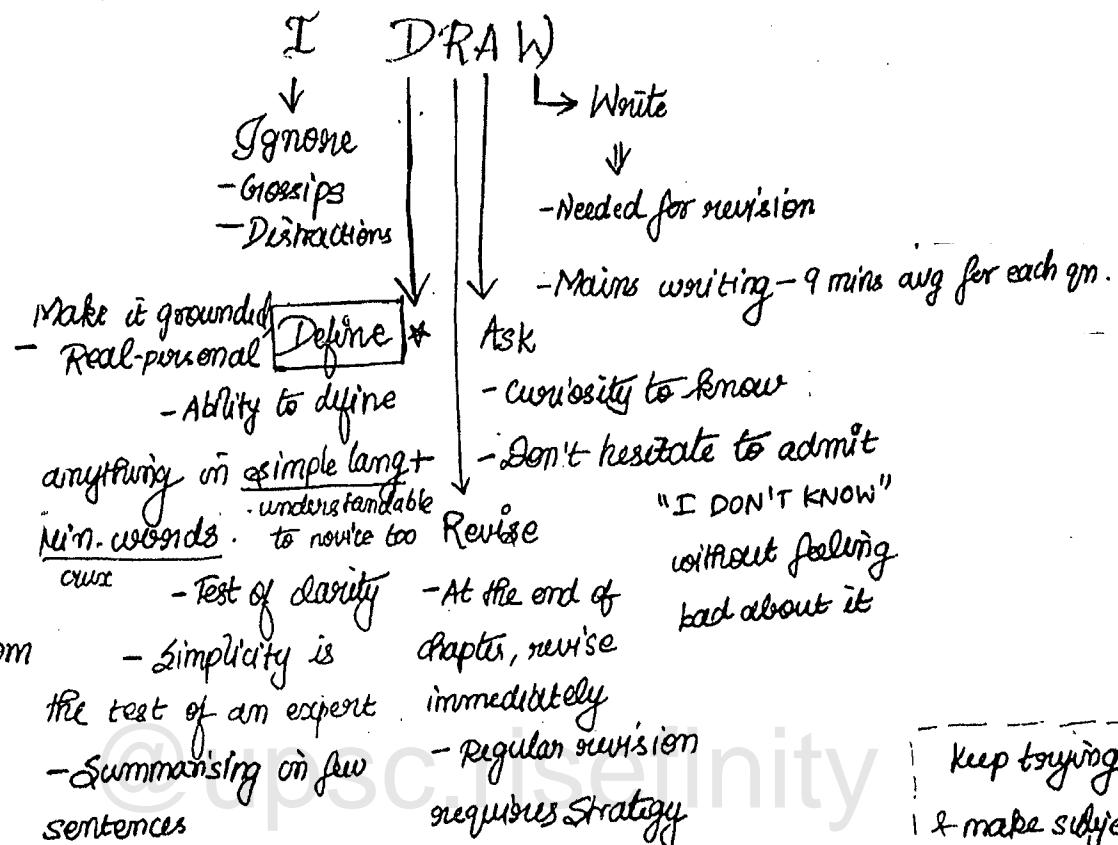


# POLITY



No 5th thing until Mastering these 4 : [2 MONTHS]

[to make this habit]

1. NEWSPAPER - start reading it

keep trying  
& make subject  
"like you"

2. ATTEND ALL CLASSES

Current Affairs  
as the deadliest  
in PSC exam

3. REVISE THE CLASS SAME DAY

TEST OF  
Discipline  
Commitment

4. READ PAST LECTURE BEFORE DAY OF NEXT CLASS

& LITTLE EXTRA ON TOMMOROW'S LECTURE

# What is Polity?

System of Governance  
of a country. providing G & S  
to people. welfare

NEVER MUG UP

- UNDERSTAND

- TRY TO DEFINE SIMPLER WAY

## BOOKS:

1. NCERTs - XI<sup>th</sup>, XII<sup>th</sup>



If this is difficult - go to VII → VI

2. Bare Act of Constitution of India - Not a text book but Reference.

3. Yellow Book by Institute - cover to cover  
any one

NCNREGA

4. Laxmikanth

LAW - Any codified Norm should / shouldn't be done in  
ways of making sure norm is followed  
a certain way.

Civil Servants main job is to

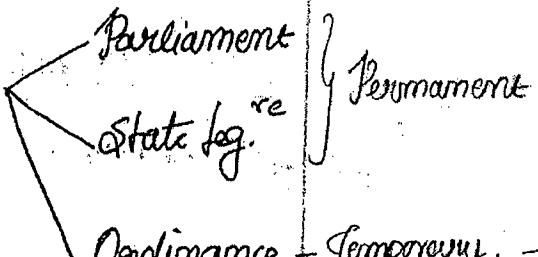
Implementing the law. So the biggest

crime UPSC aspirant can do is Violating

the law also - " FOLLOW THE LAW" - (or) "GET IT CHANGED"

1. Constitution

2. Statutes



3 Takam - 3 Judgements

Ordinance - Temporary. - Takkattu

4. Rules/Orders - Made by Executive - NITI Ayog

5. Bye laws - made by local bodies.

Next: Customs - Unwritten laws.

① + ② + ③ + ④ + ⑤  $\Rightarrow$  LAW OF THE LAND

Go see the index of Const.<sup>n</sup>  $\Rightarrow$  Parts - chapter - Article.

Next class: Part 5  $\Rightarrow$  Ch=1 - Read it

## CONSTITUTION OF INDIA

### PREAMBLE

PART I : Union & its Territory

PART II : Citizenship

PART III : FRs

PART IV : DPSP

PART V : FDs

PART VI : UNION

PART VII : STATES

Try understanding the logic behind the order.  
Don't just memorise.

Sun - Hi - Pari

Mon - Po - Satvik

Tues - S.I.H.S

Wed - Ethi - Namu

Thu - S&T - Bindu

Fri - Eco - Rayam

Sat - IR - Global

Sun - S&T - Vinay

## UNION GOVERNMENT

Advisor to Presz : COM Red by PM

In a broad sense Government is:

- ✓ Executive
- ✓ Legislature
- ✓ Judiciary

Ist Law officer : AGI  
Lawyer of Govt

A 52 : There shall be a President of India

In a narrow sense Government is:

- ▷ Executive

↳ simplest article ever

### PART - V

#### Chaptus Topic

1 → Executive (Presz, V.P.)

A 53 : Executive power of Union

Head of union Executive - Presz

(He/she has all powers of those below him + extra if not)

2 → (legislature) Parliament

↳ In reality, we know exec. is PM.

But why? Have this in mind.

3 → legislative power of Presz.

Powers of the Presz :

4 → Union Judiciary

Read by self.

### CHAPTER 1 - EXECUTIVE

In India,

50-60 L Civil Servants = UNION

1.5 Crore Civil Servants = TOTAL

Head of Union Executive : PRESIDENT

2nd in Command } : VICE -

Ex-officio chairman of } : PRESIDENT  
Council of states }

- i) Executive powers
- ii) Legislative powers
- iii) Judicial powers
- iv) Financial powers
- v) Emergency powers
- vi) Diplomatic powers
- vii) Military powers.

Const.  
doesn't  
say exact  
terms.

Answer what is asked!

- Hit the Bull's Eye

Only if you don't know what is asked, then write what you know! - No choice.

⇒ Bill ⇒ Act

↓  
statute

made by legislature.

⇒ Money bill - only on recommendation of Presz.

Annual Financial Statement

↳ Responsibility of Presz.

- ⇒
- i) Consolidated Fund of India
- ii) Public account of India
- iii) Contingency Fund of India

With Presz.

⇒ Sends & receives diplomats.

All international agreements in the name of Presz.

⇒ Presz. appoints PM(CM); Judges of SC, HC.

⇒ Money petitions

⇒ Supreme commander of armed forces - Only Presz can declare war / peace.

None of these powers are exercised by Presz on his own - but only on the advice of CM.

### ELECTION OF THE PRESIDENT

A 54, 55 ⇒ Method of Election

A 58 ⇒ Qualifications

A 62 ⇒ Timing

\* Presz & V.P Act of 1952 } Statutory provision

Constitutional provision

Qualifications:

- ✓ citizen
- ✓ 35 yrs of age
- ✓ Qualify for House of people - After
- ✓ Not hold any office of profit.

The most elusive concept - Complex - const. doesn't explain this (or anything for that matter)

## 2 SC judgements:

Tanya Bachchan

Shibul Soren

Most of the laws in the country has been made (by Govt. mostly), now we change in case of necessity (though not daily) - so predominantly in parliament (legislature) - they discuss  $\Rightarrow$  Question on Government's performance)  $\Rightarrow$  "the EXISTENCE

OF LEGISLATURE IS TO CONTROL THE

EXECUTIVE"  $\Rightarrow$  EXECUTIVE IS BOUND  
BY THE LAW.

