more transparency and efficiency to the process.
 - The power of this body is rested in the parliament and its independent from the executive and the judiciary

Lokpal and Lokayuktas in India

- The ombudsman system is known as Lokpal and Lokayuktas in India
- The proposal for Lokpal and Lokayukta establishment was suggested by the ARC (Administrative Reforms Committee) in 1966.
- This was done to redress citizens' complaints and problems against corrupt and misguided public officials, ministers etc.
- The ARC report recommended establishment of the Lokpal to redress complaints against high powered ministers, including the PM, CM etc. and the Lokayuktas to redress complaints against public officials.
- This recommendation has been proposed in the Parliament since 1968 under various government, however has never been passed.
- Many states have established Lokayuktas to redress complaints against their ministers, MLAs and public officers and are active. However, their provisions vary from state to state.

Tribunals

Added by the 42nd amendment of the constitution: **Articles 323A and 323B**

- Administrative Tribunals set up to deal with grievances of public officials, generally relating to the appointment and service conditions of persons appointed to public services of the Centre, the states, local bodies, public corporations, and other public authorities.
- In pursuance of this the Parliament passed the **Administrative Tribunals Act 1985**
 - Allows Central govt. to set up one Central Administrative Tribunal [CAT] and state administrative tribunals.
 - Judge of tribunal given status of the High Court judge
 - Drawn from both judicial and administrative services
 - Appeals can be made in High Court
- Burden sharing: Ease the load on courts
- Experts: Provide more expert opinion and judgments
- Time Saving: Specify time and reduce the time taken to arrive at decisions and dispose cases
- Jurisdiction of SC and HC applies

Other tribunals

- Other tribunals can be set up under article 323-B to resolve matters regarding:
 - Taxation
 - Foreign exchange, import and export
 - Industrial and labor
 - Land reforms
 - Ceiling on urban property
 - Elections to Parliament and state legislatures
 - Food stuffs
 - Rent and tenancy rights
- Note that while article 323-A concerns with setting up tribunals for administrative matters, article 323-B can set them up for other matters, such as above.
- Also, tribunals in case of 323-A can only be set up by the Parliament, while those under 323-B can be set up both by the Parliament and the state legislature with matters falling under their legislative competence.
- Under article 323-A, only one tribunal for the Centre and one for each state or two or more states may be established. There is no hierarchy of tribunals under article 323-A while under 323-B such hierarchy may be there.
 - Total 17 administrative tribunals today (one in delhi and others in states. UP has two and Rajasthan has two)

National Green Tribunal Act 2010

- Enables creation of a special tribunal to handle the expeditious disposal of cases pertaining to environmental issues.
- Enacted under India's constitutional provision of Article 21 which assures its citizens the right to healthy environment.
- *Origins*:
 - In the Rio Dejeniro convention (Earth Summit) of the United Nations Conference on Environment and Development in 1992, India vowed to create

- a judicial mechanism to address the remedies for victims of pollutants and other environmental damages.
 - This tribunal also meant that India could better control emissions and create a mechanism of maintaining these at desirable levels
 - **“Polluter Pays” Principle:** This is the first body of its kind that is required **by its parent statute to apply the "polluter pays" principle** and the principle of sustainable development.
 - This court can rightly be called ‘special’ because India is the third country following Australia and New Zealand to have such a system.
- *Members:*
 - 10 expert members and 10 judicial members (allows up to 20 each)
 - The Chairman of the tribunal is required to be a serving or retired Chief Justice of a High Court or a judge of the Supreme Court of India.
- *Recommendations/Decisions in past:*
 - Coal Blocks in Chhattisgarh Forests
 - DELHI YAMUNA RECREATION PLAN and NOIDA: <http://www.delhidailynews.com/news/Panel--Scrap-Yamuna-riverfront-project-1398490017/>

Parliamentary System in India

- Article 74 and 75: Parliament at the Centre
- Article 163 and 164: Legislatures in the States

Features:

1. Nominal and Executive Heads of the State
2. Majority Party Rule
3. Collective Responsibility
 - Ministers are collectively responsible to the Parliament in general and to the Lok Sabha in particular. They act as a team and sink and swim together.
4. Political Homogeneity
 - Council of Ministers usually belongs to the same party and hence they share same ideology.
5. Double Membership
 - Ministers are members of the Parliament as well as the Executive
6. PM is the leader and real head of the government
7. Dissolution of the Lower House
 - Can be resolved by the President on advice of the PM
8. Secrecy
 - Ministers operate on the principle of secrecy of procedure and cannot divulge information about proceedings, policies and decisions. They take an oath of secrecy.

Benefits:

1. Harmony between Legislature and the Executive as opposed to the Presidential form of government
2. Responsible Government

3. Prevents Despotism
4. Ready Alternative Government
5. Wide Representation

Cons:

1. Instable Government
2. No continuity in policies
3. Dictatorship of the cabinet
4. Government by amateurs
5. Against separation of powers

Difference between Indian and British Parliamentary system:

- **Republicanism:** India follows a republican system where the head of state is elected however Britain follows a monarchical system where the King or Queen is not elected by the people.
- **Parliamentary Supremacy:** The British parliament enjoys parliamentary supremacy while the Parliament in India is not supreme and the powers are restricted due to a written constitution, federal system, judicial review and fundamental rights.
- **PM:** In Britain, the PM must be a member of the lower house, in India he/she can be a member of either of the two Houses.
- **Legal responsibility of Ministers:** Britain the ministers are legally liable for their acts in the parliament, not so in India as they are not required to countersign official acts of the State. All the executive decisions are taken on the name of the President in India.
- **Shadow Cabinet:** Uniquely British institution.
- **Ministers:** Only members of parliament are elected as ministers in Britain. In India, a non-member can become a minister but must be elected to either house within 6 months.

Procedures of the Parliament

- Articles 79 to 122 in Part V of the constitution cover the organization, composition, duration, officers, procedures, privileges, powers etc. of the Parliament.

Parliament has Three parts:

1. Lok Sabha
2. Rajya Sabha
3. President (not a member and has no voting power, but an integral part of the Parliament)

Members:

Elected and Nominated members of the Parliament in both LS and RS are called members.

RS:

Composition: **250 members; 238** are representatives of states and UTs, 12 are nominated members by the President

- The 4th Schedule deals with the allocation of seats in Rajya Sabha to the state and UTs
- **States:** Members of RS elected by elected members of the state legislature assemblies by the process of election held in accordance with proportional representation by means of single transferable vote.
- **UTs:** Elected by electoral college formed for this purpose and held in accordance with proportional representation by means of single transferable vote (only **Delhi and Pondicherry** have RS members)
- Nominated members: Nominated by President from fields of art, science, literature, and social service.
 - The American Senate has no nominated members and every state as equal vote as against Indian Upper House states have votes based on the population proportion.

Duration:

- Ongoing house with 6 year terms for all members, and 1/3rd members retire every 2 years; continuing chamber

Membership:

- Citizen of India
- Other qualifications as subscribed by the Parliament
- > 30 years in age
- Registered elector from a parliamentary **constituency**
- *Disqualifications:*
 - Holds office of profit under the Union or State government except those offices exempted by the Parliament
 - As per the RPA (1951):
 - Must not be found guilty of certain election offenses and corrupt practices in the elections
 - Must not be convicted of any offense resulting in imprisonment of >2 years. Preventive detention not counted
 - Must not have failed to lodge accounts of election expenses within time
 - No interest in government contracts, works etc.
 - Not a director or shareholder in government organization where govt. > 25% shareholder
 - Must not be dismissed from government service for corruption or disloyalty to the state
 - Not convicted of bribery or inciting violence among different groups
 - Not convicted of preaching social crimes like untouchability, dowry, sati
 - Anti-Defection

The Union Legislature:

Functions of the Parliament:

1. Providing the Cabinet
 - Parliament provides the Cabinet and holds them responsible.
2. Controlling the Cabinet
 - Expressly secured in Article 75(3), the Cabinet remains in power so long it retains the confidence of the majority in the House.
3. Criticism of Cabinet and its individual members
 - Parliament ensures that healthy debating and discussion takes place and the government is run truly democratically.
4. Legislation or to make laws
 - The most important role of the Parliament is to devise legislation.
5. Financial Control
 - **Parliament has the sole power to authorize expenditure for the public services and to specify the purpose to which the money shall be appropriated.** It also provides ways and means to raise the revenue through taxes and other impositions and also ensures that money that was granted has been spent for the authorized purposes.
6. An organ of Information
 - Parliament is more powerful than Press as **an organ of information** for Parliament secures information authoritatively from those in know of the things. The information is collected and disseminated through debates and also through medium of “Questions” of the ministers.

Constitution of the Parliament

- President, Lok Sabha and the Rajya Sabha

Sessions of the Parliament

- Prorogue, Summon and Dissolution
- All done by the President
- Either House is prorogued by the President to end the session of the House (done only once a year)
- There cannot be a difference of more than 6 months between two sessions of the House
- Parliament is summoned by the President to start its sessions at least twice a year (President also addresses the first session every year), and also for Joint Seating, if required
- Dissolution is at the end of the term of the Parliament
- A ‘session’ is the period of time between the first meeting of as Parliament, and its prorogation or dissolution. The period between prorogation of the Parliament and its reassembly in a new session is termed as ‘recess’. Within a session, there are a number of daily ‘sittings’ separated by adjournments, which postpone the further consideration of business for a specified time — hours, days or weeks. The sitting of a House may be terminated by a (1) dissolution (2) prorogation (3) adjournment
- Only the Lok Sabha is subject to dissolution - by end of its term and by exercise of the President’s power under article 85(2).

- Adjournment power is held by Speaker and the Chairman of the respective houses.
- **Hence, prorogation brings end of session of the House, dissolution brings end to its life and adjournment is a temporary end to its sittings.**

Vacation of seats by members:

- Dual membership
- Disqualification
- Resignation
- Absence without permission (>60 days)

Speaker/Chairman:

- Holds office during the term/life of the House
- Can leave office by resignation given to the deputy speaker of the House, ceasing to be member of the House, or lastly by removal from the office by a resolution passed by a majority of all the then members of the House (14 days' notice to be given to the Speaker in such a case)
- Speaker does not vote in the first instance, but shall have the right to exercise the vote in case of a tie in the House.
- Speaker's conduct in regulating the procedure or maintaining order in the House will not be subject to the jurisdiction of any Court.
- Speaker presides over the Joint Sitting of the two Houses (not the Chairman)
- Speaker endorses the Money Bill, without which it cannot be called a money bill.

Privileges of the Members of Parliament (Article 105):

- **Individual privileges** for members
- Freedom from Arrest: Confined to arrests in civil cases (not in criminal cases or under the law of Preventive Detention). Applies for sitting members and for 40 days before and after the sitting of the House
- Freedom of Attendance as Witness: Cannot be summoned without the leave of the House to give evidence as a witness while Parliament is in session.
- Freedom of Speech: A member cannot be held liable in any court of law in respect of anything said in the Parliament or any committee thereof. However, this is 'subject to the rules' of the House. Additionally, no discussion shall take place in Parliament with respect to the conduct of any Judge of the SC or of a High Court in the discharge of office duties except upon a motion for presenting an address to the President for removal of the Judge.
- **Collective privileges for the MPs**
 - Right to publish debates and proceedings and the right to restrain such publication by others
 - The right to exclude others from proceedings of the House (hence from galleries of the Houses; such order may be given by the Speaker and the Chairman)

- The right to regulate the internal affairs of the House, and to decide matters arising within its walls (what is said and done within the walls of the Parliament cannot be enquired in the Court of law)
- The right to publish Parliamentary misbehavior
- The right to punish members and outsiders for breach of its privileges (admonition, reprimand or imprisonment)

Rajya Sabha or the Council of the States

- Maximum membership of 250
- 12 members nominated by the President amongst people have special knowledge or practical experience in literature, science, art and social service.
- Rest 238 elected and are representatives of the States and UTs and elected by indirect election method. This is done in states' Legislative Assembly in accordance with the system of proportional representation by means of the single transferable vote. Same was also adopted for the election of members of State Legislative Councils (wherever they have been set up) where members are elected by proportional representation by means of single transferable vote. The electorates here consist of municipalities, district boards, and other local authorities, and of graduates and teachers of three years standing resident in the state.
- Rajya Sabha reflects the federal character of our constitution by granting representation to the states, however, it is not as strong as the American Senate where all States have equal representation regardless of their size and population.
- *Duration of Rajya Sabha:*
 - Continuous non-dissolving house. 1/3 members retire on the expiration of every second year.

Lok Sabha or the House of the People:

Composition: **Max. 552 members;** 530 are representatives of people directly elected by them, 20 are from UTs, and **2 are nominated members** by the President from Anglo Indian community

- Currently: 545 members, 530 elected, 13 from UTs and 2 anglo indians

Duration:

- 5 years from date of its first meeting when a new government is elected.
- President is authorized to dissolve the LS at any time even before the completion of 5 years and it cannot be challenged in court of law
- Term of LS can be extended to a **maximum of 1 year** during proclamation of national emergency for any length of time (one year each)
 - Extension doesn't happen six months after the emergency has ceased to operate

Membership:

- Citizen of India
- Other qualifications as subscribed by the Parliament

- > 25 years in age
- Registered elector **from that constituency**
- *Disqualifications:*
 - Holds office of profit under the Union or State government except those offices exempted by the Parliament
 - As per the RPA (1951):
 - Must not be found guilty of certain election offenses and corrupt practices in the elections
 - Must not be convicted of any offense resulting in imprisonment of >2 years. Preventive detention not counted
 - Must not have failed to lodge accounts of election expenses within time
 - No interest in government contracts, works etc.
 - Not a director or shareholder in government organization where govt. > 25% shareholder
 - Must not be dismissed from government service for corruption or disloyalty to the state
 - Not convicted of bribery or inciting violence among different groups
 - Not convicted of preaching social crimes like untouchability, dowry, sati
 - Anti-Defection
- **Systems of Elections in Lok Sabha**
 - Based on First Past the Post System as opposed to the Proportional Representation method
 - Territorial Constituencies
 - Each state is allotted seats on the basis of the population (such that the proportion of seats to population is same in all the states).
 - Each state is divided into territorial constituencies in such a manner that the proportion of the population of the constituency and the seats allotted to it are same throughout the state.
 - *Readjustment after each Census*
 - Delimitation Commission is set up every 10 years or so to allocate seats to States and division of territorial constituencies.
 - 42nd amendment of 1972 forced number of seats for all states as per 1971 census. However, the readjustment and the rationalization of territorial constituencies continues to take place on the basis on the later census (2001). However, this can be done without altering the number of seats allocated to each state in the Lok Sabha.

Vacating Seats:

- Cannot be member of both houses at the same time
- Intimate within 10 days which house he wants to be a member of. **In default of such an intimation, the RS seat becomes vacant**
- If a sitting member of one House is elected to the second House, **his seat in the first house becomes vacated**
- If elected to two seats in a House, he must exercise right to one seat otherwise both are vacated
- Cannot be a member of both the Parliament and State Legislature at the same time. If doesn't resign from one within 14 days his seat in Parliament is vacated

Presiding Officers:

1. Speaker and Deputy Speaker of the Lok Sabha

- Derives her power from the Constitution of India, Rules and Procedures of the LS and Parliamentary conventions
- Presides over joint sitting of both the Houses
- Cannot vote in first instance but can vote in the event of a tie (when functioning normally)..known as the **casting vote**
- He can allow for a “secret” sitting of the house. When such sitting is held, no stranger is allowed in the galleries or in the House itself.
- He or she is the head of the Lok Sabha and its representative
- Decides whether a bill is Money Bill or not
- Decides on disqualification of a member with reference to the anti-defection law. SC still has jurisdiction over this. (judicial review)
- Appoints chairman of **all** the Parliamentary committees of the LS.
- Herself the Chairman of the Business Advisory Committee, the Rules Committee and General Purpose Committee
- *Election:*
 - Elected from the members in the House
 - Must be a member of the Lok Sabha
- *Removal:*
 - Can only be removed after a resolution is passed in the Parliament for this purpose
 - Resolution must first be raised by a member with support of at least 50 members and he must be given a 14 days notice first
 - After a resolution is brought in the House, it should be passed with an **absolute** majority of Lok Sabha and not by an ordinary majority (majority of the total members of the House, and not the majority of members present and voting).
 - While such resolution is on, he cannot preside on the LS though he may be present and also speak and take part in the proceedings.
 - However, it must be noticed that in such a case, the speaker can vote in the first instance as well, though not in the case of equality of votes.
- *Deputy Speaker:*
 - If gets elected to a Parliamentary committee, automatically becomes its chairman
 - When speaker presides the meeting, she is like any other member of the house
 - Like the speaker, when presiding the House, can vote in second instance only (after a tie). However, can vote etc. when not acting as the speaker.
 - No oaths for either speaker or deputy speaker
- *Historical reference:*
 - The post of Speaker and Deputy Speaker was proposed in the Montagu-Chelmsford reforms in 1919
 - The first speaker was Frederick Whyte, nominated in 1921 and Sachidanand Sinha, nominated in 1921 as well as Deputy Speaker.
 - In 1925, Vithalbhai Patel became the first Indian to be a Speaker of the central legislative assembly.

- GV Mavlankar was the first Speaker and A. Ayyangar, the first Deputy Speaker of independent India.
- *Panel of Chairpersons of Lok Sabha*
 - The speaker nominates a panel of not more than 10 members, any of whom can preside the Lok Sabha in the absence of both Speaker and Deputy speaker.
 - However, it must be noticed that if the Speaker position or the Deputy Speaker position is vacant, President must nominate someone, and the panel cannot preside.
 - Elections are held as soon as possible to carry out these duties.
- *Speaker Pro Tem*
 - Speaker of the last Lok Sabha immediately vacates his seat when a new Lok Sabha's first meeting is held
 - President appoints a Speaker Pro Tem to take care of proceedings.
 - Generally the senior most member of the House
- 2. Chairman and Deputy Chairman of the Rajya Sabha
 - Vice President of India is the ex-officio chairman of the RS
 - Can only be removed from here if she is removed from the office of the VP
 - Same powers as the Speaker however, she DOES NOT decide whether a bill is Money Bill or not and DOES NOT chair the joint sitting of the two Houses
 - **Chairman is not a member of the RS but can vote in case of a tie (cannot vote in first instance)**

Leader of the House - laid down in rules of the Lok Sabha

Leader of the Opposition - laid down in rules of the Lok Sabha and leader of a party with at least 1/10 of the total strength of the House

Whip - not mentioned in rules, unofficial position of a member who rallies all the members of the ruling party to vote, and be present for motions etc.

Sessions of the Parliament

- Maximum gap cannot be more than 6 months between sessions of a House
- Budget Session (Feb - May), Monsoon Session (July - Sept), Winter Session (Nov - Dec)
- A "session" is time between House's first seating and its prorogation
- Adjournment - temporary, between sittings etc.
 - Adjourn Sine Die - temporary but with no further time or date of meeting; indefinite
- Prorogation - terminates the sitting and also the session of the House - done by **president only**
- Dissolution - done by President only, ends the very life of that existing Lok Sabha
- Lapses in Bills:
 - Lapses if:
 - Pending just in LS (whether originating in LS or RS)
 - Pending in RS lapses (when passed by LS)
 - Does not Lapse:
 - If president has notified joint sitting before dissolution of LS, it does not lapse
 - Pending in RS but not passed in LS does not lapse
 - Bill awaiting assent of the President does not lapse

- A bill returned by the President for reconsideration of both Houses does not lapse
- Quorum
 - 55 members in LS
 - 25 members in RS
- Ministers and Attorney General
 - A minister can participate in proceedings of any house (in RS even if he is not a member of the RS), speak and also participate in any committee meetings
 - Attorney general can participate in processing of both the Houses, speak and also participate in any committee meetings
- Question Hour:
 - **1st hour of every sitting is a question hour**
 - Starred Questions
 - Requires an oral answer and hence supplementary questions can follow
 - Unstarred Questions
 - Requires a written answer and hence supplementary answers cannot follow
 - Short Notice Questions
 - Question asked by giving a notice of <10 days and answered orally
- Zero Hour
 - Informal device, not mentioned in Rules of Procedure
 - Raise matters without prior notice
 - Starts immediately after the question Hour and lasts until the agenda of the day is taken up
- Motions:
 - Motions are passed to start discussions in the Parliament on various issues of public importance
 - House expresses its decisions or opinions by adopting or rejecting the motions passed by either ministers or its private members
 1. *Substantive Motion*
 - Dealing with very important matter like impeachment of the President or removal of the Chief Election Commissioner
 2. *Substitute Motion*
 - Moved in substitution of the original motion and proposes an alternative to it. If adopted, it replaces the original motion
 3. *Subsidiary Motion*
 - Motion that has no meaning in itself and is made in reference to another original motion
 - *Ancillary Motion* - used as regular way of proceeding with various kinds of business
 - *Superseding Motion* - seeks to supersede an issue and moved in course of debate on another issue
 - *Amendment* - seeks to modify the original motion
 4. *Closure Motion*
 - Introduced to cut short the discussion on vote on the motion
 - Simple Closure
 - Closure by Compartments

- Kangaroo Closure
- Guillotine Closure
- 5. Privilege Motion
 - Concerned with the breach of parliamentary privileges by a minister by withholding facts of a case or by giving wrong or distorted facts
 - To Censure the concerned minister
- 6. Calling Attention Motion
 - Introduced by a member to call attention of a minister to a matter of urgent public importance and to seek an authoritative statement from him on that matter
- 7. Adjournment Motion
 - Draw attention of the House to a definite matter of urgent public importance and needs support of 50 members to be admitted
 - Extraordinary device
 - Involved element of censure against the government and hence the RS is not permitted to make use of this device
 - Discussion >2.5 hours
 - Matter should be factual and urgent public importance
 - Only one matter
 - Not framed in general terms
 - Not raise question of a privilege
 - Not revive old discussions
 - Not deal with matter under adjudication at courts
 - cannot raise a matter that can be raised in distinct motion
- 8. No-confidence Motion
 - Moved against the entire council of ministers
 - To ascertain the confidence of LS in the Council of Ministers
- 9. Censure Motion
 - Can be moved against a single member or council of ministers
 - Moved to censure council of ministers for specific policies and actions
- 10. Motion of Thanks
 - Speech of President in the Parliament given on the Motion of Thanks
- 11. No-Day-Yet-Named Motion
 - Accepted by speaker but no date decided for discussion
- Point-of-Order
- Half-an-Hour Discussion
- Short Duration Discussion
- Special Motion
- Resolutions
 - Private member's Resolution
 - Government Resolution
 - Statutory Resolution

Legislative Procedures of Passing Bills

1. Public Bills

- Introduced by a **minister** on behalf of the government is a public bill
- Reflects the policies of the Government
- Greater chance of approval in the House
- Rejection in the house leads to indication of non-confidence in the government
- **Requires 7 days notice for introduction**
- Drafted by the concerned department with consultation of the law department

2. Private Bills

- Introduced by a member who may not be a minister
- Reflects the stand of opposition or opinion and policy demand of a member
- Lesser chance of approval
- Rejection in House has no implication
- Requires 1 month notice for introduction in the House
- Drafting of this is responsibility of the member

3. Types of Bills:

1. Ordinary Bills

- Can be introduced by any member of the House in any House of the Parliament
- 5 Stages of passing:
 - *First Reading*
 - The member has to ask the House for leave to present the bill to the House
 - When the House permits so, the member introduces the bill by just reading the title and objectives of the Bill
 - No discussion takes place
 - Bill then gets published in the Gazette of India. If the Bill gets published in the Gazette with permission of the Speaker, then no such reading needs to take place. Hence after this the first stage i.e. First Reading of the bill is done
 - *Second Reading*
 - During this stage, the Bill is discussed and takes final shape
 - General Discussion
 - Principles of the bill are discussed but no detailed discussion takes place. At this stage, House can i) take the bill into **consideration** immediately or at some other date (ii) refer the bill to a **select committee** of the House (iii) may refer the bill to a **joint committee** of the two houses (iv) circulate the bill to elicit **public opinion** on it
 - Committee Stage
 - Usually the bill is referred to a select committee or a joint committee
 - Thoroughly examined
 - Can amend the provision of the Bill without changing the basic nature and principle of the Bill

- Consideration Stage
 - Bill is now received from the Committee stage.
 - **Each clause is discussed and voted separately**
- *Third Reading*
 - Bill is voted upon. Debate is limited to acceptance or rejection of the Bill.
 - After the Bill is voted, it goes to the Second House
- *Bill in the Second House*
 - Here the Bill goes through the same process as the first House
 - If the Bill is accepted, it goes to President for assent; if the Bill is sent back with recommendations to the First House which are accepted by the First House it is considered to be passed and is sent to the President for assent.
 - However if it is rejected, held for more than 6 months or sent back to the First House with recommendations which are not accepted by the First House, the President can summon the joint sitting of both the Houses for discussion and voting on the bill.
- *Assent of the President*
 - *He may give his assent*
 - *He may **withhold** his assent*
 - *He may return the bill to the House for reconsideration - must give his assent when it is returned to the President for assent again*

2. Money Bills

- **Article 110** of the Constitution deals with the definition of Money Bills
- Money Bill is a type of Financial Bill as defined by the constitution
- *A bill is considered money bill when:*
 - Deals with taxing by the **Centre** (imposition, abolition, remission, alteration or regulation) and **NOT** those taxes by local bodies for local purposes
 - the regulation of the borrowing of money by the Central government
 - Custody of the Consolidated fund of India (CFI) or the Contingency fund of India. Payment to or out of these funds
 - Appropriation of money out of the CFI
 - Declaration of any charges or increasing amounts charged from CFI
 - Receipt of money by CFI or public accounts of India
 - Audit of the Union accounts or of a State
- The decision of the Speaker of Lok Sabha is final on whether a bill is Money bill or not. Not justiciable, final decision.
- Money Bill is introduced in the LS by a minister - considered a Government Bill.
- It is passed to the RS with an endorsement of the Speaker of the LS that it is a money bill.

- RS has limited powers with respect to money bill. It must pass or return the bill to the LS within 14 days. If it gives any recommendations, they may or may not be accepted by the LS. The bill is considered to have passed if the RS does not return it within 14 days. The LS can or cannot accept RS recommendations and then the Bill is deemed to have passed.
- The President can only give his assent or withhold his assent to a Money Bill. He cannot return it to the House. Generally, a money bill passes because it is presented in the LS after the permission from the President.

3. Financial Bills

- Financial Bills deal with revenue and expenditure, i.e. fiscal matters of the government.
- Technically, Constitution defines the following as financial bills:
 - Money Bills (Article 110)
 - Financial bills (I) - Article 117 (1) - contains all matters of Article 110 and also matters of other general legislation
 - Financial bills (II) - Article 117 (3)
- Financial bills (I) - Article 117 (1) - contains all matters of Article 110 and also matters of other general legislation, i.e. any bill containing a clause for borrowing but doesn't specifically deal with borrowing; or a bill that contains a taxation clause but doesn't deal solely with taxation, is considered a Financial Bill (I).
 - A Financial Bill (I) can be only introduced in LS after the *recommendation of the President* just like the Money bill, however in all other ways it is treated as an ordinary bill.
 - This means that RS can return the bill to the LS with recommendations which may result in a deadlock if the LS doesn't accept the recommendations, unlike in the money bill. Once the President receives the Bill, he can also return the Bill to the LS with his recommendations.
- Financial bills (II) - Article 117 (3)
 - An ordinary Bill which contains provisions involving expenditure from the CFI is a Financial Bill of the second class. (under Article 117 (3))
 - Contains provisions involving expenditure from the CFI, but does not include any of the matters mentioned in Article 110
 - Treated as an ordinary bill except that it can be introduced in *either House only on recommendation of the President*
-

4. JOINT SITTING of Houses

- Cannot be called for money bills or constitutional amendment bills, **only to ordinary or financial bills (I) and (II) — Article 117.**
- The Speakers of LS presides this meeting, if she is not available, the Deputy Speaker does, if she is not available then the Vice Chairman of

the RS and following that any member selected by the Houses. Not the Chairman of the RS as he is not the member of either of the Houses.

- Chairman of the RS does not preside this sitting as he is not a member of the Houses

4. Budget in the Parliament

Two types of Expenditures to the CFI - “charged on” and “made from” the CFI (difference lies between which cannot be voted upon and which can be voted upon)

1.

Passing of Appropriation Bill:

- Introduced to provide for appropriation of funds from CFI for:
 - Grants (voted upon only in the Lok Sabha and not in the Rajya Sabha)
 - Expenditure charged on the CFI
- No amendments allowed
- Takes time to pass after the Budget has been passed, hence to make up for expenses until that time, “vote on account” is introduced to withdraw money from the CFI and allows up to two months of funds, i.e., 1/6th of the total estimation.

Passing of Finance Bill:

- ***Legalizes the income side of the budget and completes the process of enactment of the Budget***

Other Grants

Parliament's Control over the Financial System:

- No tax shall be levied without legislative authority approving it. Executive cannot enforce tax upon individuals or businesses. (Art 265)
- No money shall be appropriated from the Consolidated Fund of India with the authority of the legislature. All the taxes, receipts, loans etc. are received into the CFI and Art. 266(3) gives power to the legislature only to appropriate funds out of this. (through an Appropriation Act). Hence, the executive cannot spend money without parliamentary sanction.

•

Funds of India:

1. Consolidated Fund of India
 - All revenue receipts, proceeds from repayment of loans to the government and proceeds from issue of government bonds etc. go into the CFI
 - All expenditures legally authorized on the behalf of the GOI are made from the CFI
 - Money can be appropriated out of the CFI only on through parliamentary law and procedures
2. Public Accounts of India
 - All public money that doesn't go to the CFI comes to the PAI. These are Provident funds, judicial deposits, departmental desposits, savings bank deposits, remittances and so on.
 - Controlled by the Executive of India
3. Contingency Fund of India
 - President can allow for withdrawal under extreme or unforeseen expenditures

Motions to reduce demand for Grants

1. ***Policy Cut Motion***
 - Represents disapproval of the policy and demand cutting of the demand to Re. 1. Members can also advocate alternative policy
2. ***Economy Cut Motion***
 - Proposes that demand may be cut to a specified amount on basis of its economy/need
3. ***Token Cut Motion***
 - Ventilates a specific grievance that is within the sphere of responsibility of the GOI.

Guillotine: On the last day of the voting on demands, the Speaker puts all the remaining demands to vote and disposes them regardless of discussions. This is known as guillotine.

RS vs. LS

- Money bills can only be introduced by the LS, and LS has full power over accepting or rejecting the changes recommended by the RS (and RS can only keep the bill for 14 days)
- Financial Bills dealing with any or all the matters of Article 110 can only be introduced in the LS, however rest of the process for their passage is like an ordinary bill only
- Speaker of the LS has the power to decide whether a bill is Money bill or not
- Speaker of the LS presides over the joint meeting of both the Houses
- RS can only discuss the budget but cannot vote on the demands of grants
- Discontinuance of a national emergency can only be voted upon by the LS
- The motion to remove the VP can only be made in the **RS**
- The Council of Ministers is responsible to the House of the People and not to the Council of the States. [Article 75(3)]

- Council suffers, by the reason of its numerical minority, in case of a joint session is summoned by the President to resolve a deadlock between the two Houses.
- **RS exclusive powers:**
 - It can authorize, by a 2/3rd majority vote, the Parliament to make a law on a subject matter enumerated in the State List (Article 249)
 - It can authorize the Parliament to create a new All India service common to both centre and the states (Article 312).

Parliamentary Committees

In a parliamentary democracy like ours, the Committee system assumes great importance.

Administrative accountability to the legislature becomes the sine qua non of such a parliamentary system. The check that Parliament exercises over the executive stems from the basic principle that Parliament embodies the will of the people and it must, therefore, be able to supervise the manner in which public policy laid down by Parliament is carried out.

However, the phenomenal proliferation of governmental activities has made the task of legislatures very complex and diversified. By its very nature, Parliament, as a body cannot have an effective control over the government and the whole gamut of its activities.

Administrative accountability to the legislature through Committees has been the hallmark of our political system.

STANDING COMMITTEES:

FINANCIAL COMMITTEES:

1. Committee on Estimates

- *Functions:*
 - Selected for examination of the estimates as may seem fit to the Committee or are specifically referred to it by the House or the Speaker. Its functions are:
 - To report what economies, improvements in organisation, efficiency or administrative reform, consistent with the policy underlying the estimates, may be effected;
 - To suggest alternative policies in order to bring about efficiency and economy in administration;
 - To examine whether the money is well laid out within the limits of the policy implied in the estimates; and
 - To suggest the form in which the estimates shall be presented to Parliament.
- *Membership:*
 - The Committee consists of 30 members elected annually by the Lok Sabha from amongst its members according to the principle of proportional representation by means of the single transferable vote.
 - The Chairperson of the Committee is appointed by the Speaker from amongst the Members of the Committee.
 - **A Minister is not eligible to be elected as a member of the Committee.**

2. Committee on Public Accounts

- *Functions:*

- Examination of accounts showing the appropriation of sums granted by Parliament for the expenditure of the Government of India
- The annual finance accounts of the Government and such other accounts laid before the House as the Committee may think fit
- Apart from the Reports of **Comptroller and Auditor General** of India on Appropriation Accounts of the Union Government, the Committee examines the various **Audit Reports of the Comptroller and Auditor General** on revenue receipts, expenditure by various Ministries/Departments of Government and accounts of autonomous bodies.
- *Membership:*
 - 22 members
 - The Public Accounts Committee consists of not more than 22 members comprising of 15 members elected by Lok Sabha every year from amongst its members according to the principle of proportional representation by means of single transferable vote and not more than 7 members of Rajya Sabha elected by that House in like manner.
 - The Chairperson of the Committee is appointed by the Speaker from amongst the members of Lok Sabha elected to the Committee.
 - **A Minister is not eligible to be elected as** a member of the Committee, and if a member after her/his election to the Committee is appointed to hold such an office she/he ceases to be member of the Committee from the date of such appointment.
- 3. **Committee on Public Undertakings**
 - *Functions:*
 - The functions of the Committee are to examine the reports and accounts of the Public Undertakings specified in the Fourth Schedule to the Rules of Procedure and Conduct of Business in Lok Sabha and the reports of the Comptroller and Auditor General thereon, if any, and
 - To see whether in the context of their autonomy and efficiency, the affairs of the Public Undertakings are being managed in accordance with sound business principles and prudent commercial practices.
 - All Government Companies whose Annual Reports are placed before the Houses of Parliament and all corporations in 4th schedule come under their purview
 - *Membership:*
 - 22 members
 - The Public Accounts Committee consists of not more than 22 members comprising of 15 members elected by Lok Sabha every year from amongst its members according to the principle of proportional representation by means of single transferable vote and not more than 7 members of Rajya Sabha elected by that House in like manner.
 - The Chairperson of the Committee is appointed by the Speaker from amongst the members of Lok Sabha elected to the Committee.
 - **A Minister is not eligible to be elected as** a member of the Committee, and if a member after her/his election to the Committee is appointed to hold such an office she/he ceases to be member of the Committee from the date of such appointment.

OTHER COMMITTEES:

1. Committee on Empowerment of Women

○ *Membership:*

- It consists of 30 Members, 20 Members nominated by the Speaker from amongst the Members of Lok Sabha and 10 Members nominated by the Chairman, Rajya Sabha, from amongst the Members of Rajya Sabha.
- **A Minister cannot be a Member** of the Committee and if a Member, after nomination to the Committee, is appointed as Minister, she/he ceases to be a Member of the Committee.
- The Chairperson of the Committee is appointed by the Speaker from amongst the Members of the Committee. The term of the Committee is one year.

○ *Functions:*

- To consider the Reports submitted by the National Commission for Women and report on the measures that should be taken by the Union Government for improving the status/conditions of women in respect of matters within the purview of the Union Government including the Administrations of the Union territories
- Union Government actions on welfare and education of women
- Report on working of the welfare programs for women
- Measure the actions taken by GOI in States and Unions on directions of the committee

2. Committee on Welfare of Scheduled Castes and STs.

○ *Membership:*

- It consists of 30 Members, 20 Members from Lok Sabha and 10 Members from RS according to the principle of proportional representation by means of single transferable vote.
- **A Minister cannot be a Member** of the Committee and if a Member, after nomination to the Committee, is appointed as Minister, she/he ceases to be a Member of the Committee.
- The Chairperson of the Committee is appointed by the Speaker from amongst the Members of the Committee. The term of the Committee is one year.