Right	Wrong
1	2
1	3
1	4
1	5
2	5
3	6
3	7
4	7

$\hookrightarrow$  Member of legislature shall not hold office of profit  $\Rightarrow$  To ensure separation of power - so that they control Executive properly.

$\hookrightarrow$  Executive post is office of [Profit]  $\square$  ?

Exemptions to office of profit:

MPs can be Ministers.

4 exemptions to office of prez:

- i) Pres. of India.
- ii) V.P. of India.
- iii) Governor of India.
- (Any) iv) Minister.

① + ②  $\rightarrow$  Electoral College

of president [ECP]

$\hookrightarrow$  Elected by secret ballot.

$\downarrow$   
To ensure free & fair election

### Method of Election

Pres is elected by the people of India, by an indirect method.

1. Elected MPs

2. Elected MLAs, <sup>not</sup> MLCs

### If states have LC :

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.
- 7.

$\hookrightarrow$  System of Proportional Representation by the means of single transferable vote.

Proportional representation:

Same for Pres, V.P., MLC, RS.

$\Downarrow$   
Basic concept is same.

2 components/meanings:

$$e_{MLAs} = [J. Parliament - 29 MPs] = (29S + 2UTs)$$

[How is Pres a part of Parliament?]

$\hookrightarrow$  They both will be treated same as they are similar representatives — fundamentality of this concept.

A 12 - what is HoS?

$\hookrightarrow$  29 states + 2 UTs



Delhi, Puducherry

70<sup>th</sup> CAA other UTs

doesn't have LAs.

## Dual role of President

- ▷ Head of Union [eMPs participate]
- ▷ Head of State [eMLAs of 29st + 2UTs  
↓  
union of states      VOTE ]

⇒ value of votes of MLAs is in proportion to the population they represent.

$$\frac{1000 \text{ ppl}}{10 \text{ constituencies}} ; \frac{3000 \text{ ppl}}{15 \text{ const. reps.}}$$

$$\downarrow \qquad \qquad \downarrow$$

1 MLA here reps.    1 MLA here  
100 ppl.                300 ppl.

It should be  $\boxed{1 : 2}$  ↗

2] Value of vote of 1 MLA

$$= \frac{\text{Population}}{\text{No. of e-MLAs}} \times \frac{1}{1000}$$

We must know about our states: MLAs, MLCS, Districts, problems, solutions → Exam is about country but INTERVIEW is about specific STATE - our general awareness & curiosity

Why 1971 census?

In 1974, disputes started

↳ Good administration punished  
Bad administration rewarded  
[population growth rate]

↑ in North;  
↓ in South ]

↳ So, they fixed it for a long time ⇒ 1971  $\xrightarrow[\text{then only}]{}$  2026 census completed.

TOTAL VALUE OF VOTES (eMLAs)

TOTAL VALUE OF VOTES (eMPs)

Assumption:

[All eMPs - their vote has same value - irrespective of state]

$$\text{Value of vote of 1 MP} = \frac{\text{Total value of votes (eMLAs)}}{\text{No. of e-MPs}}$$

Don't sum after questions.

But understand concepts.



## In INDIA (since 1952)

2nd round used only once  $\Rightarrow$  1969: V.V. Giri

3rd round used never

No prez. election needed  $\Rightarrow$  1977: N. SANDEEP REDDY (None opposed him)

## Time of Conducting Election (A-62)

i) Pres. of India completes the term:

Election shall be held before the end of term

ii) Pres. of India doesn't complete the term:

- ✗ Dead
- ✗ Resigned
- ✗ Removed

→ VACANCY IN OFFICE

Here, elections shall be held after the Vacancy

No Deadline for Election: VICE-PRES OF INDIA.

[Why? Nothing much suffers on his/her absence]

$\rightarrow$  When there is vacancy in office of Pres,  
VP is the backup post.

1969: ZAKIR HUSSAIN (VP-Giri) } only & Pres. died  
FAKRUDDIN AZI AHMED } in office.

$\rightarrow$  VP just Discharges the duties of Pres in absence  
+ Discharges the duties of RS.

## EX-OFFICIO CHAIRPERSON OF RS

'By the virtue of office'

$\rightarrow$  salary only for these functions & not exclusively just for VP.

## UPSC CSE

Application of Mind.

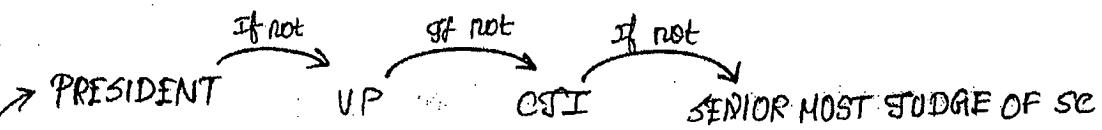
Mind of the system -

$\rightarrow$  Be very conscious  
abt How u r reading

$\rightarrow$  Mind knows the  
reasons & not just  
answers but why is  
it so?

It's OK not to have  
answers; but it's  
not OK to not have  
questions

- Watch the Guard of  
Honour in Rash. Bavan.



1969: Z. HUSSAIN died ; VP V.V. Giri resigned - In absence of head + failure  
 President Discharge of Duties Act, 1969 of backup - created more  
 ← backups.

One more P&Q Act reg. VP & P election:

President & VP Election Act, 1952

Q) If a petition is filed to challenge the election of Perez, who can resolve?

\* Supreme Court of India

Q) On which grounds can the election be challenged?

Ans for this is not written anywhere. But there is ONE GROUND based on which it can't be challenged.

\* Existence of Vacancy in Electoral college for any reason whatsoever.

Q) What happens to the work done if the election is struck down by SC?

\* They do not become invalid only by virtue of this reason.

Work done by Perez b4 SC invalidates the election.

✓ The invalidity is only prospective & not retrospective.

Q) Who can challenge / file a petition to challenge the election?

\* Only the interested parties in the election: VOTERS + CANDIDATES

Can a voter from Delhi constituency challenge PM Modi's election?

NO. He contested from Varanasi.

Can a voter from Delhi challenge Perez's election? NO.

⇒ Perez of. India's election can be challenged only by other candidates and members of Electoral college.

## Impeachment of Perez of India [A-61]

- Read on your own.
- Never has happened on India; so not contested in sc; Hence no explanations here. Just need to know what is written.
  - It is actually not REMOVAL.

**Common Sense:** A person in office can be dismissed/removed only by:

- ✓ the appointing authority.
- ✓ the authority greater/higher than appointing authority.
- ✓ the app. authority is also higher than the person appointed.

→ But, since Perez is the highest Authority, none is above him/her, he/she can't be removed by anyone - but only can be IMPEACHMENT

**IMPEACHMENT:** It is a ~~subordinate~~ process, which when completed puts the person out of office automatically.

→ It is inaccurate to call any other's office as IMPEACHED other than the highest authority (here Perez).

CJI can be removed by the appointing authority Perez; Hence CJI is not impeached as there is someone above/higher than him.

✓ It can be said CJI is removed following impeachment process  
✗ But not: CJI is impeached.

On what ground can Perez be Impeached?

\* VIOLATION of Constitution.

→ But what is considered Violation is not clearly defined. It is subjective & open for interpretation.

- SC only can deal with this interpretation (logically) ↓  
Minimum/  
Not less than/  
At least  
 $\frac{2}{3}$ rd of  
total  
membership  
of house
- Bill of impeachment is the power of the Parliament. And  
Parliament decides always by voting — It is a political  
exercise & not much of facts for this bill just factors.
- "Impeachment of Pres. of India is a Political determination  
of Parliament of India" —

QN 1 for HW: Impeachment of Pres. of India is a Political  
Determination of Parliament of India. Elucidate  
2 limitations — 250 words ; 20 minutes

### VETO Power of Pres. of India

- H.O.S always has an important role in Legislature/Lawmaking.  
through his/her Assent as the final step.

#### Veto power:

- ✓ You create a hurdle which blocks a bill.
- ✓ You create a hurdle & the bill with extra effort crosses it.

#### VETO:

- It refers to power of chief Executive to prevent permanently or temporarily the enactment of a legislation.

- When a bill is sent to Pres. of India for assent, s/he has the following 3 choices:
  - ① President declares ASSENT to Bill. It becomes act. On advice VETO - own
  - ② Pres. declares she WITHHOLDS ASSENT to Bill. Bill comes to an end.  
↳ ABSOLUTE VETO — Absolute killing of Bill. — On advice
  - ③ Pres. returns the bill for RECONSIDERATION by Parliament. If parl. passes the bill again with/without change, Pres. must pass it.  
↳ SUSPENSIVE VETO — On own — Discretion.