○ *Functions:*

- To consider the reports submitted by the National Commission for the Scheduled Castes and the National Commission for the Scheduled Tribes under Articles 338(5)(d) and 338A(5)(d), respectively of the Constitution
- To report as to the measures that should be taken by the Union Government in respect of matters within the purview of the Union Government including the Administrations of the Union territories;
- Union Government actions on welfare and education of SCs and STs
- Report on working of the GOI on due representation of SCs and STs in services and posts under its control
- Measure the actions taken by GOI in States and Unions on directions of the committee

3. Business Advisory Committee

- *Membership:*
 - Membership is composed of the **Speaker** of the Lok Sabha as the ex-officio Chairman of the Committee
 - 15 Members are elected by the Speaker
 - Members from opposition parties could be chosen as ad-hoc members but they are not counted in the quorum
 - The Deputy Speaker can be invited to attend the meetings
 - No term
- *Functions:*
 - The function of the Committee is to recommend the time that should be allocated for the discussion of the stage or stages of Government Bills and other business as the Speaker, in consultation with the Leader of the House, may direct for being referred to the Committee.
 - In suitable cases the Committee has the power to indicate in the proposed time table the different hours at which various stages of a Bill or other Government business should be completed.
- 4. **Joint Committee on Offices of Profit**
 - *Membership:*
 - It consists of 15 Members, 10 Members from Lok Sabha and 5 Members from RS according to the principle of proportional representation by means of single transferable vote.
 - *Functions:*
 - Look after the membership and if they might disqualify on the basis on office of profit
- 5. **Committee on Private Members' Bills and Resolutions**
 - *Membership:*
 - 15 members selected by the Speaker of the LS
 - The Deputy Speaker is the ex-officio Chairman of this committee
 - 1 year term
 - *Functions:*
 - Allot time for private members' bills
 - Examine private members' bills
 - Categorise those bills for importance
- 6. **Committee on petitions**
 - *Membership:*
 - 15 members selected by the Speaker of the LS
 - The Chairman of this committee is nominated by the Speaker
 - 1 year term
 - *Functions:*
 - Examine every petition that is forwarded to it
 - Report to the House of the petition referred to it
- 7. **Committee on Privileges:**
 - *Membership:*
 - 15 members selected by the Speaker of the LS
 - The Chairman of this committee is nominated by the Speaker
 - 1 year term
 - *Functions:*
 - Examine every question of privilege that is forwarded to it
 - To determine with reference to the facts of each case whether a breach of privilege is involved and, if so, the nature of the breach, the

circumstances leading to it and to make such recommendations as it may deem fit

8. **Committee on Subordinate legislation**

- *Membership*
 - 15 members selected by the Speaker of the LS
 - The Chairman of this committee is nominated by the Speaker
 - 1 year term
- *Functions:*
 - Scrutinize and Report to the House whether powers to make regulations, rules, etc. conferred by the Constitution or delegated by Parliament are being properly exercised or not
 - The Committee also examines the Bills which seek to delegate powers to make regulations, rules, sub-rules, bye-laws etc. or amend earlier Acts delegating such powers, with a view to see whether suitable provisions for the laying of the regulations, rules, etc. have been made therein.

9. **Committee on Government Assurances**

- *Membership*
 - 15 members selected by the Speaker of the LS
 - The Chairman of this committee is nominated by the Speaker
 - 1 year term
- *Functions:*
 - The functions of the Committee are to scrutinize the assurances, promises, undertakings, etc., given by Ministers on the floor of the House from time to time during the Question Hour as also during the discussion on Bills, resolutions, motions etc., and to report to the House, the extent to which such assurances, promises or undertakings, etc., have been implemented and where implemented whether such implementation has taken place within the minimum time necessary for the purpose.

10. **Committee on Absence of Members from Sittings**

- *Membership*
 - 15 members selected by the Speaker of the LS
 - The Chairman of this committee is nominated by the Speaker
 - 1 year term

11. **Rules Committee**

- *Membership*
 - 15 members selected by the Speaker of the LS
 - The Chairman of this committee is the Speaker herself
 - 1 year term
- *Functions*
 - Consider the matters of rules and procedures in the House

12. **General Purpose Committee**

- *Membership*
 - 15 members selected by the Speaker of the LS
 - The Chairman of this committee is the Speaker herself
 - 1 year term
- *Functions*
 - Consider the matters of rules and procedures in the House

13. **House Committee**

- *Membership*
 - 12 members selected by the Speaker of the LS
 - The Chairman of this committee is the Speaker herself
 - 1 year term
- *Functions*
 - Residential accommodations of members etc.

14. **Library Committee**

- *Membership*
 - Joint Committee of two Houses
 - 6 members from LS and 3 from RS
 - Deputy Speaker is the ex-officio chairperson

15. **Committee on Papers Laid on the Table**

- *Membership:*
 - Consist of 15 Members nominated by the Speaker for a term not exceeding one year. The Chairperson of the Committee is appointed by the Speaker from amongst the Members of the Committee.
- *Functions:*
 - The functions of the Committee are to examine all papers laid on the Table by Ministers and to report to the House as to whether:
 - There has been compliance of the provisions of the Constitution, Act, Rule, etc. under which the paper has been laid;
 - There has been any unreasonable delay in laying the paper;
 - In case of delay, a statement explaining the reasons for delay has been laid on the Table and whether those reasons are satisfactory

16. **Joint Committee on Salaries and Allowances**

- *Membership:*
 - It consists of 15 Members, 10 Members from Lok Sabha and 5 Members from RS_nominated by the speaker
- *Functions:*
 - Medical, Housing, Salaries etc.

DEPARTMENTAL COMMITTEES:

1. *Major Things are as follows:*

1. Membership:
 - Minister cannot be a member
2. Term
 - 1 year
3. Appointment
 - By Speaker for Part II committees and Chairman for Part I committees
4. Composition
 - 31 members, 21 from LS and 10 from RS
5. Functions:
 - Consider demands for their departments/ministries
 - Examine bills pertaining to their ministries or departments
 - Consider annual reports of Ministries
 - Do not consider the Public Undertakings as they fall under Public Undertaking Committee

DEPARTMENTAL COMMITTEES

Parliamentary Forums

- *Membership:*
 - Speaker of the LS is ex-officio chairman of all the forums except the Forum on Population and Public Health where the Chairman of the RS is the ex-officio President
 - Deputy Chairman, Deputy Speaker and Concerned Ministers are ex-officio VPs
 - 31 members (not including the above) and 21 from LS and 10 from RS
- *Functions:*
 - Unlike the Parliamentary Committees, which deliberate on a subject selected by them for examination and report during their term, the meetings of the Parliamentary Forums provide an informal platform to Members to acquaint themselves with topical issues of interest which would help them to participate effectively in the debates in the Houses or the sittings of Parliamentary Committees.

Difference between Parliamentary Committees and Forums:

- Parliamentary Committees have statutory sanction as they owe their (origin, powers, functions and privileges to the Constitution, the rules made thereunder. Acts of Parliament or Motions/Resolutions adopted by the House.
 - The composition of the Parliamentary Committees which scrutinize the functioning of the Government consists of Members of Parliament only and Rules do not permit appointment of Ministers as members of such Committees.
 - Parliamentary Committees examine subjects within their mandate and present reports to the Houses. They also follow up with the Government the implementation of the recommendations contained in their reports and thereafter present action taken reports to the House.
 - The Parliamentary Committees have been vested with the powers to call for records and persons in connection with the examination of the subjects and to report to the House any breach of privilege for investigation and suitable action.
- On the other hand **Parliamentary Forums** are an **informal mechanism** consisting of Members of Parliament and Ministers for interaction on critical issues of current importance to enable the members to acquaint themselves with such issues so that they may participate effectively in deliberations and discussions on the floor of the House.
 - The constitution of Forums do not have any statutory sanction nor they have been vested with powers, privileges conferred on the Parliamentary Committees. The Forums do not present any report to the House(s).

Article 3: Reorganisation and Changes in Existing States, altering of name of the state or UT, change areas or boundaries:

- Article 3 in the Indian constitution provides for the **reorganization or creation of new states from existing ones.**
- **Process:**
 - A bill contemplating such a reorganization must only be introduced in the Parliament after the prior recommendation of the President.
 - The President must present and refer this bill to the state legislature concerned for expressing its views within a specified period of time.
 - The President is not bound by the recommendations of the state legislature. He may accept or reject them as he wishes.
 - When amendments to this bill are made in the Parliament, they may not be required to be presented every time in the state legislature.
 - In case of a UT, no such reference by the President is required.
 - Therefore, India described as indestructible union of states.
- This law is NOT considered an amendment under the Article 368 and hence requires only ordinary majority

Cession of Indian Territory to Foreign Country

- Question came up in Berubari Union case which was ceded to Eastern Pakistan from West Bengal
- SC ruled that cession of Indian territory to a foreign country does not fall under Article 2 and 3 and hence must fall under amendment of the constitution only under Article 368

Settlement of Boundary Dispute with a Foreign Country

- Not cession, hence does not require a constitutional amendment and can be done by executive action only

CONSTITUTION of INDIA

Historical Overview of the Constitution

The process of the formation and evolution of the Constitution of India is based in long history. It started with introduction of Regulating Acts to administer the territories under Company rule from 1773. After the company rule was ended in 1858, the Crown took over the control of British territories in India and started decentralizing administrative power, very gradually, to the provincial level. Many controversial changes were made in the Charter Acts (acts governing the administration of Indian government) like the Morley Minto Reforms of 1909, which introduced communal electorates, and shaped the dark history of communalism in India. Eventually, the India Independence Act was passed in 1947, and formation of constituent assembly with leaders like Nehru, MN Roy and BR Ambedkar, who shaped the Constitution as we have today.

All Acts etc. in notes of History of Modern India

Summary:

Company Rule:

1. Regulating Act of 1773

- Created Governor General of Bengal and all the governors in British Indian territories came under him. Lord Warren Hastings was the first one.
- Created a Supreme Court est. at Calcutta in 1774
- Court of Directors (governing body of the company) to provide report of revenue, civil and military affairs in India to the British
- 2. Pitt's India Act of 1784
 - Created Board of Control that took over military affairs of the Company in India
 - Court of Directors now responsible only for revenues and commercial interests
 - First time the Indian territories called British possessions.
- 3. Charter Act of 1833
 - Governor General of Bengal became the Governor General of India
 - Governor General of India given exclusive legislative and executive powers
 - Company just became an administrative body now, not even a commercial body any more
 - Open civil services introduced, but allowing Indians to take it was opposed
- 4. Charter Act of 1853
 - Legislative and Executive powers of the Governor General of India separated
 - 6 member council formed to advise Governor General of India - Indian Legislative Council "mini parliament"
 - Open civil services exam on a competitive basis
 - Introduced local representation in the Indian Legislative Council - 4 were elected from local provinces of Madras, Bengal, Bombay and Agra

Crown Rule:

1. Government of India Act 1858 — "Act for Good Governance of India"
 - Passed all the powers of the Company to the Crown and ended company rule effectively. British territories of India were now under the Crown and the Parliament directly.
 - Office of Governor General abolished and that of Viceroy of India created. Lord Canning was the first Viceroy. He would fall under the Secretary of State, who was part of the British Cabinet. Hence, the powers of administering India came directly under the British Parliament.
 - 15 member council (known as Council of India) created to assist the Secretary of State in India. Council was an advisory body.
 - Sec. of State in-council a body corporate, capable of suing and being sued in India and in England.
 - The Council of India was exclusively English, with some nominees of the Crown and others representatives of the Directors of the East India company.
 - All powers, military, civil, executive and legislative vested in the Governor General responsible to the Secretary of state.
 - Didn't change the system of government in India, just changed its administrative functions
2. India Councils Act 1861 (Indians as non-official members, Ordinance power, decentralization of power started, new legislative councils, Portfolio System)
 - Provided that viceroy should include Indians as non-official members in his extended council.
 - These were nominated and not popularly elected

- Lord Canning nominated: Raja of Banares, Maharaja of Patiala and Sir Dinkar Rao
 - Started decentralizing the administration of India by restoring legislative powers to Bombay and Madras.
 - Established new legislative councils of Punjab, Bengal, NW Frontier etc.
 - Empowered Viceroy to issue ordinances without concurrence of the legislative council, during an emergency, the life of which was six months and he also became in charge of the departments of government in India.
 - “Portfolio system” — Lord Canning 1859: one or more members of the council made in-charge of depts. and issued final orders on behalf of the council on matters of his department.
3. India Councils Act of 1892
 1. Pretty much the same, added some more features which were largely
 4. Morley Minto Reforms of 1909
 - Increased the size of the legislative councils both at the Centre and in Provinces.
 - Enlarged the deliberative functions of the legislative council as members were allowed to ask supplemental questions
 - Allowed for the association of Indian members to the Viceroy’s Executive council. Satyendra Prasad Sinha was the first Indian to join the Viceroy’s council.
 - **Introduced communal representation of Muslims in a “separate electorate”**
 5. Montague-Chelmsford Reforms 1919
 - System of **dyarchy** was introduced in India for the first time, with the separation of lists on which decisions could be taken by the Centre and Provinces respectively.
 - "The Reserved" List was introduced which was a list of items on which only the Central Council could take decisions (with Viceroy and his executive council) and make laws, while a “Transferred” list was introduced on which the Provincial Legislative Council (Governor and executive council) would take decisions and make laws.
 - Hence, the process of decentralization was further expanded and provisions were made to introduce self-governance in the provinces. Introduced provincial budget and Central budgets. However, provinces were not autonomous and didn’t have complete power over finances, due to which this system was largely unsuccessful.
 - Introduced, **Bicameralism** for the first time in India and direct elections. The Indian Legislative council was replaced by the Upper House and the Lower House.
 - 3 of 6 members of the Viceroy’s executive council were Indians
 - Expanded communal representation to Christians, Anglo Indians and Europeans
 - Franchise granted to a very few people only on the basis of taxes, property etc.
 6. Simon Commission - 1927
 7. Communal Award - 1932
 8. Government of India Act 1935
 - **At the Provincial Level**

- Ended the system of Dyarchy at the Provincial level as introduced by the GOI Act 1919 and introduced Provincial Autonomy
 - The grant of a large measure of autonomy to the provinces of British India (ending the system of dyarchy introduced by the Government of India Act 1919)
 - The Provincial Governors retained important reserve powers, and
 - The British authorities also retained a right to suspend responsible government.
 - Now direct elections to be held hence the ministers were collectively responsible to the provincial legislature
 - Communal award was introduced and depressed classes, in addition to Muslims, Christians etc., were now given reserved seats in the legislature
 - Provision for the establishment of a “Federation of India”, to be made up of both British India and some or all of the “princely states”.
 - Introduction of Direct Elections hence increasing the franchise from 7 million to 35 million
 - Reorganization of the provinces
 - **At the Central Level:**
 - Dyarchy and Bicameral Legislatures
 - Reserved and Transferred list at this level.
 - Reserved: Defence, External Affairs, Tribal Areas administration
 - Bicameral Legislature
 - Council of States: Elected Directly
 - Federal Assembly: Elected Indirectly
 - Establishment of a Federal Court
9. India Independence Act 1947

Derivations from foreign constitutions in the Indian Constitution:

1. Appointment of President - not on American lines
2. Appointment of the Governor - not on American lines but on Canadian lines
3. American constitution designed as a Federal constitution where regardless of situations in the country, the country is always kept in tight mould of federalism. In India, BR Ambedkar and constitution designers took a different route as they decided to make it a Unitary as well as Federal system according to the conditions of the time and circumstances. In normal times, it works as a federal system, but in times of emergency it becomes more of a unitary system. (Articles 352-360 outline the emergency provisions)

Formation of the Indian Constitution or Making of the Constitution

The Constitution of India was formed through a process of formation of constituent assembly which drafted, debated, deliberated, amended and finally formed a final Constitution of India. The process has historical roots in the British administration in India from the Company rule to the Crown rule. It derived many functions of administration and division of power and duties from various Regulating Acts and Government of India Acts passed by the British in India. Eventually, it was drafted under the leadership of Dr. BR Ambedkar, who along with

other drafting committee members adopted various practices and methods from other constitutions in the democratic world. The Constitution was adopted finally in Nov. 1949 with the seal of the Constituent assembly of India.

Major Events in the formation of Indian Constitution:

- MN Roy's demand and call for formation of a constituent assembly 1934
- Nehru's call for formation of an independent constituent assembly 1938
- Cripps' mission to establish constituent assembly in India 1942 - rejected by Muslim League which was demanding two nations and a separate constituent assembly
- Cabinet Mission sent to India to form constituent assembly 1946 - proposed the formation of constituent assembly in India and structured the division of seats in the assembly to British Provinces (consisting of communal seats among General, Muslims and Sikhs, which were to be elected through a vote in these provinces) and Princely States (members nominated by the head of the respective states)
 - Proportional representation of British provinces and also of the Princely states
- **Objectives Resolution** proposed by Nehru in 1946 in the Constituent assembly which proclaimed India as a sovereign country and draw up for her governance a constitution. - unanimously adopted
- Princely states representatives who had stayed away gradually started joining the constituent assembly
- Mountbatten Plan proposed for the division of India and Pakistan and adopted by the Muslim League in June 1947
- India Independence Act of 1947 also gave power to the constituent assembly to form the constitution
- Rajendra Prasad elected President of the Constituent Body (framing of the constitution) and GV Mavlankar the chair of the legislative body (for enacting laws)
- The Drafting committee of the Constituent assembly was created to pen down the preamble, basic features and a framework for the governance of the newly formed India and its states.
- The Drafting committee considered various aspects of the Indian political, social and economic society in pre and post-independence India
- The major features of the Constitution were: Preamble which defined the major driving themes of the constitution and derivation of power of the Indian constitution, formation of bicameral legislatures at the Centre and the States, the Federal structure of the Government of India, the provision of Fundamental Rights and Directives Principles of State Policy, the executive at the centre and the state levels (office of the President, Prime Minister, Governor etc.).