## Types of Bills

I. Based on subject-matter of Bill

- ① Ordinary bill
- ② Money bill
- ③ Financial bill
- ④ Constitutional Amendment bill



Money Bill: the bill concerning only with Money.

Financial Bill: the bill concerning not only with Money but also non-money matters in addition.

Constitutional Amendment Bill: A-368 A Bill which amends the provisions of Constitution as per the PROCEDURES OF A-368.

[Note: Even ordinary, money & financial Bill can amend constitution's provisions. So in this bill, the procedure is very weird.]

Ordinary Bill: It is defined by what it is not. (i.e) Any Bill other than Money, Financial, Const. Amendment Bill.

## President & Money Bills

✗ CA Bill → Pres. has no VETO power. 24<sup>th</sup> CAA

✗ Money Bill → Pres. can't DELAY - Bcos a huge amount is involved.

✓ Ordinary Bill → All vetoes apply here

✓ Financial Bill → All vetoes apply here.

## II. On basis of who introduces the Bill:

- ① Govt. Bill - introduced by Minister
- ② Private member bill - introduced by any other members of house who are not part of Govt.

[How: Only few instances of VETO in India - what are they?]

Money Bill:

Does Pozez has Absolute Veto over MB? YES.

But, Generally Pozez of India gives assent to MB.

MBs are introduced on recommendation of Pozez by Ministers.

3 Qns on VETO

- ① What does it do?
- ② In advice / his own?
- ③ Which bill if applies to?

Indian Postal (Amendment Bill) - Pocket Veto.

	<b>QUESTION 1</b> What does it do? on advice of council? <b>QUESTION 2</b>	<b>QUESTION 3</b> which bills? Applies to	<b>EXAMPLE</b>
<b>Veto-1</b> ASSENT	It becomes ACT On Advice	All Bills [ordinary, Finan, Money & CA]	1954 - <u>Rej. President - PEPSU app</u> 1991 - <u>R. Venkateswaran -</u> Salary, allow. & pension of MPs (amend) Bill.
<b>veto-2</b> ABSOLUTE	It kills the Bill On Advice	All Bills except CA Bills ✓ Ord & Fin ✓ Money Bills	In 2006 - <u>Dr. KARAN -</u> Office of people Bill
<b>veto-3</b> SUSPEN SIVE	If passed and fine by parl, w or w/o changes, Pres is bound to give assent. It becomes ACT	On Own	(1932-87) - <u>ZILL SINGH -</u> Ordinary Bills ✓ Financial Bills X Money Bills X CA Bills (amendt) Bill from 1986 - 89 H'ill Venkateswaran sent it back & govt dropped it
<b>Veto 4</b> POCKET	Bill remains in pending	On Own	

Qn: Discuss the Constitutional position of Pres. of India.

A-53 : Executive power of union is vested on POI & he shall exercise his power directly or indirectly through his subordinates. so write Article. I

But there is a dispute whether POI can exercise directly or CoM. when dispute comes, the third party comes in - SC - Interpretation of the Constitution.

so mention the SC Judgement II

Farm Jawaya Vs S.O. Punjab, 1953

Shamsher Singh Vs S.O. Punjab, 1974

Indian constitution - Parliamentary system -  
Fundamental <sup>sidhanta</sup> principles

: must follow even if not written.

3 Fundamental principles of Parliamentary system [General-Global]

- i) Head of State is a nominal Head Vs Real Head
- ii) Real Executive powers are with CoM Vs CoM is not responsible headed by the PM; CoM <sup>is</sup> COLLECTIVELY to the legislature RESPONSIBLE to the legislature
- iii) Members of CoM are drawn from the Vs CoM are not drawn from LEGISLATURE

#### ANSWER WRITING

- ✓ Read the qn again clearly & slowly.
- ✓ Focus on thought process.

Anything taught in class will not be asked DIRECTLY.

But, need APPLICATION of mind.

Prepare: Const. position of I.G. of Delhi.

But, Constitution (A-53) says Perez can also act directly. Yes - True. But this is not the only article on Perez. so read A-53 with A-74.

A-74: CoM to advise POI, shall act on advice of CoM\*

\* Added by 4<sup>th</sup> CAA in 1976.

(But even before, POI was acting on advice of COM only as  
POI Fmn. principles, <sup>& sc.judg;</sup> in 1976 it was just formally written.)

provided that POI - reconsiduation - at after recon.<sup>\*</sup>  
once

\* Inserted by 44<sup>th</sup> CAA in 1978

(this is not suspensive veto - there bill is returned for revision.

to parliament - here advice is sent for review - there

[the bill has to be given ascent - here prez. shall Act on advice]

SC said:

2 Heads in India: Head of state → POI Vs Pres. of  
Head of Government → PM US.

→ Pres. can't exercise his powers w/o the advice of con

or even against the advice of CoH.

→ prez. can't dismiss the Com till they have Majority

$\rightarrow$  Fig. 18 bound by advice till CON exists.

For PDI: There will always be a CON (there will never be a situation where CON won't exist) - Care taker CON when LS is dissolved.  
U.N. Rao vs Indira Gandhi, 1971

Note: But for Governor, there may not be a COM always.

Any Qn. on Constitution - write opinion of - Dr. B.R. AMBEDKAR

Even when we don't know exactly what he said, write something general that it can't be wrong.

Even, Dr. Ambedkar, in various Constitutional Assembly debates, has clarified that POI is a Nominal head.

ANSWER WRITING: Develop the WAY OF EXPRESSION. Such a person can write better answer than the person who knew the exact content. That is why 1st ATTEMPT is the best - Adventurous answer writing - creating answers based on Logical thought process with just positive content.

In UK: CROWN is the HOS. He/she REIGNS but doesn't rule

In INDIA: POI is the HOS. He/she doesn't RULE but only a SYMBOL of the nation through whom Major decisions of Govt. are known to public.

"The office of POI is more or less a CEREMONIAL office"

- B.R. AMBEDKAR ON POI

What is Ceremonial office? It indicates that

Respect - All for Drama something is there which makes it

But not Real decision making. not completely ceremonial.

Conclusion:

In a nut shell, we can conclude that..... - Below average. Write  
- own opinion as last resort.

Theory is not complete on itself. Would be nice to bring a Reality element to this picture - in just 2-3 lines.

Practically, CON's words to Pres. are decisions & not actually advice. It is actually the Pres. who is advising the CON to reconsider/something.

Read:

Kalmar-suspensive  
veto-

Logically also, a neutral person's advice is more appropriate than a biased person. PM + political

H.W. Qn 2: Discuss the Constitutional position of POI.

Word limit: 250 words.

**Conclusion:** The constn. of India has tasked the CON in the role of advisor to the POI. However, in actual practice it is the President who acts as an advisor to the CON due to their huge vast experience & apolitical nature.

Other ways to put this qn:

- Is POI - Figure head or Constitutional Head
- Ceremonial head
- Nominal head
- De jure head or De facto head
- Rubber stamp
- Puppet

## Figure Head:

Figure head is a person who occupies a:

- Ceremonial office; office of respect; office of dignity  
But not Authoritative.

Ex: CROWN OF UK : Now, a Queen.

He/she will act only on advice of COM & in no situation can they act on own w/o advice/against advice of COM.

## Constitutional Head:

His/her office is largely ceremonial (99.9%), but sometimes he/she may have authority /act out of discretion in extraordinary situations

Ex: President of INDIA.

Discretion: When POI acts w/o advice or against the advice of COM.  
POI is a Constitutional Head who has certain discretionary powers under extraordinary circumstances - Alternate conclusion

## DISCRETIONARY POWERS OF PRESIDENT OF INDIA

There are many. Some may be written, some may be not.

Even the existing powers in Constitution are not mentioned as DISCRETION at any place (i.e) only <sup>constitutional</sup> <sup>Explicit</sup> <sup>Intentional</sup> SITUATIONAL/IMPLICIT/INCIDENTAL  
Note a: But Government has mention of DISCRETION in Constitution.

It is not written anywhere, but understood.

i) Suspensive veto

ii) Pocket Veto

iii) To send advice back for reconsideration once.

Practically when it happened?

2013: During the time of August-September. A legendary judgement by SC.

→ 8(4) of RPA, 1951 was made unconstitutional, invalid.

Syllabus: Salient features of RPA - GS II (only ask in GS II)

→ As per 8(4) - 90 days time for disqualification of MP  
in case of conviction by court - this case struck it  
down - the moment MP is convicted he/she is disqualified  
- then he can appeal in higher court but not as MP  
anymore.

→ But during LALU PRASAD case, to help him, UPA made an  
ORDINANCE to overrule SC's judgement.