Major Committees:

1. Union Power Committee: Nehru
2. Union Constitution Committee: Nehru
3. Provincial Constitution Committee: Sardar Patel
4. Drafting Committee: BR Ambedkar
5. Advisory Committee on FRs, Minorities, Tribal and Excluded Areas: Sardar Patel
6. Rules of Procedure Committee: Rajendra Prasad
7. States Committee (negotiating with States): Nehru
8. Steering Committee: Rajendra Prasad

Drafting Committee:

- BR Ambedkar
- Ayyangar
- Ayyar
- Munshi
- Saadullah
- Madhava Rau - replaced by BL Mitter
- Kirshnamachari replaced by DP Khaitan

Enactment - Nov 26, 1949, Enforcement - Jan 26, 1950 (same day as call for Purna Swaraj in Lahore session 1930)

Salient Features of the Constitution

1. Longthiest written constitution in the world
2. Blend of Rigidity and Flexibility
3. Federal System with Unitary Bias
 - Judiciary integration, strong centre, single constitution, governor appointment by the centre, Emergency provisions and all India services
4. Parliamentary form of Government
5. Integrated and Independent Judiciary
6. Fundamental Rights
7. DPSPs
8. Fundamental Duties
9. Secular State
10. Single Citizenship
11. Universal Adult Franchise
12. Independent Bodies
13. Emergency Provisions
14. 3 tier government - Centre, State and Local
15. Drawn from Various Sources
 - **Britain:** Parliamentary Government, Rule of Law, Single Citizenship, Legislative Procedure, Cabinet System, Prerogative writs, parliamentary privileges
 - **US:** Fundamental Rights, independence of judiciary, removal of supreme court judges, removal of president, judicial review, post of vice president
 - **Irish:** Directive Principles of State Policy, nomination of members of RS, election of President
 - **Canadian:** Federation with a strong Centre, residuary powers to the centre, appointment of governor by the centre to the states, advisory jurisdiction of the Supreme Court
 - **Australian:** Concurrent list, joint sitting of the two houses of the Parliament, free trade and commerce
 - **Germany:** Curtailment of Fundamental rights during emergency
 - **Soviet Russia:** Fundamental Duties, the idea of justice - social, economic and political
 - **French Constitution:** Republican form of government and Liberty, Equality and Fraternity in the Preamble

- **South African:** Amendment of the Constitution and election of members of the RS
- **Japanese:** Procedure established by the Law

Preamble of the Constitution:

UNION of STATES

- In the Constitution, Article 1 describes India as a **Union of States** rather than a Federation of States.
- In spite of this classification, Indian constitution is referred to as a constitution with Federal features, rather than a unitary one (with unitary bias).
- The Federal features of Indian constitution are its provision for division of powers between the state and the centre, bicameral houses at state and centre levels and provision of the Union and the State List.
- However, the unitary nature of Indian Constitution is derived from the fact that Centre generally supersedes the states in many matters. Example, the integration of judiciary, the provisions for emergency, election of Governors and provision of legislative powers over bills with the President.
- This distinction is important as the drafters of the Constitution like Dr. B.R. Ambedkar felt that while India's government would be federal in nature, the phrase Union of States and such provisions have been adopted because:
 - India is not formed by an agreement between the states and the centre
 - The State ceded their power to the centre and come directly under its purview
 - Union of India is indestructible and states cannot secede from it
- UTs have been acquired and administered directly by the Centre

Reorganisation and Changes in Existing States, altering of name of the state or UT, change areas or boundaries:

- Article 3 in the Indian constitution provides for the reorganization or changes in **existing states**. (Article 2 only outlines admitting **new states** - those already in existence and forming brand new ones - new ones not in existence)
- **Process:**
 - A bill contemplating such a reorganization must only be introduced in the Parliament after the prior recommendation of the President.
 - The President must present and refer this bill to the state legislature concerned for expressing its views within a specified period of time.
 - The President is not bound by the recommendations of the state legislature. He may accept or reject them as he wishes.
 - When amendments to this bill are made in the Parliament, they may not be required to be presented every time in the state legislature.
 - In case of a UT, no such reference by the President is required.
 - Therefore, India is described as indestructible union of states.

- This law is NOT considered an amendment under the Article 368 and hence requires only ordinary majority

Cession of Indian Territory to Foreign Country

- Question came up in Berubari Union case which was ceded to Eastern Pakistan from West Bengal
- SC ruled that cession of Indian territory to a foreign country does not fall under Article 2 and 3 and hence must fall under amendment of the constitution only under Article 368

Settlement of Boundary Dispute with a Foreign Country

- Not cession, hence does not require a constitutional amendment and can be done by executive action only

Anti-Defection law

Anti-Defection law came into being during the Rajiv Gandhi government when the need was felt to check unscrupulous use of the ability of members of the Parliament and State Legislatures to change their parties for material gains. This problem has become very widespread as many members were changing parties and the question of their loyalty, ideology, moral and commitment to the democratic and constitutional were questioned.

In view of these practices, the Government passed a resolution banning the defection of members of one party to another. These restrictions were:

1. **Members of Political Parties:** No member of a party can switch to another party, or abstain from voting on party lines in the parliament. In addition, the member could not vote against the party lines in such votings on various issues raised in the Parliament. (act must be condoned by the party within 15 days; in case the member has taken permission from the party, it's ok)
2. **An independent member** of the parliament cannot join another party
3. **A nominated member** of the parliament can only join a party before the expiry of a period of 6 months from the date he or she has been nominated in the Parliament.

Exceptions:

- Exceptions were provided if 2/3rd of the total membership of the party was merging into another party
- The member has been elected as the presiding officer of the house and gives up his membership of the party on a voluntary basis to uphold the unbiasedness of the office.

Deciding Authority:

- In such matters, deciding authority lies with the Presiding officer, i.e., the Speaker of the Lok Sabha and the Chairman of the Rajya Sabha and so on.
- It is justiciable in the court of law.

- The Rule making power lies with the presiding officer that must be placed in front of the House for 30 days, and the House can adopt, change or drop the recommendations.
- The presiding officer cannot act on self and must receive the complaint from a member of the House.

Election Commission

- Free, independent and constitutional body established under the Article 324
- Article 324 provides powers to the parliament, state legislatures, the office of the President, and the office of the vice president of India to be vested in the Election commission.
- Election commission is not concerned with the elections of the Panchayats and the municipalities in the states. For this State Election Commission of India is provided. (via 72nd and 73rd amendment acts of 1992)
- **Composition:**
 - Chief Election Commissioner, and members of the commission or election commissioners - fixed by the President
 - Election by the President
 - President may appoint regional commissioners as he may consider necessary in consultation with the Chief Election Commissioner
 - Today - three election commissioners form the body (including the CEC)
 - CEC and other election commissioners have the same power and receive same salaries etc. - similar to the judge of the SC
- **Tenure:**
 - 6 years or until they attain age of 65, whichever is earlier (prescribed by the President only, not the constitution)
- **Removal:**
 - Chief Election Commissioner has the removal process same as that of the judge of the SC
 - Any other election commissioner or regional commissioner cannot be removed from the office except on the recommendation of the CEC
- **Flaws:**
 - No qualifications prescribed
 - No term prescribed as per the constitution
 - Constitution has not debarred the retiring ECs from any further government appointments

Political Dynamics in India - Political Parties, Elections, EVMs, Model Code of Conduct, Electoral Reforms, National Party vs. Regional Party, Naming of Party etc.

Features of Indian Elections

Role of Election Commission

- MCC

EVMs

- These indigenously designed machines were first used in Kerala's Parur constituency elections in May 1982
- In 1989, a provision was made to use the EVMs instead of traditional paper and rubber stamp ballot.
- They were used for the first time in 1998 in selected constituencies of Rajasthan, MP and Delhi.
- Used in the entire Goan elections for the first time in 1999.
- Finally, India became an e-democracy in 2004 with the introduction of EVMs in the LS elections across India
- Features:
 - The chip is designed on a "one time programable basis", i.e. once the program is burned onto it, no changes can be made to the chip
 - Reduced the cost of printing and reduces the chances of irregular vote where electors could mark the paper improperly
 - Can be used in areas without electricity as it runs on alkaline batteries
 - An EVM can record a maximum of 3840 votes and if the number of candidates is more than 64, the EVM cannot be used
- Designed and Manufactured by Election Commission in partnership with Bharat Electronic Limited and Electronic Corporation of India Limited
- *Rules and Procedures to ensure free and fair elections*

Adult Franchise, Universal suffrage Delimitation Act

1. Organized by an independent Election Commission as per Article 324. It ensures free and fair and elections in the Parliament, state legislatures, in the offices of VP and President.
2. Only single electoral roll is maintained by the Election Commission in each constituency where the election has to be held. The system of communal and multiple rolls have been forgone.
3. All persons, regardless of their age, gender, religion or any other social or economic position can stand in the election.
4. Adult franchise is practiced for the elections where every citizen above the age of 18 years can vote apart from being disqualified to do so.
5. The elections are held as per the rules and procedures laid down in the Representation of People Act of 1950. It clearly lays down the rules for delimitation of constituencies, adult franchise, electoral roll, qualifications of the voters, allocations of the seats to the Parliament and the state legislatures.
6. Representation of People Act of 1951 which provides for the procedure of the elections and provisions for election offenses, disputes, by-elections, registrations of political parties etc.
7. Delimitation Act of 1952 which provides for readjustment of seats, delimitation and reservation of territorial constituencies and other matters.
8. Orders by the Delimitation Commission are final and cannot be challenged in any court on any basis.

Electoral Reforms in India:

1. Before 1996

1. Lowering of Voting Age: 1988 by 61st Amendment, voting age lowered from 21 years to 18 years for all elections (LS and assembly)
2. Deputation to Election Commission: In 1988 it was declared that staff members and officers who were involved in preparations for elections are deemed to be on deputation to the Election Commission for the period of such employment
3. Increase in the number of Proposers: In 1988, the number of proposers required to sign the nomination papers for Rajya Sabha elections and State Legislative council elections has been raised to 10% of the electors of such constituency or ten such electors, whichever is less
4. EVMs:
 - These indigenously designed machines were first used in Kerala's Parur constituency elections in May 1982
 - In 1989, a provision was made to use the EVMs instead of traditional paper and rubber stamp ballot.
 - They were used for the first time in 1998 in selected constituencies of Rajasthan, MP and Delhi.
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 - Designed and Manufactured by Election Commission in partnership with Bharat Electronic Limited and Electronic Corporation of India Limited
5. Booth Capturing: In 1989 provision was made for dismantling of the election in constituency where booth capturing takes place

2. Reforms of 1996

- Listing of Names of Candidates:
 - Appears in the order of Candidates of recognized political parties, candidates of registered-unrecognised political parties and other independent candidates
- Disqualification for Insulting the National Honour Act
 - If convicted of any offenses under the Prevention of Insults to National Honour Act of 1971
 - National flag, constitution, and national anthem
- Prohibition on Sale of Liquor
 - During 48 hours of polls (fixed by EC)
- Number of Proposers:

- 10 minimum proposers (for Parliamentary and assemblies) if the candidate is not sponsored by a recognized party
 - 1 proposer for a recognized party candidate
- Death of Candidate
 - Candidate death doesn't mean the election can be countermanded. However, the recognized party has the right to field another contestant in such a case
- Contestants restricted to two constituencies
- Holidays to employees
- Prohibition of Arms
- 3. After 1996
 - Postal Ballot for certain classes of people as determined by Election commission
 - Proposers increased in Presidential and VP's election
 - Facility to vote through Proxy for personnel in service in the Armed Forces (2003)
 - **Declaration of Criminal Antecedents, Assets etc. by Candidates**
 - 2003, EC issued an order direction candidates to declare the following:
 - Whether the candidate has been convicted or acquitted or discharged in any criminal offense in the past? Whether he was imprisoned or fined?
 - Any pending cases prior to 6 months of filing the papers in which he/she could be imprisoned for more than 2 years
 - Assets or self, spouse and dependents
 - Dues and liabilities
 - Educational Qualifications of the candidate
 - Rajya Sabha - secret polling removed in 2003
 - Parties to report donations or contribution more than 20,000 to EC
- 4. Since 2010
 - Exit-Poll
 - Not allowed to conduct or release any such exit polls during time period after elections as fixed by EC
 - Citizens living abroad entitled

First-Past-The-Post

The fact that in Indian elections a candidate is declared winner when he accumulates the large number of votes in a constituency regardless of the percentage of the votes received by him. Several advantages: 1) Easy for voters to understand (2) Counting is simple (3) Voters know who their winning candidate is and how much of their vote he represents (4) System has proven successful in that it has allowed for stable governments at the Centre and the States.

Right to Reject - NOTA - In 2013 SC granted the NOTA provision where voters can select the option of none of the above. However, the Right to Reject plea still stands as NOTA just accounts for votes as "invalid" and even if they form the majority, the candidate with the next most number of votes is declared a winner.

Paid News:

Full report: <http://www.newswatch.in/paid-news>

“Private Treaty” - concept used by Times of India to sell equity stake and provide media coverage to celebrities. Described by New Yorker as a practice where Times of India “have been dismantling the wall between the newsroom and the sales department”

The fifteenth general elections to the Lok Sabha took place in April-May 2009 and in order to ensure free and fair coverage by the media, the Press Council of India issued guidelines applicable to both government authorities and the press. After the elections, a disturbing trend was highlighted by sections of the media, that is, payment of money by candidates to representatives of media companies for favourable coverage or the phenomenon popularly known as “paid news”.

The deception or fraud that such “paid news” entails takes place at three levels. The reader of the publication or the viewer of the television programme is deceived into believing that what is essentially an advertisement is in fact, independently produced news content. By not officially declaring the expenditure incurred on planting “paid news” items, the candidate standing for election violates the Conduct of Election Rules, 1961, which are meant to be enforced by the Election Commission of India under the Representation of the People Act, 1951. Finally, by not accounting for the money received from candidates, the concerned media company or its representatives are violating the provisions of the Companies Act, 1956 as well as the Income Tax Act, 1961, among other laws.

The phenomenon of “paid news” goes beyond the corruption of individual journalists and media companies. It has become pervasive, structured and highly organized and in the process, is undermining democracy in India. Large sections of society, including political personalities, those working in the media and others, have already expressed their unhappiness and concern about the pernicious influence of such malpractices.

During his inaugural address at a seminar on “General Elections 2009 and Media Reporting” on May 13, 2009, that was organized by the Andhra Pradesh Union of Working Journalists at Hyderabad, Andhra Pradesh, three days before the results of the fifteenth general elections were declared, Hon’ble Chairman of the Press Council of India Justice G.N. Ray expressed grave concern about the covert emergence of the “paid news” syndrome and this issue was discussed threadbare during the seminar.

Subsequently, representations against such malpractices were received from several veteran journalists (such as the late Shri Prabhash Joshi, Shri Ajit Bhattacharjea, Shri B.G. Verghese and Shri Kuldip Nayar). They alleged that sections of the media had received illegal payments for providing favourable coverage to candidates who had stood for the Lok Sabha elections.

On June 6, 2009, the Press Council of India expressed serious concern over the phenomenon of “paid news” that doubly jeopardized the functioning of an independent media in the country and the working of Indian democracy by influencing free and fair elections. The Council noted that the press provides a service that is akin to a public utility – it exercises its right to inform because the public has a right to know. The press thus functions as a repository of public trust and has the obligation to provide truthful and correct information to the best of its ability when such information is being presented as news content. Such news content is distinct from opinions that are conveyed through articles and editorials in which writers express their views.

There is an urgent need to protect the right of the public to accurate information before voters exercise their franchise in favour of a particular candidate in the electoral fray. An opinion that was expressed in the Council is that one reason for the proliferation of the “paid news” phenomenon could be that on account of the limits on election campaign related expenditure that have been imposed by the Election Commission of India, candidates have chosen this alternative to publicize themselves, in the process posing a danger to the conduct of free and fair elections. It was suggested that the powers that are vested in returning officers appointed

by the Election Commission before the elections take place are adequate for such officers to issue notices to the press to explain the basis of particular “news” reports and ascertain whether financial transactions had actually taken place between candidates and representatives of media companies.

The Press Council of India felt that in pursuance of the mandate given to the Council by Parliament, it was incumbent upon this statutory authority to examine the issue in all its dimensions through detailed research and consultations. Such an exercise was deemed necessary to maintain the faith of the public in the media and also make appropriate recommendations to check such malpractices from recurring on a wide scale before the forthcoming rounds of elections at both the Union and state levels.

On June 10, 2009, the Delhi Union of Journalists communicated with the Press Council telegraphically and expressed its concern at reports of money power having played havoc with the media coverage of the elections that had taken place. Shri S.K. Pande, President, Delhi Union of Journalists described the “paid news” phenomenon as unethical, unfair and an infringement of the right of journalists to report freely. He further informed the Council that selected journalists had been targetted by the managements of media companies for not acquiescing with such malpractices.

- In October 2011, Umlesh Yadav became the first ever sitting Member of Legislative Assembly (MLA) to be disqualified for not declaring the expenditure incurred on advertising during her election campaign. Yadav a member of Rashtriya Parivartan Dal had been elected from Bisauli, Uttar Pradesh, in 2007. She was banned from contesting election for a period of three years by the Election Commission of India.
- Ashok Chavan, a former Chief Minister of Maharashtra. His use of funds for Paid News was questioned by the Election Commission of India in 2010. "The complaint against Mr. Chavan was that he arranged publication of news items, masquerading as advertisements, in newspapers praising him in the 2009 State Assembly elections and he had not properly accounted for the expenses in his election expenditure accounts. But he claimed that the newspapers on their own might have published complimentary stories on him."
- Narottam Mishra, a Cabinet Minister of Madhya Pradesh who, according to the Election Commission of India, “failed to lodge his accounts of his election expenses in the manner prescribed by law” and was linked to 42 news items on him during the November 2008 state elections which “read more like election advertisements in favor of you alone rather than as news reports.”

RPA (Representation of People Act 1950 and 1951)

All doubts and disputes relating to the elections to the office of President and Vice-President are dealt with by the Supreme Court (Article 71), whereas the initial jurisdiction to deal with all doubts and disputes relating to the elections to Parliament and State Legislatures vests in the High Court of the State concerned, with a right of appeal to the Supreme Court (Article 329). The disputed matters relating to elections to municipalities, etc. are decided by the lower courts in accordance with the laws made by the respective State Governments.

Conduct of elections to Parliament and State Legislatures are governed by the provisions of two Acts, namely, Representation of the People Act 1950 and Representation of the People Act 1951.

Representation of the **People Act 1950** deals mainly with the matters relating to the preparation and revision of electoral rolls.

- The provisions of this Act have been supplemented by detailed rules, Registration of Electors Rules 1960, made by the Central Government, in consultation with the Election Commission, under Section 28 of that Act and these rules deal with all the aspects of preparation of electoral rolls, their periodic revision and updating, inclusion of eligible names, exclusion of ineligible names, correction of particulars, etc.
 - These rules also provide for the issue of electoral identity cards to registered electors bearing their photographs at the State cost.
 - These rules also empower the Election Commission to prepare the photo electoral rolls containing photographs of electors, in addition to their other particulars.
 - All matters relating to the actual conduct of elections are governed by the provisions of the Representation of the People Act 1951 which have been supplemented by the Conduct of Elections Rules 1961 framed by the Central Government, in consultation with the Election Commission, under Section 169 of that Act.
 - This Act and the rules make detailed provisions for all stages of the conduct of elections like the issue of writ notification calling the election, filing of nominations, scrutiny of nominations, withdrawal of candidatures, taking of poll, counting of votes and constitution of the Houses on the basis of the results so declared.
 - The superintendence, directions and control of elections vested by the Constitution in the Election Commission empowers the Commission even to make special orders and directions to deal with the situations for which the laws enacted by the Parliament make no provision or insufficient provision.
 - The classic example of filling such vacuous area is the promulgation of the Election Symbols (Reservation and Allotment) Order 1968 which governs the matters relating to recognition of political parties at the National and State level, reservation of election symbols for them, resolution of disputes between splinter groups of such recognised parties, and allotment of symbols to all candidates at elections, etc.
 - Another such vacuous area where the Election Commission exercises its inherent powers under Article 324 of the Constitution is the **enforcement of the Model Code of Conduct** for guidance of political parties and candidates.
 - The Model Code is a unique document evolved by the political parties themselves to govern their conduct during elections so as to ensure that a level playing field for all political parties is maintained during elections and, in particular, to curb the misuse of official power and official machinery by the ruling party(ies) to further the electoral prospects of their candidates.
 - All post election matters to resolve **doubts and disputes** arising out of or in connection with the elections are also dealt with in accordance with the provisions of the Representation of the People Act 1951.
 - Under this Act, all such doubts and disputes can be raised before the High Court of the State concerned, but only after the election is over and not when the election process is still on.
1. The above mentioned Representation of the People Acts 1950 and 1951 and the Registration of Electors Rules 1960 and Conduct of Elections Rules 1961 form complete code on all matters relating to elections to both Houses of Parliament and State Legislatures. Any person aggrieved by any of the decisions of the Election Commission or the authorities functioning under it has to find a remedy in accordance with the provisions of these Acts and Rules.