↳ Privileges of MP will be lost in case of conviction &  
disqualify only after 90 days.

↳ Then POT was Dr. Pramod Mukherjee. He was a  
legendary Poet (Neutral inspite of being in pol. sphere)

He didn't send it back as it would be an insult.  
Instead he called the Minister who proposed it &  
asked why ordinance, which is only for urgent matters,  
is brought up now & y not wait for session?

This created public discussion & debate & pressure built on.

Pol. parties are very much afraid of Public image disruption  
[only major weapon to put pressure on them except vote].

RAHUL GANDHI came into a press conference and tore the ordinance of his own party.

So, don't underestimate this power of Pxz.

→ iii) If the reference by POI is supported by legal & ethical reasons, then the CoN may not be able to reject the reference off-handedly. The CoN will be forced to apply its mind.

iv) A-78: It is the constitutional duty of PN to keep POI informed about the affairs of administration.

(consequently, it is the right of the Pxz. to be informed).

This is not written as discretionary power but it is understood as discretionary power.

v) A-85: 6 months - B/wn 2 sessions of parliament.

If CoN don't advise for initiation of session.

Under A-85, if CoN don't advise Pxz. Properly (i.e.-within 6 months) to summon a session of parl, then Pxz may act in discretion (this power is not directly discretionary but creates situation of discretion).

vi) Under convention est. on England, applicable in India, Pxz.

has the right to warn or encourage the CoN in the exercise of his/her Executive powers.

vii) what is the important fn. of POI?

To provide STABILITY of Govt. to India.

Practically, role of POI begins & even ends with formation of stable government.

Biggest decision of POI? who to call first.

Ex: KARNATAKA drama - Yedurappa called 1st?  
GOA drama before that

the person called 1st has an advantage.

As per convention, who is to be called 1st?

i) the largest pole-pole alliance

If no party or coalition of parties enjoy the majority of LS, then President has discretion to call/invite the leader of a party who in his/her opinion can form a stable govt.

viii) Pres. can't dissolve LS w/o advice of CON. However, this advice is binding only when council is enjoying majority in the house.

ix) During caretaker govt, it is not expected to take any major policy decisions but only those decisions that are necessary for day-day administration. In such cases, it is for the Pres. to decide which decisions are necessary.

[

Ex:

SHASHI THAROOR - Twitter.

- Travelling eco-class  
is like CATTLE CLASS -  
it was a joke but  
ppl took offence &  
agitations for his  
resignation happened.

Article on HINDU:

"India is losing its  
sense of humour"

We need to become a  
bettu society - Bring  
back sense of humour  
- Crack jokes on self -

2019

Lucky Balaji - as we  
can see the real dance  
of Democracy - 80%  
of polity coming alive  
on the country.

Ordinance; pardon; Emergency

→ All are advice only but exceptional discretionary powers.

## VICE PRESIDENT OF INDIA

✓ Either performs duties of Pres.

✓ on duty of chairman of RS.

Election:

By Proportional representation - single transferable vote -  
value of vote : 1 - by parliament

Removal:

By parliament

Resolution must be from RS as he is ex-officio chairperson there.

UNIQUE MAJORITY: <sup>In RS:</sup> EFFECTIVE MAJORITY - Majority of

[For: their membership. ( $> \frac{1}{2}$  of total membership)

Speaker

<sup>In L.S.:</sup>

- Vacancy)

Deputy Speaker

SIMPLE MAJORITY.

Chairperson-R.S

Dep. Chair-R.S]

Note: Effective Majority

} special features of VP.

Diff. majority in 2 houses

# COM (COUNCIL OF MINISTERS)

Today GS-I

Tony writing answers This is our Govt. in the most narrowest form.

Who appoints COM? Pres. of India

Discretion? On the advice of PM. No discretion

Who appoints PM? Pres. of India.

Discretion? Depends on majority.

If clear maj - No discretion

If not clear maj - May be some discretion.

COM is collectively Responsible to → Ppl-House of ppl [LS]

Individually responsible to → President

Answerable to →

Collectively Responsible? (CR)

Even if one acts or inacts all are together responsible

→ Action can be taken against them.

CR to ppl but as India is indirect Democracy they are

CR to House of people [LS]

Individually Responsible? (IR)

IR to President; Governor

But Pres. can do so only on advice of PM.

So, in a way COM is IR to PM - but this can be proclaimed only in mains.

Why Pres? Only who appoints can dismiss.

Narr. Ministers — 15% of Lok Sabha

↓  
≠  $81.75 \approx 81$  - Technically

$$\begin{array}{r} \frac{15}{100} \times 545 \\ = 81.75 \\ \hline \end{array}$$

But, ≠ 82 - as per SC judgement  
(rounded off to max. value)

$$\begin{array}{r} \frac{15}{100} \times 545 \\ = 81.75 \\ \hline \end{array}$$

### HIGHEST MINISTER

#### Cabinet Rank ministers

→ At present - 26 cabinet ministers [M.M. Singh - 55]

{ senior leaders  
important ministers  
→ Both are subjective terms

SHRITI PANI - CM  
GEN. V.K. SINGH - SEP Min  
→ don't qualify as senior leaders

→ Who decides? PM

→ So - PM's decision

→ They manage their ministries independently. - But - actually party leader.  
Finance min is boss of his/her ministry.

PM is not the boss of cabinet ministers - All are equal.

→ When several ministries are involved in a matter, only then PM & cabinet comes into picture.

On else, for day-to-day activities, only Cab. Min are boss - not PM.

Minister of State (MoS) IC → 11

Minister of State (MoS) → 40

MoS IC — work like cabinet min but w/o that rank.

MoS — work as Assistants for cabinet ministers

Cab. Min. will decide their functions / operations.

~~DEPUTY MINISTER~~ → Gone 4-5 decades ago.

They were like assistants but not associated with ministers  
Like. Finance. Free. (fea)

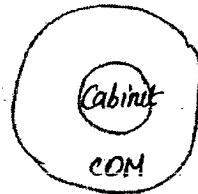
Parliamentary secretaries (PS)

They are NOT MINISTERS

Ex: AAP - & 1 NLAs as PS - whether office of profit? Debate on.  
will come in topic of LS and not here on COM.

COM

(PM → 1)  
Cabinet → 27 -  $\frac{1}{3}$ rd  
N.O.S (CIC) → 11  
M.O.S → 40  
Now → 78



A-74(1) - There shall be a COM

But, nowhere cabinet ministers written in constitution.

In 1950 - no words of cabinet in original constitution too.

A-352 - Relates with National emergency

- earlier it was 'COUNCIL'
- After emergency changed to 'CABINET'
- still for state executive 'COUNCIL'. But they too do have a cabinet.

Why do we have cabinet even when not mentioned in constitution?

- 1] Ease of conducting business of Govt.
- 2] Ease of Decision making.
  - Big enough to have diverse opinion;
  - small enough to have swift decisions.
- 3] It helps ensure secrecy of decisions & informations.
  - PM trusts their loyalty & capability of administration

✓ Highest decision making body in India.

✓ All Major decisions are taken by them.

▷ So, naturally, work load is high.

▷ Also, not all decisions require all of them.

How many ministries  $\approx$  50

Each ministry many departments  $\approx$  200

Cabinet Secretary

Joint Secretary

Secretary

Additional Secretary

1000s of Top jobs

All to be decided by cabinet?

- waste of time



▷ So we create smaller bodies for distribution of work.

Cabinet Committees

6      → Standing - Always continue, never ending

→ Ad-hoc - For specific objective, temporary

## Standing Committees:

6 in No.

### WEBSITE

Cabinet Secretary of India  
Spend time there.

1]

2]

3]

4]

5]

6]

Constitution recognises only CoN.

These are internal functioning of Government.

But has to be written somewhere?

### TRANSACTION OF BUSINESS RULES

POI can make rules for smooth transaction of Business.  
convenient

But practically CoN makes them

More practically CABINET makes them

A decision of cabinet COMMITTEE

is assumed as that of Cabinet → CoN → POI.

Practically, CABINET runs the show & CoN actually a myth.

New CABINET can change these rules, in name of POI.

## ROLE OF PM

Who creates CON? POI

Who gets it done? PM.

✓ So, PM is the PIVOT around which CON exists.

↳ PM present — CON exists

↳ PM absent — CON disappears.

→ SUN ← → PLANETS

→ PM is 'Ponimus Inter partes' — 1st among the Equals.

→ PM is 'Interstellar Luna Minoris' — Moon among the lesser stars.

↳ Not scientific but literary ☺

\* PM is the RESIDUAL LEGATEE of the Government

↳ All residuary powers & responsibilities are delegated to PM.

↳ All leftover works fall on his plate. He/she is responsible for own + colleague's + no one's work.