These Acts and Rules enable the Election Commission to issue directions and instructions to deal with various aspects of the preparation/revision of electoral rolls and the conduct of elections and lead all such matters of detail to be dealt with by the Commission. Pursuant thereto, the Commission has issued a plethora of directions and instructions which have been consolidated by the Commission in various compendia and the handbooks for the Electoral Registration Officers, Returning Officers, Presiding Officers, candidates, polling agents and counting agents.

Schedules of the Constitution

1. **Schedule 1: Deals with names, boundaries of states.**
2. Schedule 2: Deals with salaries, allowances and pensions of various constitutional dignitaries.
3. Schedule 3: Deals with oaths of certain constitutional dignitaries.
4. Schedule 4: Deals with distribution of RS seats among different states.
5. **Schedule 5: Deals with scheduled areas.**
6. **Schedule 6: Deals with tribal areas.**
7. **Schedule 7: Deals with the 3 lists.**
8. Schedule 8: Deals with the languages of the country.
9. Schedule 9: Deals with the immune laws - cannot be challenged in Supreme Court
10. Schedule 11: Deals with powers to panchayats.
11. Schedule 12: Deals with powers to municipalities.

Indian Constitution- historical underpinnings, evolution, features, amendments, significant provisions and basic structure.

Important Constitutional Litigations:

1. *Jan Chowkidari Case*
 - Persons in custody of police debarred from contesting elections
 - Supreme Court upheld the judgement of the Patna 2004 judgement of the Janchaukidari v Union of India case where all those in lawful police or judicial custody, other than those held in preventive detention, will forfeit their right to stand in an election.
 - Judges relied on the RPA which specifies that a person must be an elector while standing for elections and a jailed person cannot be so as they are prevented from voting.
 - However, in August 2013, the Parliament passed an amendment to the RPA that a jailed person can be an elector for the purpose of contesting elections as long as his or her name is entered in the elector list.
 - Status as of now? not sure.
2. *Lily Thomas vs. the Union of India Case*
 - The sitting MLAs or MPs must be disqualified from their membership on the date of conviction
 - The Lily Thomas case challenged an existing provision which allows the legislators a three-month window to appeal against their conviction while keeping the membership in the House or the State legislatures.
 - Still pending

The Executive:

Prime Minister (linchpin of the government):

- Controls the council of ministers
 - nominates them, guides them in policy making and they are answerable to the Lok Sabha
- Controls the bureaucratic machinery of the country
- The link of communication between the council of ministers and the president
- The link of communication between the Parliament and the president
- Leader of the House
- Represents the country in international delegations, treaties and negotiations

President

- Situational Discretion - no constitutional discretion

Governor

- Situational Discretion and constitutional discretion

Chief Minister

- Plays the same role as PM in the state

Council of Ministers

- Collectively responsible to the Lok Sabha
- Head various governmental ministries and departments
- Policy formulation
- Advising the Prime Minister

Historical Background and Evolution:

Regulating Acts of:

1773

1784 (Pitt's India Act)

1833

1853

1858

- Company's functions in India as administrative unit are abolished in India.
- India is declared as a territory of the British crown
- The office of Governor General is abolished and he is now called the Viceroy of India
- An office of the Secretary of State is established by the British Parliament to oversee various functions of the British Government in India. He directly supervised the functioning of the office of Viceroy in India

1861

- Appointment of Indians to the Viceroy's executive council (under Lord Canning)
- Devolution of powers back to the provinces and adoption of policy of nonintervention in local matters of Indians and non-annexation of more provinces

- Expansion of the Central legislative council and setting up of more provincial legislative councils
- Ordinance making power of the governor during an emergency in the province or multiple provinces
- It enabled Viceroy to make rules for convenient undertaking of various business and established the “**portfolio**” **system** - where different duties or departments were assigned to the members of the Viceroy's council

1892

- Further expanded the Central and the provincial councils
- Gave them power of discussing the budget

1909 (Morley-Minto Reforms)

- Further expanded the Central Legislative and the provincial councils (central council expanded from 16 to 60 members)
- Enlarged the deliberative functions of the councils at both levels, for example allowed members to discuss budget and ask supplementary questions and move resolutions on budget etc.
- Provided for an Indian member of the Viceroy's executive council Satyendra Prasad Sinha
- Communal Electorate for Muslims

1919 (Montague-Chelmsford Reforms)

- **Introduction of Dyarchy** at the Provincial legislative assemblies. This means that two lists - reserved list and transferred list of subjects were introduced. The Governor general and his executive council was provided powers over the reserved list while the transferred list was managed by the governor with assistance of the ministers in the provincial council. However, this system failed as the transferred list did not contain any substantial provisions and provided no substantial power to the ministers.
- For the first time, **Bicameralism was introduced at the central level** - upper house and lower house established. Additionally, **Direct elections** - were introduced for the first time.
- Expansion of the Indian membership in Viceroy's council
- Expansion of communal award
- Limited franchise for people with property, tax paying etc.
- **Established different budgets at central and provincial levels**

1935 (Government of India Act, 1935)

- Abolished Dyarchy at the Provincial level

- Introduced the system of lists at the central level where “Federal list”, “Provincial List” and “Concurrent list” were introduced for the division of legislative powers of the Central government and the provincial governments respectively
- Bicameralism introduced at the Provincial level as well
- Reservations introduced for the depressed classes
- Extended franchise to almost 10% of the population
- Est. of a Federal Court (later became the Supreme Court)
- Establishment of the Reserve Bank of India to control currency and credit of the country

Constituent Assembly

-Constitution of India was made by the constituent assembly elected by independent India.
 -It first had a sitting on December 9, 1946 and re-assembled on August 14th 1947.
 -Members of the constituent assembly were elected through an indirect election by the members of the Provincial Legislative Assemblies that had been established in 1935
 -Constituent Assembly was composed roughly along the lines suggested by the Cabinet Mission.

According to the Cabinet Mission:

-Each province and each princely state or group of States were allotted seats proportional to their respective population roughly in the ratio of 1:1000000
 -As a result Provinces got 292 seats and princely states got 93 seats
 -Seats in each province were distributed among Muslims, Hindus and Sikhs according to their proportionate population
 -Members of each community in provincial legislative assembly elected their own representatives by a method of proportional representation with single transferrable vote.
 -Method of selection in the case of representatives of the princely states was to be determined by consultation.

- Formation of Constituent Assembly called by MN Roy as early as 1934 and formed in 1946 to draw up the constitution.
- The President of the Constituent Assembly was Rajendra Prasad, Sir BN Rau was elected as the constitutional advisor
- **"Objectives Resolution"** passed in December 1946 by Jawahar Lal Nehru which called for the fundamentals and philosophy of the constitutional structure. It encapsulated the aspirations and values behind the constitution.
- Drafting Committee was formed under the leadership of BR Ambedkar
- Final draft was presented to the assembly in Nov. 1948 by Ambedkar, and finally after multiple readings and changes it was adopted in Nov. 1949 with the Preamble 395 articles and 8 schedules.

- Constitution is a moral commitment that defines the values that guide our country, its laws and the various goals of the policy makers.

Also, it is important to note that constitution of India did not just develop during the period of 3 years it was drafted. In fact, the constituent assembly was giving concrete shape and form to the principles it had inherited from the nationalist movement. These principles were forged during the long struggle for independence.

For decades, the freedom fighters and the nationalist movement had debated the question of which form of government India should take, the values it should uphold, the inequalities it should overcome.

Functions of the Constitution

- To provide a basic set of rules that allow for coordination among members of society
- To specify who has the power to make decisions in the society
- It decides how the government should be constituted
- Set limits on what government can impose on its citizens. Limit government interference so that citizens' rights are guaranteed.
- To enable the government to fulfill the aspirations of the society - economical, social and justice
- Expresses the fundamental identity of the people
 - Political identity
 - Moral identity
 - Ethnic identity - not in case of India
 - National identity

Features

1. Longest written constitution in the world
2. Parliamentary form of government
3. Real Executive Head - Prime Minister and Nominal Executive Head - President
4. Separation of Powers
5. Draws from many other constitutions of the world
6. Federal and Unitary in nature - Federal with unitary bias
7. Blend of Rigidity with Flexibility
8. Judicial Supremacy and Parliamentary Sovereignty
9. Secular State
10. Fundamental Rights, Fundamental Duties and Directive Principles of State Policy
11. Single Citizenship
12. Three tier government
13. Independent bodies
14. Universal Adult Franchise
15. "Living Document" - flexible and rigid enough

Amendments

- Article 368 of the Constitution provides provisions for the amendment of the Indian constitution by the Parliament
- It provides that amendments to the constitution can be made only by a **special majority, i.e., by majority vote of at least 2/3rd members of the House present and voting**. Additionally, amendments of Federal nature, where changes are made that effect the federal nature and relationship between the centre and the states can be made by a special majority and by ratification of at least half of the state legislatures. Hence, constitutional amendments under article 368 cannot be made by simple majority.
- However, constitution amendments by simple majority for certain provisions can be made, but these lie outside the scope of article 368.
- By Simple Majority (not under article 368)
 - Admission of new states, changing names of existing states, changing boundaries of existing states and formation of new states
 - Abolition of legislative councils in states
 - Citizenship
 - Elections to the Parliament and State Legislatures
 - Delimitation of constituencies
 - UTs
 - **5th Schedule - administration of schedule areas and scheduled tribes**
 - **6th Schedule - administration of tribal areas in Assam, Meghalaya, Tripura and Mizoram**
- Under Article 368:
 - By majority vote of at least 2/3rd members of the House present and voting and ratification of 1/2 of the states:
 - This deals with any changes to the constitution that impact the federal nature of the constitution
 - Constitutional Amendments dealing with changing election process of the President or the Vice President, Supreme court and the High Courts, distribution of legislative powers between the centre and the states, any changes to the lists in the 7th Schedule, representation of states in the parliament and article 368 itself.
 - By majority vote of at least 2/3rd members of the House present and voting
 - Constitutional Amendments dealing with fundamental rights, directive principles of the state policy.
 - Others
- *Criticisms:*
 - No special body like a Constitutional Convention in the US or a constituent assembly for the amendment of the constitution
 - Consent of the state legislatures is required in very few cases, hence making the nature of this feature more unitary than federal
 - No time frame prescribed within which the state legislature must ratify or reject the amendment
 - No provision for the joint sitting of the houses

- Leave wide scope and make it more litigative in nature
- **Important Amendments**
 - *1st - Taking away the right to property as a fundamental right and introduced **Schedule 9 to implement certain laws that take away fundamental rights etc.***
 - *24th (reaction to the Golak Nath case and amended Article 13 to the effect that any constitutional amendment does not come under the purview of article 13 as a "law". Stated that the parliament can take away any fundamental rights through a constitutional amendment act)*
 - *42nd (reaction to the Kesavananda Bharti case and stated that the parliament can take make any amendments in the constitution and no amendment can be questioned in a court on the grounds of contravention of FRs)*
 - *73rd and 74th: PRIs and Local Administrative Bodies*
 - *91st: Strengthen Anti-defection and limit to the number of council of ministers (maximum 15% of the total strength)*
 - *86th - Right to Education*
 - *93rd - reservations for OBCs (27%) in government as well as private educational institutions*
 - *94th - Minister of Tribal affairs in MP, Odisha, Jharkhad and Chattisgarh*
 - *95th - reservation of seats for SCs and STs in the LS and state assemblies from 60 years to 70 years*

Basic Structure

- Shankari Prasad Case 1951
 - Supreme court declared that constitution provided the Parliament the power to amend Fundamental Rights of the constitution as it pleased
 - It interpreted Article 13 "Laws inconsistent with or in derogation of the fundamental rights" in the light that this only meant "laws" that are of ordinary legislative nature, **"but not laws made as per constitutional amendment"**
- Golak Nath vs. Union of India 1967
 - The Supreme Court took a completely different view of the amendment power of the parliament as per article 368 of the constitution.
 - It declared that Fundamental Rights were of **transcendental nature and immutable**, and hence the Parliament could not take them away or change them simply through a constitutional amendment act as it pleased
 - A constitutional amendment act under article **368 is also a law as per article 13** and hence it should be void for violating the Frs
- 24th CA 1971
 - The Parliament reacted to the judgment of the Supreme Court in the Golak Nath case by passing the 24th constitution amendment act which amended articles 13 and 368. It declared that parliament had the power to take away any FRs under article 368 and such an act will not be a law under the meaning of Article 13
- Kesavanand Bharti case 1973
 - In the landmark Kesavanand Bharti case, the Supreme court **upheld the 24th constitutional amendment act.**
 - It ruled that while the parliament had the power to take away any Fundamental rights, it did not have the power to change the basic structure of the constitution. This means that the parliament cannot take away absolute

fundamental provisions of the constitution that were enshrined in various features of the constitution like the fundamental rights etc.

- 42nd CA 1976
 - Parliament reacted yet again by amending article 368 and declaring that there was no limitation on the constituent power of the Parliament and no amendment can be questioned in any court on any ground including that of contravention of FRs
- Minerva Mills Case 1980
 - The Supreme court nulled the 42nd CA and ruled that the constitution provided for the power of **judicial review** as a basic tenet and hence all amendments by the parliament were justiciable

The Parliament

Why do we need one:

1. Parliament is the place where the legislature functions. Legislature is not merely a law making body. In fact, it is the centre of all the crucial aspects of a democracy:
 - Discussions
 - Disagreements
 - Protests
 - Unanimity
 - Concern
 - Co-operation
2. Democracy is inconceivable without a genuine, accountable and responsive legislature

Legislature losing its importance?

- It has been noticed that due to the power of the cabinet and the executive, the legislature is losing its importance.
- Most important policies are made by the cabinet and the council of ministers and the legislature merely functions to pass such policies.
- Hence, Parliament seems to have declined.
- However, even strong cabinets must retain majority and respect in the legislature.
- A strong leader has to face the parliament and answer their questions.
- Eventually, the power of dismissal of a government in case of no-confidence lies in the hands of the parliament and hence it is of utmost importance.

Why do we need two houses of Parliament?

- Representation of all geographies of India - all the states are represented
- Representation of all the people of India
- Every decision is reconsidered to enable better law making
- As it is the council of states, it checks the power of the Lower House by reconsidering bills that may not be Federal in nature
- *Rajya Sabha - problem with the representation of states on the basis of populations:*
 - The states are represented according to the population proportion in Rajya Sabha. So smaller states like Arunachal Pradesh have lower number of votes

and may not be able to influence any decisions, even those ones that are important or have significant impact on their state.

- Population representation is already achieved in the LS, so it doesn't have to be repeated in the RS.
- Rajya Sabha must be a forum for the states to have an equal footing in federal decision making
- Example: US Senate - each state is represented by two senators regardless of their populations.

Role of the Parliament - what does it do?

1. Legislative function - makes laws of the land
2. Serves as a platform for representation of people's aspirations
3. Aims at keeping the executive in check and provides accountability
4. Financial function - power of taxation
5. Debating function
6. Constituent Function - The parliament has the power to amend the constitution.
7. Electoral Function - elects the President and the VP
8. Judicial Functions - removal of president, VP and judges of the Supreme and High Courts

Instruments of Parliamentary Control (over the executive):

- Deliberation and discussions
- Approval or refusal of laws
- Financial Control
- No confidence motion

Appointment to various Constitutional posts, powers, functions and responsibilities of various Constitutional Bodies.

Constitutional Bodies:

1. Election Commission

Election Commission

- Free, independent and constitutional body established under the **Article 324**
- Article 324 provides powers to the parliament, state legislatures, the office of the President, and the office of the vice president of India to be vested in the Election commission.
- Election commission is not concerned with the elections of the Panchayats and the municipalities in the states. **For this State Election Commission of India is provided. (via 72nd and 73rd amendment acts of 1992)**
- **Composition:**
 - Chief Election Commissioner, and members of the commission or election commissioners - fixed by the President
 - Election by the President
 - President may appoint regional commissioners as he may consider necessary in consultation with the Chief Election Commissioner

- Today - three election commissioners form the body (including the CEC)
- CEC and other election commissioners have the same power and receive same salaries etc. - similar to the judge of the SC
- **Tenure:**
 - 6 years or until they attain age of 65, whichever is earlier (prescribed by the President only, not the constitution)
- **Removal:**
 - Chief Election Commissioner has the removal process same as that of the judge of the SC
 - Any other election commissioner or regional commissioner cannot be removed from the office except on the recommendation of the CEC
- **Flaws:**
 - No qualifications prescribed
 - No term prescribed as per the constitution
 - Constitution has not debarred the retiring ECs from any further government appointments

1. UPSC and SPSC

- Members and chairman debarred from taking government jobs after their position at UPSC (except that UPSC member can become SPSC member/chairman or UPSC chairman, and SPSC chairman or members can become UPSC members or chairman or SPSC members can become SPSC chairman and members further).
- However, the Supreme Court had ruled that UPSC members/chairman can be appointed to constitutional positions such as the Governor.

2. Comptroller Auditor General of India (CAG)

- Described by BR Ambedkar as the most important officer under the Constitution of India
- Guardian of the public purse and oversees the spending of funds from CFI is done as per legislation only
- Does not occupy office in pleasure of the President but may be removed only through the same process of impeachment as judge of the Supreme Court
- Two main issues surrounding the CAG:
 1. Audit of Private organization that is funded (partially) by the Government of India to supply any industrial, commercial or services to the people:
 - *Use of CFI funds:* The former CAG has argued that as long as any funds from the Consolidated Fund of India are used in any shape or form to assist, invest or provide services to these organizations, they come under the purview of the CAG.
 - *CAG does not have the business experience and expertise:* Arguments have been made that CAG does not have the necessary business experience, expertise and capacity to carry out such audits and investigations.
 - *Paralyzing effect on private enterprises:* Arguments have been made that such actions also lead to a paralyzing effect on functioning of the private organizations and could impact national development.
 - *Act in 1971:* However, an Act was passed in 1971 which allows the CAG to carry out audits in bodies which are substantially

finance from the Union or State revenues, irrespective of any specific legislation in this behalf.

2. Audit of the propriety of expenditures by Government departments
 - CAG cannot audit the nature of use of the funds (propriety of use) and the economics related to it. It can only audit whether such funds have been spent by the appropriate body as per the legislation.