He needs to know everything going on in all ministries and can't say I don't know for any qn.

Ex: Reg. some decision of committee on Western Ghats

To help him in these, SECRETARIES TO PM ≈ almost 400 of them.

A secretary rely only on her knowledge, but

Ministers rely on 100s of secretaries so she becomes more knowledgeable + pulse of ppl, but only if she is interested.

⇒ PM is the FACE OF INDIAN GOVT in India & Globally.

He may not know but if something goes wrong, he is held responsible.

Even the GOVT is known by PM's Name - MODI Govt, SINGH Govt.

Word 'Government':

Constitution uses not this but an equivalent term 'State'

But, officially - Minority Govt, interim govt, etc.... -  
are not defined but generally used in practice.

### CARE TAKER GOVERNMENT

From time Govt falls till new Govt assumes office.

WHY GOVT. FALLS?

- i) When PM resigns. 
- ii) When PM dies 
- iii) When LS is dissolved → CM dissolved [LS-Nom;  
COM-Baby]

WHY CARE-TAKER GOVT?

① To fulfill own obligations under parliamentary system.

Bes, w/o COM, POI will not be able to take any decision.

② SC Judgement: Always a COM to aid & advise POI.

Case: U.N. RAO vs S. Gandhi, 1971

WHEN CARE-TAKER GOVT EXISTS?

During INTERREGNUM period - the intervening period  
btwn fall of one COM & rise of another COM.

1ST TIME IN INDIA:

Initially J. NEHRU was ruling for long. So no problem of this.  
when, in 1964 he died, 1st time CON dissolved.

Need to decide new leader & need time for that.

Till that decision is taken, POI decided to appoint a CARE-TAKER GOVT.  
who may be a care-taker PM? Common sense, senior most  
cabinet minister - GULZARI LAL NANDA - took office of oath.

Then SHASTRI was made PM & died later in TASHKENT.

Again POI → caretaker → GULZARI LAL NANDA, broke the convention

then I.GANDHI - PM - dead - 1984 - ZAIL SINGH directly

Then R.GANDHI - PM appointed R.GANDHI as PM,

↳ Died as a common man, not PM. Then he was elected as  
leader of party

Technically not, As not written anywhere.

But principally wrong - but it was obvious that R.G will become.

Then no PM died in office. In future if happens, senior most  
cabinet minister as care-taker PM as per convention.

what care-taker govt & POI can/can't do?

✓ Depends on situation.

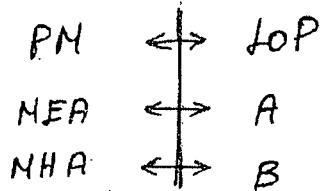
- A care-taker govt is not expected to take major policy  
decisions but only those req. for day-to-day functioning.  
However, it is not cast in a rigid mould but only a  
restricted mould. — ponder upon this

Only a convention, not written

## SHADOW CABINET

Not in India. But in UK, AUSTRALIA.

Opposition also starts to behave as if it is part of cabinet  
Nothing here is official. But, opposition internally  
has parallel / shadow persons dedicated for each &  
every post of cabinet.



Similarly in sports, MARKING a person → Nam to Nam... .

working like a team ⇒ Co-ordinated effort

shadow minister ← Better opposition ↘

In UK ⇒ shadow cabinet called:

'cabinet in waiting'

'PM in waiting'

Can India have this?

ANSWER WRITING

Don't say YES & don't say definitely, NO.

The fact that a qn. is asked in mains is there is no unanimous YES / NO. we are expected to analyse both YES & NO + concerns on both + Finally our Decision / solution.

'NADHYAN MARGI' - BUDDHA - BALANCE - But CHOOSE THE PATH

Write a solution, if asked / not.

also ultimately.

THE CHOSEN PATH has to counter or Embrace Both YES & NO .

⇒ Yes. But,

✓ It is effective in 2-PARTY system like in UK, AUS.

✓ 2-PARTY political system means

▷ 2 main parties among multiple parties.

▷ 2 main ideologies

▷ 2 main schools of thought

✓ India is gradually moving towards it.

Naturally, any society gets Bifurcated into two main ideologies.

Natural phenomenon in growth of a nation.

It will take time though: UK - 800 yrs ; INDIA - < 80 yrs only.

Advantages of shadow cabinet:

i) The opposition is able to channelize its efforts and provide effective opposition to govt. policies.

ii) It helps identify and groom talent in the art of admin." among the MPs even when they are in opposition.

However, such systems function effectively in countries following 2 PARTY POLITICAL SYSTEM.

Ex: UK, CANADA, AUS, NZ, etc..

## INTERIM GOVERNMENT

- Caretaker in a different sense.
- Happens once in lifetime of a nation.
- Only once in India.
- During a LANDMARK TRANSITION from:

↳ No rules, constitution → Interim Government → Constitution, rules...

- From 1947 till 1950.  
Btwn Independence & Sovereignty.

Recently in NEPAL : 6-7 yrs of INTERIM GOVT.

Monarchy disbanded - consti<sup>t</sup>? adopted.

⇒ It exists during the HISTORICAL TRANSITION of the country until the time there are permanent solutions on the form of constitution & holding elections.

⇒ It is a FULL-FLEDGED GOVT. [diff. from caretaker govt]

Ex: Govt. formed by NEHRU on 15<sup>th</sup> Aug, 1947 in INDIA.

## NATIONAL GOVERNMENT / UNITY GOVT.

Not happened in India so far.

A rare happening. In some countries happened.

All parties of a Nation forming a govt. with practically a NO OPPOSITION.

During the TIME OF CRISIS - where internal divisions are not desirable.

Ex: WW II, 1940 - UK - Wanted all colonies to participate.

WINSTON CHURCHILL asked all parties to join govt. to go for war together.

- ⇒ It is a govt. formed by all/ almost all the pol. parties in parliament.
- ⇒ It is a govt. by CONSENSUS.
- ⇒ Usually formed to overcome a Great NATIONAL CRISIS.
- ⇒ Virtually, no OPPOSITION in parliament.
- ⇒ It is a FULL-FLEDGED Government.

Ex: The Govt. formed in UK on 10<sup>th</sup> May, 1940 by CHURCHILL

## MINORITY GOVERNMENT

Very important topic on India.

coalition govt has nothing to do with this.

In 2004, No party got clear majority.

In fact except 1984 & 2014 - none got clear maj. otherwise.

→  $\underbrace{\text{INC} + \text{NCP} + \text{DMK} + \text{X} + \text{Y} + \text{Z}}_{\text{they formed the Govt.}} \Rightarrow \text{Formed Govt.}$

they formed the Govt.

Some of them became ministers all can't become.

But, when they have to vote for majority, they will.

Almost ~ 220 seats, But 273 req. minimum.

So there will be some OUTSIDE SUPPORTERS who are not part of govt. but will support to give them majority. So, minority here is the Govt,

but it can prove majority

not outside but part of govt.

$$\frac{545}{2} = 272.5$$

~ 273 min.

[Note - Ex: LOK SAN SHAKTI PARTY - RAM VILAS BASWAN.]

Small parties with simple ideology - support those in power.

Sometimes called ISSUE BASED SUPPORT / EXTERNAL SUPPORT

Note - Ex: LEFT FRONT - Hates everyone

Extremes of everything / anything is not desirable.

'MADHYAM MARG' ✓

Then y in UPA ? Hates INC, but hate BJP more.

Present Govt  $\Rightarrow$  NDA = BSP + SAD + SS + X + Y + 2.

But BSP alone has majority - 335, so necessary of external support not there. But coalition.

	Minority	Majority
single		
coalition	<u>2004, UPA</u> - 14 +	2014, NDA
AAP also		

4 years ago, AAP got external support from INC to form Govt.

It is AAP govt, INC just support - KESRIWAL's explanation.

It does not enjoy the majority of lower house on its own.

But, it survives politically with the outside support of other political parties.

It is a full-fledged government.

If the political parties extending outside support join the government, it becomes (coalition-already) MAJORITY GOVERNMENT. EX:

## COALITION GOVERNMENT

- ⇒ It is a govt formed by 2/more pol. parties in parliament with certain common goals to achieve.  
(Nothing lost, Friends with benefits)
- ⇒ It may or may not enjoy the majority in lower house on its own. [It can be a majority / minority & may require external support]

Ex: ▷ UPA - 2004 - Coalition minority govt.

▷ NDA - 2014 - Coalition Majority govt.

## Parliamentary Vs Presidential Form of Govt

1989-99 → extreme instability

4 PMs in 10 yrs.

13 days - Vajpayee - 1996

No fixed & fast rule.

During comparison,

PERSPECTIVES play.

Problem: Hung Parliament



Instability



Coalition govt.