3. Attorney General of India

- Article 76 provides for the office of Attorney General of India.
- Highest Law officer in the country.
- Must be qualified to be a judge in Supreme Court of India.
 - Must have been a judge in high court for 5 years, or an advocate in high court for 10 years or an eminent jurist in opinion of the President of India.
- First Law Officer of the Government of India
- Shall give advice on legal matters as referred to him by the President
- Appears before the SC on behalf of GoI in all cases.
- Represent GoI in any reference made by the President to the Supreme Court under Article 143 of the constitution.
- To appear in any high court in any case in which GoI is concerned.
- To discharge functions conferred to him by the Constitution
- **He is a Member** of either House of Parliament and has the right to speak in either of the House and participate in its proceedings, and also sit in any meetings of the Committees, **however no right to vote**
- All immunities as any other member of the Houses.
- He is part of the Union executive along with the President, the Council of Ministers and the PM.
- Not debarred from private legal practice, however must take govt. permission in representing or defending accused persons in criminal prosecutions. Cannot be appointed director in any company or corporation without the permission of the GoI.
- *Solicitor General of India and Additional Solicitor General of India*
 - Assist the AG in conducting his duties.
 - However, no mention of these in the constitution.
 - Not member of the cabinet and a separate law officer in the cabinet to look after matters of law related to them.
- **Advocate General of State**
 - Article 165 has provided for the office of AG of State
 - Appointed by governor and must be qualified to be a judge of the High Court.
 - Must have held a judicial office for over 10 years or been an advocate of high court for 10 years.
 - Member of the State legislature or council however no right to vote.

4. National Commission for SCs

- The commission has following roles:
 - To investigate and monitor all matters relating to the constitutional and other legal safeguards for the SCs and to evaluate their working
 - To inquire into specific complaints with respect to deprivation of rights and safeguards of the SCs

- To participate and advise in planning of the socio-economic development of the SCs
 - Prepare and present report to the President
 - To make recommendation as to measures to be taken by the Union and the state for the effective implementation of safeguards and other measures for the protection, welfare and socio-economic development of the SCs
 - To discharge all functions in relation to the protection, welfare and development and advancement of the SCs as the president may specify
 - Report presented to the President, who presents it to the Parliament.
 - **Powers:**
 - The Commission while investigating any matter or inquiring into any complaint has all the powers of a civil court trying a suit and in particular in respect of the following matters:
 - summoning any person and examining him under oath
 - requiring the discovery and production of any document
 - receiving evidence on affidavits
 - requisitioning any public record from court or office
 - issuing summons for the examination of witness and documents, and
 - any other matter which the President may determine.
 - The Central and State governments are REQUIRED to consult the Commission on all major matters affecting the SCs
 - Discharge such functions for OBCs and Anglo-Indians as well.
5. National Commission for STs
- Same as SCs but also with safeguards to protect the mineral wealth, forest rights, water resources etc. for the tribals.

6. Special Officer for the welfare of Linguistic Minorities
- No original provision in the Constitution
 - Later made after the States Reorganization Commission made recommendation in this regard
 - Inserted as per the 7th Constitutional Amendment
 - No provisions for nomination, removal, salaries, term, qualifications etc. Nominated by the President.
 - Position created by Article 350-B in 1957
 - "Commissioner of Linguistic Minorities"
 - HQ in Allahabad
 - Three regional officers in Karnataka (Belgaum), TN (Chennai), and West Bengal (Kolkata).
 - Commissioner falls under the Ministry of Minority Affairs
 - Submits annual report to the President through the Ministry of Minority Affairs.

7. Finance Commission

- Membership qualifications:
 - Judge of HC or qualified to be one
 - special knowledge in finance and administration
 - special knowledge and experience in government accounts and finance
 - person with special knowledge of economics
- Finance Commission makes recommendation to the President on:
 - Distribution of taxes between the States and the Centre; and allocation between the states of such proceeds
 - Principles governing grants-in-aid to the states by the Centre (out of CFI)
 - Measures needed to augment the CFI of states to supplement the resources of the PRIs and Municipalities on recommendations of the State Finance Commission
 - Any other referred to it by the President in the interests of sound finance
- Advisory nature only — generally not turned down but not binding in any way on the government

Statutory, regulatory and various quasi-judicial bodies

- **Quasi Judicial**

- National Human Rights Commission
 - Est. in 1993
 - Statutory body
 - Est. under the Protection of Human Rights Act 1993
 - Watchdog of human rights related to liberty, dignity, equality and life of an individual
 - Chairman and 4 members — the chairman should be a retired Supreme Court Chief Justice of India and members should be serving or retired judges of the SC, a serving or retired judge of the HC and two persons having practical experience with respect to human rights.
 - 4 ex-officio members who are the chairmen of the National Commission for SCs, STs, Women and Minorities.
 - The Commission enquires into the violation of human rights, either on complaint or suo moto or on an order of the court.
 - It can also intervene in any proceeding involving allegation of violation of human rights pending before a court.
 - To visit jails to study the living conditions of inmates and make recommendations before a court. (can visit jails without intimating the state government)
 - To undertake or promote research in the field of human rights.
 - **It can only look into a matter that transpired within one year from the date of complaint**
 - Actions it can take regarding case — Recommendatory in nature, recommendations not binding on the government, however the government must inform the commission of action taken on its recommendation within one month (in case of armed forces committing any violations, it can seek report from the Central government and provide its recommendations on such report. The

government must inform the commission of action taken on its recommendation within three months)

- Recommend government for compensation
- Recommend prosecution of a public servant accused in such a case
- Recommend government to grant immediate relief
- Approach SC or HC concerned for necessary directions, orders or writs.
- State Human Rights Commission
 - Enquires into cases of human rights violation related to subjects mentioned in the state and concurrent list as given in the 7th schedule. If NHRC or any other statutory commission is already enquiring into the same matter, the SHRC does not inquire into that case.
 - Chairperson + 2 members: Chairperson is a retired chief justice of a HC. Members should be a serving or retired HC judge or a district judge in the state with a minimum of 7 years experience as the district judge and a person having knowledge or practical experience with respect to human rights.
 - Rest same as NHRC except it applies to the State government.
- Human Rights Court — can be est. in every district by the state government with concurrence of the Chief Justice of the High Court of that State.
- Central Information Commission (CIC)
 - Not constitutional body
 - Est. in 2005 under provisions of the RTI Act 2005
 - CIC and its 10 information commissioners (not more than 10) are appointed by a committee of the PM of India, the Leader of Opposition in the Lok Sabha and a cabinet minister appointed by the PM.
 - The commissioners should be eminent persons and must not be members of Parliament or state legislatures. They should not be related with any political party, must not hold any office of profit, or carrying on any business or pursuing any profession.
 - The Commission while investigating any matter or inquiring into any complaint has all the powers of a civil court trying a suit and in particular in respect of the following matters:
 - summoning any person and examining him under oath
 - requiring the discovery and production of any document
 - receiving evidence on affidavits
 - requisitioning any public record from court or office
 - issuing summons for the examination of witness and documents
 - it may examine any record which is under the control of the public authority and no such record may be withheld from it on any grounds.
 - Its report is placed before the Parliament by the Central Government.
- Central Vigilance Commission
 - Main agency for preventing corruption in the Central Government

- Est. in 1964 by the recommendation of Santhanam Committee on Prevention of Corruption (1962-64)
- Its a statutory body
- “Designated Agency” for receiving all complaints for disclosure on any allegation of corruption or misuse of office and recommend appropriate action.
- Commissioner + 2 vigilance commissioners
- Appointed by President on recommendation of a Committee headed by the PM, Home Minister and LoP of the Lok Sabha
- Functioning:

-

- Working:

-

- Central Bureau of Investigation

- Came into being in 1963
- Comes under the DoPT
- The Special Police Establishment (SPE) set up in 1941 also comes under CBI
- CBI derives power from the Delhi Special Establishment Act (DSPE) 1946
- Provides assistance to the CVC
- Divisions:
 - Anti Corruption Division
 - Economic Offenses Division
 - Special Crimes Division
 - Police and International Police Cooperation Division
 - Administrative Division
 - Directorate of Prosecution

- Central Forensic Science Laboratory
- With the enactment of the CVC Act 2003, the superintendence of DSPE vests with the Central Government, however, the investigation of offenses under the Prevention of Corruption Act, 1988, superintendence vests with the CVC.
- CBI Director has security of 2 years as per the CVC Act 2003.
- The Director of CBI is appointed by the Central Government on the recommendation of a committee which is headed by the Chief Vigilance Commissioner, the Vigilance commissioners, the secretary of the Ministry of Home Affairs, the Secretary in the Cabinet Secretariat.
- CBI vs. State Police

○ **ADRs (Alternative Dispute Resolution) bodies**

- Tribunals
- Lokadalats
- National Consumer Disputes Redressal Commission
- Informal channels like khap panchayats and other religion based bodies
- Nyaya Panchayats (under the PRI system)
- Regulatory
 - SEBI
 - Competition Commission of India (CCI)
 - IRDA
 - TRAI
- FSLRC - v.imp.
- Super Regulator vs. Multiple Regulators

Salient Features of the RPA

- What is the RPA 1950 and 1951? Difference between the two.
 - The RPA (enacted by Article 327 before the first General Election) provides for the rule of:
 1. Conducting of elections of the houses of the Parliament and to those of the State Legislatures
 2. Details about the structure of the administrative machinery for the conduct of the elections
 3. Qualifications and Disqualifications for membership of those Houses

4. **Corrupt practices and other offenses at or in connection** with such elections and the decision of doubts and disputes arising out of or in connection with such elections.
- What are provisions for elections in the constitution and how are they different from those in RPA?
 - Part XV in the Indian constitution is related to Elections
 - It provides for:
 - The Election Commission
 - Universal Suffrage
 - Adult Suffrage
 - RPA
 - Courts barred from questioning the delimitation commission through the Delimitation Act
 - Disputes in relation with elections can only be brought forward by the use of election petitions in a manner provided by the law
 - Presidential and Vice-Presidential Elections Act 1952
 - RPA 1950
 - Allocation of seats and delimitation of constituencies of the Parliament and state legislatures
 - Officers related to the conduct of elections
 - Preparation of electoral polls
 - Manner of filling seats of Council of States allotted to the UTs
 - RPA 1951
 - Conduct of elections to both the House and State legislatures
 - Qualifications and Disqualification for membership to those houses, the corrupt practices.
 - Qualifications:
 - Council of States (RS):
 - Elector of a Parliamentary constituency in India (any constituency)
 - House of People:
 - Elector for any parliamentary constituency
 - Exceptions provided for reserved seats for SCs and STs - must be a member of the SC or ST community from anywhere in India and elector for any parliamentary constituency
 - For autonomous districts in Assam (Lakshadweep and Sikkim also), he or she must be a member of that Scheduled Tribe and also elector from that constituency
 - State Legislative Assembly
 - Elector of a Parliamentary constituency in that State (any constituency)
 - State Legislative Council
 - Elector of a Parliamentary constituency in that State (any constituency)
- Section 8(1) of the RPA provides for disqualifications of membership of the parliament and state legislatures
 - 8 grounds of disqualification:
 0. Conviction of certain offenses like untouchability, Importing or exporting prohibited goods

1. Conviction and sentences for more than 2 years of imprisonment not covered by other sections
 2. Interest or ownership in organizations where government had > 25% ownership
 3. Ongoing government contracts or supply
 4. Disloyalty to state or corruption
 5. Failure to lodge election expenses
 6. Corrupt practices, Sati
 7. Dowry, adulteration of food or hoarding.
- Any person found guilty of conduction or enforcing electoral offenses such as booth capturing, threatening voters, bribing etc. is deemed unqualified.
 - Administrative Machinery:
 - Chief Electoral Officer
 - District Election Officer
 - Observer
 - Returning Officer
 - Presiding Officer
 - Polling Officer
 - Benefits to Recognized parties:
 1. Portion of free time allocated on the national broadcasting for TV and radio
 2. Reserved election symbol for exclusive use of the party throughout the state or the country
 3. Access to all electoral lists prepared by the Election commission
 4. Name of the recognized party candidates is on the top of the EVMs (alphabetically arranged)
 5. No need for nomination papers of the candidates of the recognized parties to be subscribed by at least 10 voters as in other parties
 6. In case a candidate of recognized party dies during elections, the commission gives the party a time of 7 days to nominate another candidate to participate in the elections.
 - EVM (Electronic Voting Machine)
 - Simple electronic device used to record votes in place of ballot papers
 - Introduced all over India in 2004 in Lok Sabha elections
 - Declaration of Assets and Liabilities
 - All movable and immovable assets owned by the candidate and his or her spouse and dependents must be declared
 - All the liabilities to public financial institutions or to the centre or the state governments must be declared

- Within 90 days from the date of subscribing an oath for taking seat in the parliament
- Election Expenses:
 - Shall keep separate account of all expenses and within 30 days of election must file these with the DEO
 - Caps:
 - Lok Sabha: Maximum Rs. 70 lakhs and for NE states and hilly states Rs. 54 lakhs
 - State Assemblies: Rs. 28 lakhs and NE states and hilly state maximum Rs. 20 lakhs
- Election petition:
 - Only an election petition can be used to call an election invalid or disputed
 - Presented in the High Court having jurisdiction of the state involved
 - Must be presented within 45 days from the date of election of the candidate
 - **Reasons of filing an election petition:**
 0. The candidate was not qualified or was disqualified to be chosen to fill the seat under the Constitution or this Act
 1. Corrupt practice has been committed by the candidate or her agent or by any other person with the consent of the candidate
 2. Any nomination has been improperly rejected
 3. Result of the election has been materially affected:
 1. by improper acceptance or any nomination
 2. by corrupt practices
 3. by the improper reception, rejection or refusal of any vote or the reception of any vote that is void
 4. by non-compliance with the provisions of the constitution or the RPA 1951
- Moral Code of Conduct (MCC)
 - Aims:
 0. Provides a general conduct for political parties and candidates (no attack on private life, no promotion of communal feelings, discipline and decorum in meetings, processions, guidelines for party in power not to use government resources for electioneering, prohibition against Ministers and other authorities in announcing grants and new schemes)
 1. Ministers are not allowed to combine official visits with elections campaigns
 2. Issue of advertisements at the cost of public exchequer is prohibited.
 3. Eradicate the ruling party's use of government resources to influence elections
 4. Minimize and eradicate any biases in the election due to undue influence of certain members in the government
 5. Create a level playing field among the parties, candidates for participation in the election
 6. Started in 1968 when the commission talked with various parties at State level to observe minimum standards of behavior to ensure free and fair elections.
 7. Reissued with more changes over the next few elections
 - Enforcement:
 - No statutory backing

- However, it does have judicial recognition of the highest court of the land
- Comes into effect the moment the Election Commission releases a Press Release
- Ongoing development activities are not stopped, they continue, however new schemes are not launched during the meantime.
- NOTA (None of the Above)
 - Improves participation among voters
 - Voters can express their disapproval of candidates
 - An important step towards decriminalization of politics
 - Parties now to take steps to select their candidates carefully
 - Not allowing such a provision would be against the right to freedom of expression
 - However, needs improvement as candidates first-past-the-post still win regardless of the number of votes NOTA gets
- VVPAT (Vote Verifiable Paper Audit Trail)
 - “Indispensable for free and fair elections”
 - Accuracy
 - Trail
 - Fair and efficient elections
- Ruling on Nomination papers of candidates
 - PIL by **Resurgent India** detached a trend among candidates of leaving blank the columns demanding critical information about them
 - No columns in the forms can be left empty as that would be same as attempting to hide information
- Ruling on Election manifestos
 - Plea was made in the Supreme court against the political parties’ practice of announcing freebies in their manifestoes which amounts to nothing less than bribes
 - The Supreme court agreed with this and asked the election commission to frame guidelines for the content of election manifestoes

Anti-Defection law (Schedule 10, not under RPA)

- Anti-Defection law came into being during the Rajiv Gandhi government when the need was felt to check unscrupulous use of the ability of members of the Parliament and State Legislatures to change their parties for material gains.
- This problem has become very widespread as many members were changing parties and the question of their loyalty, ideology, moral and commitment to the democratic and constitutional were questioned.

In view of these practices, the Government passed a resolution banning the defection of members of one party to another. These restrictions were:

1. **Members of Political Parties:** No member of a party can switch to another party, or abstain from voting on party lines in the parliament. In addition, the member **could not vote against** the party lines in such votings on various issues raised in the Parliament. (act must be condoned by the party within 15 days; in case the member has taken permission from the party, it’s ok)

2. **An independent member** of the parliament cannot join another party
3. **A nominated member** of the parliament can only join a party before the expiry of a period of 6 months from the date he or she has been nominated in the Parliament.

Exceptions:

- Exceptions were provided if **2/3rd of the total membership of the party was merging into another party**
- The member has been elected as the presiding officer of the house and gives up his membership of the party on a voluntary basis to uphold the unbiasedness of the office.

Deciding Authority:

- In such matters, deciding authority lies with the **Presiding officer, i.e., the Speaker of the Lok Sabha and the Chairman of the Rajya Sabha and so on.**
- It is justiciable in the court of law.
- The Rule making power lies with the presiding officer that must be placed in front of the House for 30 days, and the House can adopt, change or drop the recommendations.
- The presiding officer cannot act on self and must receive the complaint from a member of the House.

Structure, organization and functioning of the Executive and the Judiciary, Ministries and Departments of the Government; pressure groups and formal/informal associations and their role in the Polity

Nomination of the Judiciary: Collegium System vs. the Judicial Appointments Commission

- **Controversy over Consultation:**
 - Three Judges Case which highlight and give historical background of this controversy
 - *First Judges Case (1982)*
 - SC held that consultation does not mean concurrence and it only implies exchange of views
 - *Second Judges Case (1993)*
 - Reversed the previous ruling and changed the meaning of the word consultation to concurrence
 - Hence it ruled that the advice tendered by the **CJI to the President of India is binding in matters of appointment of judges of the SC**
 - But the CJI must consult with two of his senior most colleagues in such matter
 - *Third Judges Case (1998)*
 - The SC opined that the process of consultation involves **“consultation of plurality judges” by the CJI and CJI’s opinion alone cannot be constitutional**

- Hence, the CJI must consult with the collegium of four senior most judges of the SC and if the judges give an adverse opinion, she must not send it to President as a recommendation.
- *Appointment of the CJI*
 - The senior most judge of the Supreme Court must be appointed as the CJI by the government
 - Two instances where this didn't happen:
 - 1973 when AN Ray was appointed the CJI superseding three other judges in the SC - all the 3 judges resigned
 - 1977 when MU Beg was appointed as the CJI superseding the then senior most judge.
 - The second Judges case in 1993 curtailed this by where it ruled that only the senior most judge of the Supreme Court must become the CJI of India.
- *Qualifications:*
 - Citizen
 - Judge of High Court >5 years or Advocate of High Court >10 years or
 - A Distinguished Jurist in opinion of the President
- *Removal:*
 - Only by President who must present such resolution in an address to the Parliament
 - Must be passed in each House of the Parliament by Special majority - i.e. majority of the total membership and 2/3rd of the members present and voting.
 - Grounds: proved misbehavior and incapacity
 - A removal motion signed by 100 members in case of LS and 50 members in case of RS is given to the Speaker or the Chairman
 - Speaker may admit or refuse this motion
 - If accepted, 3 member committee to be formed by the Speaker
 - Committee should consist of the 1) CJI or judge of the Supreme Court (2) Chief justice of a high court (3) distinguished jurist
 - Then passed by each house if consideration is made to the House by the committee
- Appointment of Ad-Hoc Judges and Retired Judges
 - In case of lack of quorum, ad-hoc judges can be appointed by CJI from the High Court as long as that HC judge is qualified to be a judge of the SC and such action has been approved by the President (consent of the President)
 - CJI can also appoint a retired judge of the high court as long as that HC judge is qualified to be a judge of the SC and such action has been approved by the President (consent of the President)
- Seat of the Supreme Court
 - Delhi, however, the Constitution declares that CJI is authorized to appoint another place or places as seat of the Supreme Court of India
 - He takes such decision only on the approval of the President of India

- Constitutional cases referred by the President are decided by a bench consisting of at least 5 judges
- Others decided by at least 3 judges
- *Procedures assuring Independence of Supreme Court*
 - Mode of Appointment
 - Tenure of the Judges
 - Jurisdiction of the Supreme Court
 - Original Jurisdiction
 - Exclusive jurisdiction in cases of legal nature (not political) between:
 - Centre and one or more states, or
 - Centre and any state or states on the one side and one or more states on the other side, or
 - Between two or more states
 - However, original jurisdiction does not apply in the following cases:
 - Ordinary disputes of commercial nature between the centre and the states
 - **Inter-state water disputes (Excluded by the Inter-State Water Disputes Act 1956)**
 - Matters referred to the Finance Commission
 - Adjustment of certain expenses and pensions between the centre and the state
 - Recovery of damages by a state against the Centre
 - A dispute arising from a pre-constitution treaty, agreement, covenant, engagement, sand or other similar instrument
 - Appellate Jurisdiction
 - Appeals in constitutional matters
 - Appeals in civil matters
 - Appeals in Criminal matters
 - Appeals by special leave
 - Writ Jurisdiction
 - Can issue **writs including habeas corpus, mandamus, prohibition, quo-warrento, and certiorari**
 - However, these writs are limited to be issued in cases of violation of **Fundamental Rights only**
 - However, the Parliament can confer the power of issuing other writs to SC as well
 - Advisory Jurisdiction
 - Advisory jurisdiction in case President seeks opinion of the SC as per article 143 of the constitution
 - Two major categories:
 - That of public importance (arisen or likely to arise)
 - SC **not obligated** to give its opinion
 - Disputes regarding pre-independence treaties and such
 - SC obligated to give its opinion

- Judicial Review
 - Power of SC to examine the constitutionality of legislative enactments and executive orders of both the Central and State Governments.
 - Required to establish:
 - The supremacy of the constitution
 - To maintain federal equilibrium of the Centre and the States
 - To protect Fundamental Rights of people
 - Examples: Golaknath Case (1967), the Bank Nationalisation case (1970), the Privy Purses Abolition Case (1971), Kesavanand Bharti Case (1973) and the Minerva Mills case (1980)
 - Other Powers:
 - Only authority to decide upon the constitutionality and other disputes of the election of a President or Vice President. In this regard, it has the original, exclusive and final authority
 - It enquires into the conduct of the members and chairman of the UPSC on a reference made by the President. Its recommendation regarding their removal (in case found guilty) is binding on the President.
 - Fixed Service Conditions
 - Expenses charged to the CFI
 - Ban on Practise after Retirement
 - Power to Punish for its contempt
 - Freedom to appoint its staff
 - Separation from the Executive
- **The Controversy over the Collegium and the Judicial Appointments Commission**
 - *As long as the process of judicial appointments remains opaque, selection of judges on considerations other than merit will continue*
 - *Problems:*
 - Too many vacancies in the High courts in India
 - As of June 2013, there were 276 vacancies out of a total sanctioned strength of 904 permanent and additional judges in all the High Courts of India. With almost a third of the vacancies to be filled,
 - Canvassing for other criteria rather than meritocracy
 - Most States are witnessing major canvassing on caste, community, political and other considerations for appointment as judges.
 - As allegations and counter-allegations over the appointment of favourites fly thick and fast, the debate over the process of judicial appointments is once again heating up.
 - Judicial Appointment Commission 2013 set by the government to create a process for selection of the Judges of the SC
 - Focuses not on “how” but “who” in the question of appointment of judges

- Lays down rules on “who” or the committee that can nominate the judges in the SC, but does not really focus on what merits those nomination decisions be based on
- **Collegium experiment (Who appoints, How appointed, and also from whom they should be appointed)**
 - The government proposes to come up with a Bill for the appointment of judges to the higher judiciary replacing the current collegium system.
 - The political executive is of the view that the collegium system hasn’t worked well; hence a **Judicial Appointment Commission**, in which the executive will have a say in the appointment of judges, is necessary to achieve the objective of appointing the best people as judges in a transparent fashion. >>> The Union Minister of Law and Justice, along with the CJI and other senior most Judges of the SC would be members of this new JAC
 - There is growing evidence that the current system of judicial appointments has resulted in incompetent, inefficient, ethically compromised individuals being appointed as judges.
 - Protests over judicial appointments have been seen in Punjab and Haryana High Court, Madras High court over judicial appointments
 - **Another issue----->>>>>>>** Today the greatest concern is the secrecy shrouding the appointments
 - The **real issue is not who appoints judges but how they are appointed**. Irrespective of whether it is the executive, the judiciary or a Judicial Commission that appoints judges, as long as the process is opaque and appointments are made on personal considerations, we will have variations of the same problem of favouritism, nepotism and appointments on criteria other than merit and capability.
 - Another issue- While “who” should appoint judges can be debated endlessly, the need is to broaden the debate on the appointment of judges by focusing on other relevant issues **like having jurists as judges of the Supreme Court**. There has never been much debate on this issue.
 - Article 124 (3) of the Constitution, broadly, provides for three categories of persons who are “eligible” to be appointed to the Supreme Court — a High Court judge with five years experience; an advocate in the High Court with 10 years experience; a “distinguished jurist.”
 - A “distinguished jurist” refers to academic lawyers or law professors: people who have challenged and expanded the existing frontiers of legal knowledge through cutting edge research and teaching.
 - This requires a certain ability to theorise and conceptualise. Law professors are academically trained to theorise and conceptualise. Industrious law professors improve upon this training, through years of painstaking research and teaching in their specialised domains, often employing empirical and interdisciplinary tools. These well developed and nuanced theorising and conceptualising abilities have the potential of raising the bar of legal reasoning up by several notches.

- Regrettably, 63 long years after the Constitution was adopted, both the judiciary and the executive have consistently ignored this clear constitutional mandate. In the history of the Indian Republic, never ever has a “distinguished jurist,” i.e. a law professor, been appointed as a judge of the Supreme Court, although India has produced some outstanding law professors worthy of the “distinguished jurist” tag. In last 63 years, all appointments to the Court have been made from the first “eligible” category i.e. High Court judges, barring four instances, where practising lawyers (the second category) were directly appointed as Supreme Court judges
- **Reforms**
 - The crucial need, therefore, is to evolve objective criteria to assess a candidate and make appointments on the basis of assessments against such stated criteria.
 - We may usefully refer to the system adopted by the Judicial Appointments Commission in the United Kingdom to assess candidates.
 - *Other Judicial Reforms for better judiciary reforms*
 - Only some cases can be put for repeal in higher courts
 - Time allotted for oral argument (30 minutes in USA)
 - Conduct legal audit- why cases took so long
 - Repeal archaic laws
- **UK Process**
 - The JAC in the UK assesses candidates against five merit criteria:
 1. Intellectual capacity: Nominated candidates ought to demonstrate (a) a high level of expertise in chosen areas or profession with the (b) ability to quickly absorb and analyse information. They should have (c) appropriate knowledge of the law and its underlying principles or the ability to acquire this knowledge where necessary.
 2. Personal qualities: ranging from (a) integrity and independence of mind, (b) sound judgment, (c) decisiveness, (d) objectivity, (e) ability and willingness to learn and develop professionally and (f) ability to work constructively with others.
 3. An ability to understand and deal fairly: This includes (a) the ability to treat everyone with respect and sensitivity whatever their background and (b) willingness to listen with patience and courtesy.
 4. Authority and communication skills: The nominated person is expected to have (a) the ability to explain the procedure and any decisions reached clearly and succinctly to all those involved with the further (b) ability to inspire respect and confidence and (c) maintain authority when challenged.
 5. Efficiency: The ability to work at speed and under pressure and the ability to organise time effectively and produce clear reasoned judgments expeditiously
- **US Process**
 - The ‘public’ senate hearings for appointments of judges to superior courts in the U.S. are another example of transparency. We may not

find the U.S. system implementable as it is; but nothing prevents us from incorporating the key principles of transparency, accountability and citizen participation underlying the U.S. system for selection of judges.

Nomination and Removal of the Governor

- ***Role and Powers of the Governor:***
 - ***Appointment and Removal of the Governor:*** (may be removed at any time by the President as he holds the office in President's pleasure and this is not justiciable)- recent removal of Governors by the new Government
 - **Appointment:** As per the Articles 155 and 156 By the President and enjoys the tenure "during the pleasure of the President".
 - Under Article 74, the President is bound to act on the aid and advice of the Council of Ministers, hence effectively the Council of Ministers can also decide the removal or appointment of Governors.
 - **Removal:** No mechanism in the constitution for removal of a governor
 - Historical, VP Singh's National Front Government in 1989 asked all governors to resign as they were appointed by the Congress government
 - Some were allowed to continue and some were replaced
 - Same in 1991 when the PV Narsimhan Rao's government changed 14 governors appointed by the VP Singh and Chandra Sekhar Government
 - Same in 2004 and 2014 under Modi's government
 - **Supreme Court Interpretation:** In 2010, a constitutional bench of the Supreme court laid down some binding principles in this matter. (BP Singhal v. Union of India)
 - The power of the President to remove the Governor cannot be exercised arbitrarily, in an unreasonable manner.
 - This should be done only in rare and exceptional cases.
 - The mere factor that the Governor does not confirm with the political ideology or policies of the Government does not form a ground for the removal of the Governor.
 - Such a decision to remove the Governor can be challenged in the court of law. To do so, the petitioner first has to make a prima facie case of arbitrariness or bad faith on part of the Central government. If the prima facie case is established, the court can require the Central Government to produce documentation on the basis of which such a recommendation was made.

- **Commissions and their Recommendations:**
 - **Sarkaria Commission (1988)** - recommended that removal of governor should be extremely rare in reasonable cases and if it happens, Governors should be able to make their case.
 - **Venkatachaliah Commission (2002)** - same as Sarkaria commission
 - **Punchhi Commission (2010)** - suggested that “during the pleasure of the President” phrase should be removed from the Constitution all together. Governor should not be removed at the will of the central government but by a resolution of the State Legislature.

Functions and responsibilities of the Union and the States, issues and challenges pertaining to the federal structure, devolution of powers and finances up to local levels and challenges therein.

Centre-State Relations

Centre-State relations can be studied under three main heads:

1. Legislative Relations
2. Administrative Relations
3. Financial Relations

Legislative Relations are governed by four factors:

1. **Territorial Extent of Central and State Legislation**
 - Centre has a clear power over legislation in any territory within the boundaries of India
 - State can only legislate within its own boundaries and not in boundaries of other states or union territories
 - Certain restrictions in power of the Parliament as given by the constitution:
 - Governor has the power to override or make any changes to any **centre legislation in a scheduled area within** a state or applies with modifications and exceptions.
 - President can make administrative decisions in the 4 UTs, and any regulation so made by him has the same force and effect as an act of the Parliament.
 - Governor of Assam can declare that a legislation of the centre does not apply in **tribal areas in Assam** or applies with changes and modifications. President has similar power to for **Tribal areas of Mizoram, Meghalaya and Tripura**
2. **Distribution of powers through the lists as per the 7th schedule and Centre's power to legislate in State List and Concurrent list**
 - Centre has complete legislating power in the subjects mentioned in the Union List of the 7th Schedule. These cover areas of national interest such as foreign policy, defense, communications etc.

- State has legislation power in the subjects of the state list - these include subjects such as education, police, agriculture.
 - Concurrent list includes all subjects not covered in Centre or State Lists. This has subjects like criminal law, civil procedure, marriage and divorce, population control etc.
 - In concurrent list, Centre has power to legislate over the State
 - Only one exception, that if the state law has been kept for consideration of the President and has received his assent, then the state law prevails in that state over the Union law. However, the Parliament can still override such a law by subsequently making a law on the same matter.
3. **Parliamentary legislation in the state field — Centre's power to legislate in the state's areas, and nomination executive in the States (Governor and state executive during President's Rule or Emergency)**
- *Rajya Sabha Resolution*: The Rajya Sabha can pass a special resolution (special majority) allowing the centre to legislate in state list or areas concerned of state legislation. These legislations stay in effect for a period of 1 year only. Can be renewed any number of times and expire within 6 months after expiry of such a resolution.
 - This does not prevent a state legislature to make law in the same field, however, on conflict, the Parliamentary legislation shall prevail.
 - *Resolution by States*: Two or more states can pass a resolution to allow the Centre to make legislation in certain area as required by them. Ex: Transplantation of Human Organs Act, 1994, Wild Life Protection Act, 1972
 - Implementation of International treaties. Eg: TRIPS related legislations.
 - National Emergency - legislation operative for 6 months after the expiry of the emergency
 - President's rule - legislation operative indefinitely unless another act overriding it is passed by the legislative assembly or the Parliament
4. **Centre's control over state legislation**
- Through Governor's power to refer a legislation passed through the state legislatures to the President for his assent
 - Certain bills related to state list can only be introduced by the consent of the President. For example bills improving restrictions on the freedom of trade and commerce.
 - Financial Emergency - President can ask state legislatures to present any finance bills for his consideration

Administrative Relations between States and the Centre

- **Distribution of Executive Powers:**
 - Centre's Executive Power extends to all matters on which the Parliament has exclusive power of legislation (Union List Subjects). Also, it has executive power in case it is conferred by any treaty or agreement.
 - State's Executive Power extends to all matters on which the State has exclusive power of legislation (State List Subjects)
 - A law on a concurrent subject, though enacted by the Parliament, is to be executed by the States except when the Constitution or the Parliament has directed otherwise.
- **Obligations of the State and the Centre**

- The Constitution has placed two restrictions on the state executive power to ensure Centre has ample scope for exercising its executive powers:
 - State executive complies with all the Parliamentary laws and any existing laws in the State
 - Executive of the State cannot impede or prejudice the exercise of executive power of the Centre in the State.
 - This is regarded as a coercive sanction and the Centre can use this to impose Article 365 President's Rule if this is violated.
- Centre's Directions to the States
 - The centre has power to give direction to states in the following matters:
 - the construction and maintenance of means of communication by the state
 - the measures to be taken for the protection of the railways within the state
 - the provisions of adequate facilities for instruction in the mother-tongue at the primary stage of education to children belonging to linguistic minority groups in the state, and
 - drawing up and execution of specified schemes for the welfare of the STs in the state.
- Mutual delegation of functions
 - President may, with the consent of the state government, delegate it the executive functions of the Centre
 - The governor may, with the consent of the central govt., delegate it the executive functions of the State
 - Also, the Parliament can also pass resolution to allow State to exercise power in executive functions of the Centre. Hence, a law made by the Parliament on the union list can confer powers and impose duties on a state, or authorize the conferring of powers and imposition of duties by the Centre upon a state.
 - This provision cannot be applied by the state legislature.
- Relations during emergencies:
 - National Emergency: The Centre becomes entitled to give executive directions to a state in any matter. Article 352.
 - President's Rule: The President can assume to himself the functions of the state government and powers vested in the Governor or any other executive authority of the state.
 - Financial Emergency: The Centre can direct state to observe canons of financial propriety and the President can give other necessary directions including the reduction in salaries of persons serving in the state and the high court judges.
- Financial Powers:
 - Taxation Powers:
 - Union List — centre
 - State List — state
 - Concurrent List — both
 - Residual — Centre
 - The Constitution also differentiates between the power of levying and collecting the taxes, and the power of appropriation of the proceeds of the tax so levied and collected. For example, the income tax is levied and collected by the Centre, but its proceeds are distributed between the Centre and the States.

- *Taxes levied by the Centre, but collected and appropriated by the States (Article 268)*
 - Stamp duties on bills of exchange, cheques, promissory notes, policies of insurance, transfer of shares and others.
 - Excise duties on medicinal and toiler preparations containing alcohol and narcotics.
- *Service Tax Levied by the Centre but collected and appropriated by the Centre and the States (Article 268-A)*
 - Taxes on services are levied by the Centre
 - Proceeds are collected as well as appropriated both by the Centre and the States
- *Taxes levied and collected by the Centre, but assigned to the States (Article 269)*
 - Taxes on sale or purchase of goods (other than newspapers) in the course of inter-state trade
 - Taxes on the consignment of goods in the course of inter-state trade or commerce
- *Taxes levied and collected by the Centre, but distributed between the Centre and the States (Article 270)*
 - This list includes all taxes in the Union List, except:
 - Duties and taxes referred to in the Articles 268, 268-A, and 269
 - Surcharge on taxes and duties referred to in Article 271
 - Any cess levied for a specific purpose
- *Surcharge on taxes and duties referred to in Article 271*
 - Parliament can anytime levy surcharge on taxes and duties referred to in articles 269 and 270. These proceeds go to the Centre exclusively. State do not have shares in these.
- *Taxes levied and collected and retained by the States*
 - Enumerated in State List
 - Eg: Land revenue, taxes on agricultural income, succession and estate duties in respect of agricultural land, taxes on land and buildings, on mineral rights, on animals and boats, on road vehicles, gambling, luxuries and entertainment, tolls, stamp duty on documents, sales tax etc.
- **Grants-in-aid**
 - Two types of grants-in-aid: (1) Statutory Grants (2) Discretionary Grants
 - Statutory Grants: Article 275 of the constitution empowers the parliament to make grants to the states which are in need of financial assistance and not to every states.
 - Different sums may be fixed for different states.
 - Charged to the CFI
 - The constitution also provides for **specific** grants for the promotion of welfare of the STs in a state or for raising the level of administration of the scheduled areas in a state including the state of Assam.
 - These are given to the states on recommendations of the Finance Commission.