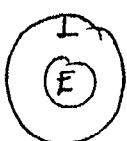
① Read

② See if you can explain it clearly

③ If not, try to understand urself

## Parliamentary

- i) Hos is nominal
- ii) Real Exe = CoM - CR to L
- iii) CoM is drawn from L



E is subset of legislature



complete separation of power

## Presidential

- i) Hos is Real
- ii) CoM - not CR to L but to Hos

The Hos operates through a

### KITCHEN CABINET

Cook the decision before bringing to (dinner) Table [Ex. M. Ambani]

Problem: Ambani has no responsibility (kitchen) to legis/people.

(iii) CoM → drawn from L

### KITCHEN CABINET:

It is an unofficial body which exercises POLITICAL POWER without being accountable to the legislature.

### ① Legislative Control over Executive:

a) POLITICAL Control → ✓ Parl ✗ Prez

b) FINANCIAL Control → ✓ Parl ✓ Prez

More control less control

#### Political Control

Politics → struggle for Power

Political control → Decision of who will & will not be in power

Leg-control (pol) over Executive

✓ Parl ✗ Prez

## (2) STABILITY Vs ACCOUNTABILITY OF EXECUTIVE:

↓	↓
Focus of Pres. system	Focus of the Parl. system
Fixed term & year of election	No fixed term or year of election

## (3) EXECUTIVE'S ACCOUNTABILITY TO PEOPLE:

A/c to people → People can throw the Govt. out.

In Presz

Periodical - 4 years (USA)

In Parliamentarianly

Definitely periodical but also regular  
(i.e.) CONTINUOUS. through House of  
& CONCURRENT people (LS-INDIA)  
(Indirect Democracy)  
Leg and People

### ADVANTAGES OF PARLIAMENTARY SYSTEM (Indian perspective)

⇒ The institution which represents the diversity of a country  
the better - ~~Par~~ Legislative (Parliament)

If Executive comes from this legislature then s/he will  
also be from diverse representation. (not 100% but ↑ chance)

Esp. for India - known for its Diversity - Need to protect everybody's  
interest. (In Presz, the ministers aren't a/c to ppl like in Parl)

⇒ Parl

Majority in both houses → Very smooth functioning

Coop b/w.

Majority even in 1 house → Budget atleast will pass

(L) & (E)

Pres

(E) (L) completely separate

Senate can disapprove of any decision of Exe - Deadlock possibility.

2 times Senate rejected Obama's budget - US calls it 'SHUTDOWN'

No money for Govt to spend. (Paralysis of administration)

Meaning of Govt: Ex. say India - Police station never shuts down.

Problem:

Parl: Any thing will pass - where is the control then?

If 'CUT' motion is in LS - PM is gone out.

⇒ In India, it is comparatively easier for parties rather than individuals to get many/more share of votes.

Even then, Modi govt / BJP has got only 31%, then it is highly unlikely for a single person (Pres) to get 50%.

for that we need to go to single Transferrable Vote, but none will use it for an 80 crore electorate.

⇒ INDIA comparison with BRAZIL  
Parl Pres

Even in a country like FRANCE - last year MACRON didn't get majority.

FRANCE - language + uniformity  
binding together

INDIA - No 1 thing binds us  
together.

## FRANCE

### Two-Ballot System

1st election - none gets majority, but top 2 picked up

2nd election - only 2 candidates so one will get Maj.

Why can't India have this system?

- Expenditure of Govt - concern to a certain extent

(for 2 elections) - 3000 Cr out of 25 L Cr (Budget)

- Expenditure of Individual candidates - Black Money,

Democracy - its moral fabric - Biggest Source - Election

should not be subject to subsequent forces like BN.

The cost of morality & ethics of Dem

Problem:

Nature of Indian politics }  
Diversity of Country } &

1st election - 1892  
out, indirect.

1st election - 1909  
recommended by Morley Minto,  
1st actual election -

1937 - ?

Not Parliamentary system itself.

whatever scheme / person - No 100% satisfaction with ppl.

so always be some DISSATISFACTION

Someone's interest always not met

ASPIRATION



POLITICAL IDEOLOGY

No majority  
Instability  
COALITION ← of front ← divided votes ← more parties

INSTABILITY : SOL : Change Nature of politics  
Reforms to system.

## Anti Defection Law

A member of a party cannot leave the party  
why? To prevent INSTABILITY

Then why allow Coalition to Break? - illogical

⇒ 2nd ARD - Head: Veerappa Moily

⇒ NCRWC - Head: Venkata

① Both recommended to include Coalition in ADL.

- Reform for Ruling

② NCRWC - Banning Constructive NCM

- Reform for Opposition

270+130 = BSP

50-60 seats - 15 more should be other

2nd largest - 45 seats.

Opposition always tries to catch the small fishes. Only persons can't defect but no problem if whole party defects — NCM — Break Govt.

Need to make Opposition Responsible

How? Hint from GERMANY

Biggest Curse  
for a Nation

— Constructive No Confidence Motion  
Solution, not just fault finding.  
→ 2 Motions

CORRUPT BUREAUCRACY

worse than

CORRUPT POLITICIAN

PATEL - unity of nation

neg - AIS

NEHRU - Remove AIS

PRANAB - Biggest hurdle  
for dev-corr.bureaucracy

- ① NCM against present Govt (toM)  
② CM for TDP.

If both pass

New Govt

If ① fails

Present Govt continues

If ① passes, ② fails

Present Govt continues

## Healthy coalition culture

Democracy means - (Everybody has to agree →) CONSENSUS IN SOCIETY, & not just do what I think is right.

When we are a team, we should work like a Team.

## Advantages of Parliamentary System

- ① It provides opportunity to represent the various sections of a diverse country like India into the Executive & thereby help protect their interests.
- ② It provides Enhanced & Continuous Accountability of the Executive.  
(This is preferred over the periodical accountability in presidential system.)
- ③ There is inherent co-operation between Executive & legislature for passage of bills, esp Money Bills. whereas, in Pres. system due to complete separation of power, there may be a deadlock b/w them leading to crisis-paralysis of admin
- ④ If pres. system is adopted, then due to great diversity of population, No single candidate may secure req. majority

Have atleast one philosophical point in answer  
— VISION for FUTURE  
That is what leaders do.  
Ex: We need to improve  
HEALTHY COALITION CULTURE  
though, not convolute as to  
how to do it, it is a  
VISION & later can find ways.

ANS writing  
Any point, not more  
than 2 sentences  
Assume exam

and more than one round of election may be held which will increase the expenditure & electioneering time.

⑤ People of India are familiar with parl. system for several decades & it has been largely successful.

Problems of Parliamentary System:

However, problems of:

× HUNG Parliament    × Political Instability  
are often given as reasons against parl.-system.

These issues are more due to great diversity of our ppl and non-fulfillment of regional aspirations of ppl by successive govt.s.

Therefore, these issues can be resolved within the existing system with certain Reforms.

Reforms Suggested:

① Extending ADL to include COALITIONS also

② Introduction of German model of constructive motion of NC (NO Confidence)

③ Strengthening emergence of a healthy coalition in the country

Pattern of answer:

① Start with good things    ② Certain problems    ③ How to bring a better system/make present system better.

Why didn't we choose it in 1st place?

- i) We continued British legacy.
- ii) In 1947 →  $\approx 15\%$  Literacy rate (No census - just approx)  
In 2018 →  $\approx 75\%$  Literacy rate (2011 census - still 7 yrs lag)  
 $75\%$  are literate but how many of them are EDUCATED.  
NarKandey Katju → 2% only educated;  
98% are idiots in India.

Ex: Panchkula - commotion for a Babaji. — In 2017

Then think of 1947 when literacy itself was only 15%.  
— Overnight can ppl understand to control the Govt,  
coming from the culture of kings/queens.

But, for those in favour of Pres. system:

Argue, now the scenario is different.

More ppl are aware & willing to fight

Philosophical rights are demanded now,

unlike earlier Basic rights

JR not in  
constitution:

HYPER-ACTIVE JUDICIARY

ACTIVE MEDIA

International organisations

Ex: 1991 - LPGI-arm twisting of IMF

So, it is not the case of only LS controlling Executive

But, there are other players to oversee & control Executive

So, STABILITY is important, ACC. in other ways can be done.

Courage of Govt. to hurt ppl comes from strength of house (maj)

~~Ex:~~ Demonetisation.

Parl. controls Cm & N is a myth

Cm is in majority & do anything.

How can control be there when ADL is true?

Pres. system - absolute control: Senate can refuse Pres.

More talented ppl can be brought in on Pres. system.

If India follows Pres. system, it will help bring the National Integrity to India. (philosophical) - in long run.

Regional, narrow aspiration - ppl vote for an MP of their area.

National aspiration - ppl vote for the President.

Added advantage: SPONTANEOUS ELECTION

7/11/1967 - simultaneous elections

only in 1967 - problem

The federal nature of system has to be changed.

After over 70 yrs of independ. the pol. maturity & awareness of Rights among ppl has reached a stage where ppl themselves can impose accountability. This is reflected on the Anti-incumbency factor present during elections in India. Therefore, country need not rely entirely on an institutional mechanism of control through LS.

With complexities we face today on policy making, what is needed is political stability, more than Executive accountability. Instability leads to frequent elections which lead to corruption. Moreover, an unstable govt. is focussed more on survival nature from administration which hinders populist approach to govt.

Due to these factors, there is Delayed & Poor policy making.

#### Advantages of Pres. System

Political defections have no political significance because they don't affect the stability of govt.

The fun. principle of pres. system that pres. controls Cm is a myth because as long as Cm enjoys majority, it controls the legislature. This leads to poor financial control & fiscal indiscipline. Whereas in Pres. system, the

legislature exercises better financial control bcs their members are free to vote beyond party lines.

It provides more opportunity to recruit talent & expertise in the govt.

Presently, during LS elections ppl are less motivated to develop an All India perspective while electing representatives as they are largely guided by local factors. Porez-system in long run has the potential to motivate ppl to develop national perspective during presidential election & thereby strengthen National Integration.

since 1967, synchronisation of LS & assembly elections has been lost permanently. Porez-system provides opportunity to resynchronise these elections.

Conditions:

Next class

250 words only

Qn: India & USA are large democracies. Examine the basic tenets on which the political systems are based.

## PART - XV

### ELECTIONS

[324-329]

Why part XV in Constitution & not Law?

Constitution is the highest while there is legislature above law. So to maintain INDEPENDENCE, important things are put into constitution.

Free & Fair : Independent,  
from influences who gets the majority uses  
of influences of any vested interest.

For: Legitimacy

Teach now  
keep updating  
Most dynamic  
Very dynamic  
Very long  
No one book or  
single source  
so prepare own  
single source

325 - Universal Suffrage

326 - Adult

A-325: Universal Suffrage

Universal — Suffrage

includes everyone the right to be registered as a voter  
(right to get your opinion counted)

All ppl have the right to be registered as voters.

Language → ANTI-DISCRIMINATION right.

(-ve obligation on state)

No person to be ineligible - - - Religion, Race, Caste or Sex.

- No place of birth here as it is differentiated.

History: Separate electorate - diff. representatives for same responsibility. So it is no one's responsibility.

SC prohibits:  
x Creation of any x Separate } electoral roll.  
x Special  
x Communal ]

✓ One General Electoral Roll for every territorial constituency - \* No tag of SC, ST, men, women - nothing - a unifying factor in a diverse country.

## A - 326 Adult

Now, 18 yrs in India. May change.

4 grounds of disqualification: - through a law

- i) Non-residence
- ii) Unsoundness of mind - (Court certifies finally)
- iii) Crime
- iv) Illegal or corrupt activities.

RPA, 1950 - Everything that is before election

RPA, 1951 - Only act in syllabus - salient features - GS-2

Everything that is after election

RPA, 1950

Registration / disqualification  
of voters.

Recent developments:

Voting rights to NRI

NRI → Indian out for > 182 days.

What is the evidence of ur citizenship?

Nothing to be carried but is a RIGHT you have  
by Birth (Soli) + Mom/Dad citizen at time of birth.

Now, NRI's don't have right to vote but demand now.

2012 - RPA amended: NRIs can be registered as voters,  
in the place of residence mentioned in passport.

2018 - After 3.5 yrs of announcement in Madison square,  
now NRI given vote by Proxy.

Before this, only armed forces in forward areas had  
the proxy.

Logically, in future even the migrants within country  
must also have this comfort of voting w/o physical presence.

### Right to vote-Complex right

- ① Right to vote
  - ② Right to contest election
  - ③ Right to endorse a nomination
- } must be a registered voter on the general electoral roll of that territory.

But, NRIs have only ① Right to vote.

327 - Parliament (power to make law)

328 → legislature

A-327

New act every time

Delimitation

DEFINITION of constituencies [A-81] - act, 2002 ;  
Order, 2008.

↳ Now, based on 2008 designed from 2001 census

All 2026 elections

↳ To ensure the value of voter [ $\frac{1}{100}$  vs  $\frac{1}{500} \rightarrow \frac{1}{300}$ ]

It empowers parl. to provide by law regulation  
of elections to parl., state legislatures, pres. of  
electoral roll & delimitation of constituencies.

Accordingly parl. has enacted RPA-1950 & RPA-1951  
to regulate all elections - parl., state legislature & electoral rolls.

General election

Mid-term election

By-elections

For delimitation exercise, parl. enacts a Delimitation  
act from time to time. This is done to ensure the principle:

ONE PERSON / WOMAN, ONE VOTE, ONE VALUE.

### A-328:

It empowers state leg. to provide by law, regulations of elections to state legislature provided that it does not violate any law made by parliament [RPA]

RPA is so comprehensive that no state has made any law apart from it till now.

### A-329:

- a) Delimitation is beyond Judicial Review.
- b) Any election dispute only in or above high court only after complete election process is over. [EC has to approve final]
- \* Extra-ordinary power of EC - when I'm in control, only I'm in control. No dispute before my work is over.



329(a) - Prohibits a COURT OF LAW from interfering in delimitation exercise.  
329(b) - Empowers the parl. to provide by law the mechanism to file ELECTION DISPUTE petition. Accordingly RPA, 1951 prescribes that it can be filed only before the respective HC after process is complete.

(i.e.) During the entire electoral process, it is controlled by EC.



329 (a) - part of same article  
x A - amendment, may be diff. part of

## A-3d4

(1) Superintendence, direction & control.

Election commission.

{ Parl; stat leg;

Presz; V-Presz.

only 4

Only line telling role of EC, but it is very VAGUE—  
no specific provision.

(2) Appointment of 1 CEC + x EC by presz <sup>as per law.</sup>  
<sup>decided by law.</sup>

~~In 1987,~~

During independence, no law, so practically (Presz) ruling party decides the no. of ECs.

Ruling party will never make this law as it will take away their power to control EC [Fault in constitution]

Till 1989, EC was only a SINGLE MEMBER COMMISSION  
1st Oct 1989, 1st time +2 ECs were appointed. [Age 21 → 18]

By 1990, again SINGLE Member commission.

But, this case showed the unilateral power of ruling side to appoint or not EC. — protests happened by opp. & media  
Hence in 1991, a law was made.

1950 - 91} 41 yrs : DELAY X → MISGOVERNANCE.

The Elec. Commission [Conditions of service of ECs & Transaction of business] Act, 1991 — once changed in 1993 also.

## The EC Act

CEC +  $\leq 4$  EC

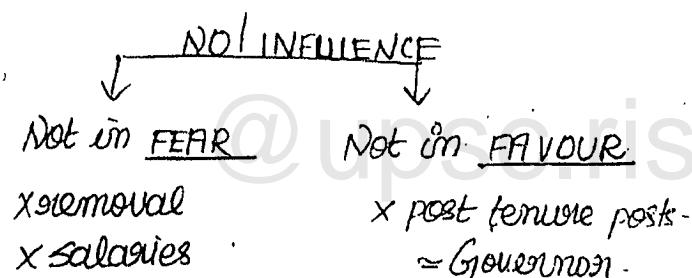
Typical of power hungry country  
↑

Genuinely it is in 1+2 format since 1991.

Earlier, CEC - Rank & status of SC Judge - OVERRIDING authority  
EC - Rank & status of HC Judge

But now with Act, CEC & EC equal vote  $\rightarrow$  CONSENSUS,  
if no consensus  $\rightarrow$  majority vote, if not  $\xrightarrow{\text{tie}}$  casting vote to CEC.

### Independent Institution



Structure of answer for any independent authority

I. Constitutional II. Statutory III. Conventional

for CEC + EC's Independence:

"Justice must not only be done but also must be seen to have been done"

### I. CONSTITUTIONAL PROVISIONS

Appointed by President

(i) EC removed by recommendation of CEC. CEC removal on lines of SC judge.

FAITH		A.K. TARI
based on functioning of institutions.		Ex-CEC, former Accts. Secretary of MODI as CM in Guy.
Even a small doubt can destroy it.		PIL filed to change this app. by ruling - Need Transparency, parity only.

## BUREAUCRATS

i) The service conditions cannot be changed to one's disadv. after appointment.

Need to ensure to bring back the loss of faith on government.