- Discretionary Grants: Article 282 empowers both the Centre and the states to make any grants for any public purpose, even if it is not within their respective legislative competence. Under this, the Centre makes the grants to the States as per recommendations of planning commission (but now not valid anymore).
 - These are discretionary in nature.
 - These form larger part of the Central grants to the states.

Centre-State Relations:

- Issues in centre-state relations have been a feature of post Nehru India. Until the death of JL Nehru in 1964, Congress was the dominant party in most states in India, which meant that there was not much scope of disagreement between the Centre and the State policies. Additionally, Nehru always maintained cordial relations of Centre with all the states and gave them enough voice to form consensus on major policy issues.
- After 1964, with the advent of new political regional parties in various states, advocacy for greater financial, administrative and policy making autonomy started.
- Parties like DMK, RJD and AIDMK emerged and negotiated at very tough terms with the centre governments for their control over state issues.
- **In 1969, the first ARC (Administrative Reforms Commission) was set up to outline the roadmap for centre state relations going forward.**
 - Establish Inter-States Council
 - Appointment of people with experiences in public life and administration as Governors
 - Delegation of powers to the maximum extent to the states
 - Transferring of more financial resources to the states
- **Sarkaria Commission (1988)**
 - RS Sarkaria former CJI
 - Gave major thrust to advocating more **autonomy over financial, administrative and operative powers to the states**, however, outrightly rejected curtailing powers of the centre and stated that a strong centre is imperative to safeguard national unity.
 - Recommendations:
 - Establish **Inter-States Council (finally established in 1990)**
 - Appointment of people with experiences in public life and administration and with low political connections and ambitions as Governors and such must be made on the consultation with the CM (appointment on basis of Nehruvian principles and through the use of Inter-State councils, not arbitrary)
 - Reactivation of the Zonal councils
 - All India Services to be extended
 - Commissioner of Linguistic Minorities should be reactivated

- Steps to be taken for implementation of the Three language formula in its true form
- **MM Punchhi Commission (2007)**
 - MM Punchhi former CJI
 - Recommendations:
 - **Centre must consult with the states on matters of concurrent list**
 - Institutionalization of this process through the Inter-State Council
 - **Bills reserved for the consideration of the President**
 - Specific time limit as states complain that there is no time-sensitivity to the bills reserved for President's assent
 - **Appointment and Removal of Governors**
 - - **Curtailing Wide ranging powers of the Governor in state subjects**
 - **On Zonal Councils and Empowered Committees of Ministers**
 - **Inter-State Water disputes**

Special Category Status to States

- The idea of the Special Category States was introduced in **1969 by the 5th Finance Commission**
- It used the **Gadgil Formula** for allocation of the status to the states of **Nagaland, Assam and J&K**. However, overtime the next few decades, other states were added and today a total of 11 states are part of the Special Category.
- The formula considers some quantitative and qualitative factors in determining the special category status.
- These are:
 - presence of hills and mountainous areas in the hills (difficult terrain)
 - strategic location with presence of international boundaries
 - low population density or sizable tribal population
 - economic and infrastructural backwardness, and non-viable nature of the state finances.
- **Benefits:**
 - Greater amounts of funds from the Central Assistance for State Plans as allocated by the **Planning Commission**
 - In Central Assistance for State Plans, three main types of funds are allocated to the states:
 - **NCA (Normal Central Assistance)**
 - Allocates funds in favor of the special category states: 11 states get 30% of the total NCA while other get the remaining 70%. Nature of assistance also differs, as the NCA is split into grants and loans, the special states get 90% grants and 10% loans while the normal ones get 70% grants and 30% loans
 - For allocation of the SCA among special category states there is no explicit formula and the fund are allocated o the basis of the state's plan size and previous plan expenditures. Allocation

among normal states is as per the Gadgil formula (population, per capita income etc.)

- ACA (Additional Central Assistance)
 - Same for both
 - SCA (Special Central Assistance)
 - This is more assistance to the special category states
 - Additional benefits to special states on excise, custom duties, income tax rates etc.
- Raghu Ram Rajan Formula

Centrally Sponsored Schemes

- Problems:
 - States are not able to provide matching funds due to lack of resources
 - Inflexibility in the nature of schemes causes states to not carry out programs efficiently
 - Differing accounting procedures
 - Irregularity of social audits etc.

NCTC (National Counter Terrorism Cell)

GST

- *Issues surrounding GST*
 - Financial autonomy of states is compromised
 - Compensation is not adequate
 - Disagreement over alcohol and spirits
- *Financial Relations between Centre and the States*
 - Taxes and duties levied by the Centre but collected by the States
 - Service Taxes levied by the Centre but collected by the Centre and the States
 - Grants in Aid
 - Statutory (Finance Commission)
 - Discretionary (Planning Commission)
 - Loans

Federalism and Foreign Policy

WB, Sikkim, Tamil Nadu (tamils)

Panchayati Raj Institutions and Municipalities

see vision notes

- Gandhian approach of Gram Swaraj and Hind Swaraj called for Decentralized Democracy
- "Oceanic circles of power - horizontal division of power"

- Nehru philosophy influenced by large state in Soviet Union, but not a Decentralized Democracy
- Ambedkar disagreed with Gandhian view and considered villages as “dens of ignorance and narrow mindedness”
- Address:
 - Issues of local and rural development
 - Internal security issues
 - Empower of dalits and women
 - Eliminate rural poverty
 - Social Inclusion
- First, Nehru launched “Community Development Program” in 1952 and the responsibility went to the Bureaucracy to bring large scale reforms for development of rural India, in addition to their other duties
 - Elitist nature of bureaucracy resulted in non-fulfillment of this goal
- Balwant Rai Mehta Committee in 1957
 - Called for establishment of “Democratic decentralization”
 - Panchayati Raj inaugurated in 1959 in Nagaur district of Rajasthan
- Sarkaria Commission
- LM Singvi Committee 1986 - first time called for constitutional status for the PRIs to ensure free and fair elections to the institution
 - 1993 - 73rd Constitutional Amendment Bill
 - Created a skeleton for establishment of formal Panchayati Raj in India
 - It was left to the states to fill the skeleton with working system, the flesh and blood and the spirit
 - The bill divided provisions for the power with PRIs in two major segments: Compulsory Provisions for States and Voluntary Provisions for States
 - This had also been described as great flaw of this act because it doesn’t provide for a firm system of machinery, but gives voluntary mechanisms at the hand of states which may be used by them for vested interest of political parties in power
 - Key Provisions:
 - Focuses on power with respect to preparation of development plans for economic and social development of rural areas
 - Implementation of schemes
 - States may give such powers as may be necessary to enable the PRIs to function as institutions of self government
- 2nd ARC Report - Local self-government
 - PRIs are over structured but under powered institutions
 - Strengths:
 - Three tier panchayats in most parts of India
 - Gram Sabha, Gram Panchayat and Nyaya Panchayat
 - Representation of dalits and women through reservations

- Creation of State Finance Commission for planning of distribution of funds between the state and the PRIs and also creation of development plans
- Creation of State Election Commissions to ensure free elections
- Creation of District Planning Committee
- 11th schedule earmarking 29 main functions of the Panchayats
- Weaknesses:
 - Left devolution of power like reservation for the chairmanship position etc. in the hands of the state government, which may create confusion and action influenced by vested interests
 - Overall performance of states has been extremely uneven
 - Greater momentum in role of PRIs due to involvement of the Ministry of PR and Finance and Planning Commissions, not the state governments.
 - States reluctant in transferring funds and resources to these institutions
 - Reservation for OBC members left to the state
 - Causes for dissolution of PRIs left on state governments to decide
 - No disqualification provisions for members with criminal backgrounds
- Financial Problems:
 - Only 7% of the total funds with PRIs are self-determined through their own resources. 93% are left to centre and state.
 - This limits the autonomy of the PRIs and makes them ineffective in taking quick welfare decisions for development of their regions
 - Funds may be allocated impartially by the state governments for their own political purposes
- Statutory Power to Gram Sabhas
 - The Panchayati Extension to Scheduled Areas (PESA) Act of 1996 provides statutory power to the Gram Sabhas (of nine 5th schedule states, AP, Jharkhand, Chattisgarh, MP, HP, Gujarat, Maharashtra, Odisha, Rajasthan) with the following major provisions:
 - Power to preserve tradition, culture and resources and
 - Power to dispute resolution according to customary practices of Tribals
 - Specifically:
 - GS can approve plans of village panchayats, identify beneficiaries and issue certificate for utilization of funds
 - Gram Sabha consultation mandatory with respect to land acquisition, resettlement and rehabilitation
 - Power to prevent land alienation and restore alienated land
 - Power to restrict and ban sale of liquor
 - Power to manage village markets and control money lending
 - Ownership of forest products and consultation mandatory for giving certificates for mining etc.

Separation of powers between various organs dispute redressal mechanisms and institutions.

- Concepts:
 - Montesquieu, Locke, the US separation of powers, independence of judiciary
 - Classic Separation of Powers (Absolute), Modern Approach (Checks and balances), Marxist-Meninist Approach (State control over every organ)

Comparison with other constitutions in world

Vision Notes

Structure, organization and functioning of the Executive and the Judiciary Ministries and Departments of the Government; pressure groups and formal/informal associations and their role in the Polity.

From notes in Polity

Promulgation of Ordinances

Recently, the President repromulgated the [Securities Laws \(Amendment\) Ordinance, 2014](#), which expands the Securities and Exchange Board Act's (SEBI) powers related to search and seizure and permits SEBI to enter into consent settlements. The President also promulgated the [Scheduled Castes and the Scheduled Tribes \(Prevention of Atrocities\) Amendment Ordinance, 2014](#), which establishes special courts for the trial of offences against members of Scheduled Castes and Scheduled Tribes. With the promulgation of these two Ordinances, a total of 25 Ordinances have been promulgated during the term of the 15th Lok Sabha so far. Ordinances are temporary laws which can be issued by the President when Parliament is not in session. Ordinances are issued by the President based on the advice of the Union Cabinet. The purpose of Ordinances is to allow governments to take immediate legislative action if circumstances make it necessary to do so at a time when Parliament is not in session. Often though Ordinances are used by governments to pass legislation which is currently pending in Parliament, as was the case with the Food Security Ordinance last year. Governments also take the Ordinance route to address matters of public concern as was the case with the Criminal Law (Amendment) Ordinance, 2013, which was issued in response to the protests surrounding the Delhi gang rape incident.

- **Ordinance Making Power of the President**
 - The President has been empowered to promulgate Ordinances based on the advice of the central government under Article 123 of the Constitution. This legislative power is available to the President only when either of the two Houses of Parliament is not in session to enact laws. Additionally, the President cannot promulgate an Ordinance unless he 'is satisfied' that there are circumstances that require taking 'immediate action'.
 - Ordinances must be approved by Parliament within six weeks of reassembling or they shall cease to operate. They also cease to operate in case resolutions disapproving the Ordinance are passed by both Houses
- **History of Ordinances**
 - Ordinances were incorporated into the Constitution from Section 42 and 43 of the Government of India Act, 1935, which authorised the then Governor General to promulgate Ordinances 'if circumstances exist which render it

necessary for him to take immediate action'. Interestingly, most democracies including Britain, the United States of America, Australia and Canada do not have provisions similar to that of Ordinances in the Indian Constitution. The reason for an absence of such a provision is because legislatures in these countries meet year long.

- Ordinances became part of the Indian Constitution after much debate and discussion. Some Members of the Constituent Assembly emphasised that the Ordinance making power of the President was extraordinary and issuing of Ordinances could be interpreted as against constitutional morality. Some Members felt that Ordinances were a hindrance to personal freedom and a relic of foreign rule. Others argued that Ordinances should be left as a provision to be used only in the case of emergencies, for example, in the breakdown of State machinery. As a safeguard, Members argued that the provision that a session of Parliament must be held within 6 months of passing an Ordinance be added.
- Repromulgation of Ordinances
 - Ordinances are only temporary laws as they must be approved by Parliament within six weeks of reassembling or they shall cease to operate. However, governments have promulgated some ordinances multiple times. For example, **The Securities Laws (Amendment) Ordinance, 2014 was recently repromulgated for the third time during the term of the 15th Lok Sabha.** Repromulgation of Ordinances raises questions about the legislative authority of the Parliament as the highest law making body.
 - In the **1986 Supreme Court judgment of D.C. Wadhwa vs. State of Bihar, where the court was** examining a case where a state government (under the authority of the Governor) continued to re-promulgate Ordinances, the Constitution Bench headed by Chief Justice P.N. Bhagwati observed:
 - “The power to promulgate an Ordinance is essentially a power to be used to meet an extraordinary situation and it cannot be allowed to be “perverted to serve political ends”. It is contrary to all democratic norms that the Executive should have the power to make a law, but in order to meet an emergent situation, this power is conferred on the Governor and an Ordinance issued by the Governor in exercise of this power must, therefore, of necessity be limited in point of time.”

Decline of the Parliament

Reasons:

1. Degraded role of the opposition
2. Coalition politics has worked for bargaining purposes not for constructive purposes. Use of no-confidence motion by coalitions as a threat to the government, instead of a constructive tool.
3. Criminalization of politics
4. Degradation in the working of the committees
5. Role of Media

Judicial Activism

Shatrughan Chauhan Case: Commutation of Sentence by Supreme court - SC infringing its constitutional limitations and division of powers between organs of the government.

- Concept of PIL came with the Bandhua Mukhti Morcha v. Union of India and the locus stand requirement was diluted.

Freedom of Speech

What the Damodaran panel recommended

1. Transparent mechanism to appoint a watchdog (SEBI, IRDA, CCI)
2. Regulators to be made independent of government departments for financial support
3. Regulators to undertake self-evaluation once in three years and put report in public domain
4. Draft regulations to go through a two-stage consultation process: by going back to stakeholder with revised draft

DRDA and Ramachandaran Committee:

The government on Tuesday announced that it was disbanding the three-decade-old District Rural Development Agency, which so far has been overseeing the implementation of the Rural Development Ministry's programmes. The agency will now work under zila parishads, elected local bodies at the district level.

DRDAs have been principal organs at the district level to oversee the implementation of the ministry's anti-poverty programmes. They were set up as independent societies in 1980.

"There is the overwhelming view is that the DRDA should now function as professional units, professional cells, professional divisions of the zila parishads and not have a separate independent, autonomous existence through the Society's Act," Rural Development minister Jairam Ramesh said in his concluding remarks at the National Conference of Project Directors of DRDAs on Tuesday. "As of April 1, 2014, the DRDAs as constituted today under the Society's Act will not exist," he added, saying there would be state rural development agencies to deal with issues like staffing and functioning of the district rural development planning units.

The decision to disband the DRDA was taken on the recommendation of a committee constituted under the chairmanship of V Ramchandran, Chairmen-Emeritus, Centre for Management Development, Thiruvananthapuram, with the objective of strengthening and professionalising DRDA. The panel had submitted its report in March 2012.

Ramesh said that a new nomenclature for the revamped DRDAs has not been decided yet. He added that all states were on board and were consulted on the issue of disbanding of the DRDA and their merger with zila parishads.

Parliament and State Assemblies' Performance:

Legislative performance of State Assemblies

- As the dust settles around the 16th Lok Sabha, attention must now shift to the state assemblies, some of which have been newly constituted like Rajasthan, Chhattisgarh, Madhya Pradesh, Odisha, Andhra Pradesh and the few that will go into elections in the next few months like Maharashtra and Haryana.
- There are 30 state legislative assemblies not including the newly formed state of Seemandhara.
- In our federal structure, laws framed by the state assemblies are no less important and deserve the same diligence and debate as laws made by Parliament.
- A brief look in to the performance of some of our state assemblies reveals that these institutions which form the cornerstones of our democracy need some serious attention.
- **State Assemblies: business hours**
 - The current Haryana Legislative Assembly that comes to the end of its five year term in October this year has held **10 sessions since 2009 till March 2014, meeting for a total of 54 days – an average of 11 days per year.**
 - In comparison, the Lok Sabha sat for an average of 69 days each year from 2009 to 2014. Among state assemblies, **only Nagaland and Arunachal Pradesh sat for fewer days than Haryana.** In the same period the Kerala Assembly sat for an average of 50 days per year, while Tamil Nadu Assembly sat for 44 days.
 - In its previous term, the **Gujarat Legislative Assembly sat for a total of 157 days – an average of 31 days each year.** Similarly, the current Goa Legislative Assembly sat for 24 days in 2012 and for 39 days in 2013. Over

the last 10 years, the Assembly sat for an average of 26 days a year. It recorded the highest number of sitting days in the last 10 years, at 39 days.

- **Law making in the states**
 - *In most states, Bills are passed with little or no discussion. Most Bills are introduced and passed on the last day of each session, which gives Members hardly any opportunity to examine or discuss legislation in detail. Unlike Parliament, where most Bills are referred to a department related standing committee which studies the Bill in greater detail, in most states such committees are non-existent.*
 - **The exceptions are Kerala which has constituted subject committees for this purpose and states like Goa and Himachal Pradesh where Select Committees are constituted for important Bills.**
 - The current Haryana Assembly has passed 129 Bills, all of which were passed on the same day as they were introduced. **Upto 23 Bills were passed on a single day, which left hardly any time for substantial discussion.**
 - In the twelfth Gujarat Assembly, over 90% of all Bills were passed on the same day as they were introduced. In the Budget Session of 2011, 31 Bills were passed of which 21 were introduced and passed within three sitting days.
 - Of the 40 Bills passed by the Goa Assembly till May 2013, three Bills were referred to Select Committees. Excluding Appropriation Bills, the Assembly passed 32 Bills, which were taken up together for discussion and passing in five days. Almost all Bills were passed within three days of introduction. On average, each Bill was discussed for four minutes.
 - In 2012, the West Bengal Legislative Assembly passed a total of 39 Bills, including Appropriation Bills. Most Bills were passed on the same day they were introduced in the Assembly. In 2011, a total of 23 Bills were passed. On average, five Members participated in the discussions on each Bill. In 2012, the Delhi Legislative Assembly passed 11 Bills. Only one of the 11 Bills was discussed for more than 10 minutes. The performance of the Chhattisgarh and Bihar Vidhan Sabhas follow the same pattern.
 - Over the last few years, some assemblies such as Andhra Pradesh, Rajasthan and Haryana have taken some positive steps which include setting up subject committees and permitting live telecast of Assembly proceedings.
 - Every legislator- in Parliament and the states – is accountable to his voter.
 - Weak democratic institutions deprive legislators of their right to oversee the government as enshrined in the Constitution.
- **Inadequate number of sitting days, lack of discussion on Bills, and passing of the Budget and demands for grants without discussion are symptoms of institutional ennui and do not do justice to the enormous import of these legislative bodies.**
 - Serious thought and public debate is needed to reinvigorate these ‘temples of democracy’ and provide elected representatives with the opportunity to exercise their right to legislative scrutiny, hold government to account, and represent their constituents

Delegated Legislation

- Article 50 makes provision for separating the Judiciary from the Executive

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