## II. STATUTORY PROVISIONS:

The EC Act, 1991 → 6 yrs / 65 yrs whichever is earlier.  
tenure of EC & CEC

→ They can't be reappointed [i.e.) for same office again]

If 6 yr/65 yrs not get over, CEC can be made CEC.  
(However, CEC can be made Governor, etc.)

## III. CONVENTIONS:

Senior / Retired bureaucrats - qualification.

RECOMMENDATIONS To Enhance Autonomy.

(By EC itself)

i] Appointment shall be done by a panel

(PM, LoP, Speaker of LS - ) NGO member, SC judge may be added by us.

For Transparency & no place for doubt of favouritism.

ii] Removal of EC should also be like SC Judge.

iii] After EC, no other posts must be held by them  
(OoP)

iv] After EC, no joining in political party for 10 yrs.

v] Fix no. of ECs to 2. Don't leave the window open for misuse  
or atleast fix a number

## RAMA DEVI

Only CEC ♀.

Several times

appt. as Governor

M.S. GILL

CEC → sports minister  
of HM Singh.

vii] All admin. expenses must be made charged upon CFI [for Financial autonomy].

True Independence

SC; CAGI

→ Admin. expenses charged upon CFI

EC

Voted expenditure.

324 (1): Superintendence, direction & control.

1960s → EC started asserting itself.

> ELECTION CONDUCT RULES, 1961

> E. SYMBOLS (Reservation & allotment) Order, 1968.

Only Executive makes rules & orders, but EC was supposed to be free from executive & nowhere its exec. power is mentioned.

\* K.L. OMAR Vs R.K. TRIVEDI CASE, 1985

SC → Do whatever it takes to maintain Free & fair elections : EC. SC was of opinion to give broadest possible meaning to 3 terms. So, terms came to be called:

UNLIMITED ; RESERVOIR ; PLEINAIR powers.  
powers of power (unrestricted)

in the sense that it is not limited by EXECUTIVE.

Certain limitations of EC:

i) Constitution.

ii) valid electoral laws.

iii) Court order

iv) Principles of Natural Justice

(A-21)

No pun. w/o being heard

If there is silence on const.<sup>n</sup>, law, SC, then great authority to make own orders.

W - G - SS  
T - G - S  
F - E - V  
S - S & T - R  
S - Test

\* (Referendum case) Re. Power of EC, 2002:  
[Perez J.]

Only one body to control elections as per 324(1) & RPA.  
hence need independence clearly from executive.

Ex: RPA, '51 - S14 → Perez power      ↗ Election notification  
S15 → Governor power      ↗ based on recomm. of  
EC & not COM.

Elections within time limit. No delay is accepted  
except in case of acts of God/nature & not man (LFO issues)

Registration is must for contesting elections - Party

But party doesn't contest, Candidates will contest.

However they might be nominated by party.

They must pledge to uphold the Constitution.

Recognition - after performance in elections      CPI(M) - UAPA, 1967

Some parties get recognition.

- kannur.org

→ National Political Party (NPP)

→ State political Party (SPP)

Base among masses

Reach among masses

Potential to come to power.

\* E. Symbols (Reservation & Allotment) Order, 1968

→ 6A & 6B - On Recognition.

Criteria for Recognition:

## I. SPP

- i) At least ( $\geq$ ) 6% of valid votes - LS/LA + 1 LS seat / 2 LA seats
- (or) ii) At least ( $\geq$ ) 8% of valid votes - LS/LA
- (or) iii) At least ( $\geq$ ) 3% of seats (LA) / 3 (whichever is higher)
- (or) iv) At least ( $\geq$ ) 1 per 25 seats (state in LS)

Now, 64 SPP

31 LA

Find out SPP of own states: DO

## II. NPP (29 S + 7 UT = 36 entities)

Performance on atleast 4 states.

- i) At least ( $\geq$ ) 6% of valid votes on 4 or more states + 4 LS seats.
- (or) ii) SPP in  $\geq 4$  states.
- (or) iii) At least ( $\geq$ ) 2% of LS seats (i.e.) 11 seats & must be spread among  $\geq 3$  states.

Now, 7 NPP.

1 INC 2 BSP ~~1 CPI~~ 3 CPI ~~1 SP~~ + BSP 5 CPI(M) 6 NCP

7 TNC

## Benefits of Recognised Political Parties

- Land & office space in capitals either free of cost or at discounted rate.
- Free Air time on Prasar Bharti & its channels.
- 2 copies of electoral roll for each constituency they contest from free of cost.
- 1 registered voter only enough to subscribe the nomination paper of candidate in case he/she is from SPP/NPP (otherwise 10 voters required)

→ Dis.

→ If candidate of recognised PP passes away before polling starts, then the election is postponed & 1 week time to replace him/her.

Recog recog party	A	* 0	0
	B	+ 0	0
	C	-	0
Regis regis party	A	-	0
	B	-	0
	C	-	0
Endop	F	-	0
	E	-	0
NOTA			

→ STAR CAMPAIGNERS - expenditure must (See admin. perspective) be on party & not of candidates.

Recog - 40 SCs; Regis - 20 SCs.

Proposed benefit:

→ State Funding of election is proposed only for recognised parties.

Recent news:

RTI Act - Pol. parties.

GIS-II, III

At least 1 current relation needs to be drawn in every qn.

RTI

HW  
File 1 RTI

ADR - Association for Democratic Reforms - Read in  
their website

ADR filed RTI in 2002 on NPP asking the  
top 10 donors of them.

PIO - Public Information Officer in every office (Govt)

CIC - Highest authority on RTI.

2013 → said: PP are public authority, under s2(h) of RTI Act  
definition.

4 reasons: (Why should be under RTI?)

- i) Significant public funding.
- ii) Nature of work - in public domain.
- iii) When an authority/institution controls public authority,  
it is also a public authority. (BSP controls LS).
- iv) UoI Vs ADR, 2002 - Landmark case - MOTHER OF RTI, 2005

RTI is a FR of citizens.

Ppl have R.to.know the BG<sup>info</sup> of candidates.

2013 - If ppl have R.to.know BG info of candidates, then  
ppl also have R.to.know BG info of party as well. So they  
can know the SOURCE OF FUNDING. June, 2013

But in 2018, still they've not obeyed the order to disclose.

## Penalty

→ ₹ 500/day, upper day limit of ₹ 25,000 from salary of PIO. But parties don't have PIO.

2015, PIL on SC by ADR

SC should direct parties to give info.

SC gave notice to govt to seek govt's stand.

Govt gave affidavit - pp must not be under RTI.

SC asked why?

4 reasons: (Why they shouldn't be under RTI)

- i) Original intention of act was not for political parties.  
SC → May be. But how is that an argument now?
- ii) If political parties are brought under RTI, it will affect their smooth functioning. How?
- iii) If pp are under RTI, they can become a victim of frivolous RTI petitions by other parties or others just to pull the leg or harass. (So, they file.)
- iv) PP are already very transparent. How? They submit their annual audited accounts to EC & IT department.

After that, No judgement has been given.

Other personal arguments:

- ✓ Internal democracy of party can be improved & they can be made accountable.
- ✓ There is no limit of cost for political party, only for candidates, so it can be hidden in name of pp.

- ✗ Unlimited party money
- ✗ Party members don't even know where it is coming from.  
esp. Black money.

So, this unlimited money can be reduced - indirect limit.

- ✓ NGOs also get lot of funding even foreign funding.  
But they are not under RTI. But technically, NGO & PP  
are same - Societies Registration Act, 1860. So, if PP are  
brought under RTI, NGOs must also be under RTI.

### SIGNIFICANCE OF PP UNDER RTI:

- ⇒ It will bring TRANSPARENCY & ACCOUNTABILITY in the  
party functioning by making the office bearers more accountable  
to party members & thereby enhance Democratic functioning.
- ⇒ It will indirectly create ceiling on party expenditure, in  
the absence of which the ceiling on candidate's expend. is meaningless.
- ⇒ Gradually, even the NGOs which receive significant public  
funding from govt. can also be brought under RTI Act.

## CRIMINALISATION OF POLITICS IN INDIA

Criminal & anti-social elements entering politics,  
contesting elections & coming to power.

It <sup>(?)</sup> STILL happens in India.

### REASONS

- Earlier i) Nexus between Politician & Criminals - Money & Muscle power.  
in turn for political patronage to continue with crimi. activities.  
Now ii) Criminals themselves started entering politics.

BG1: Inherent weakness & delay of Criminal Justice system.

Avg. time for disposing criminal case: 15 yrs — SC.  
Conviction Rate

1980 - 80-85%.

~2018 - 40-45%.

Election system - FPTP system. It is not discouraging  
Even 30% is enough to win. (If literacy = 25-30%) Criminals  
In a multi-cornered contest, votes are divided & 25-30%  
achievement is not that difficult to get with money & muscle.

People are legitimately voting for them

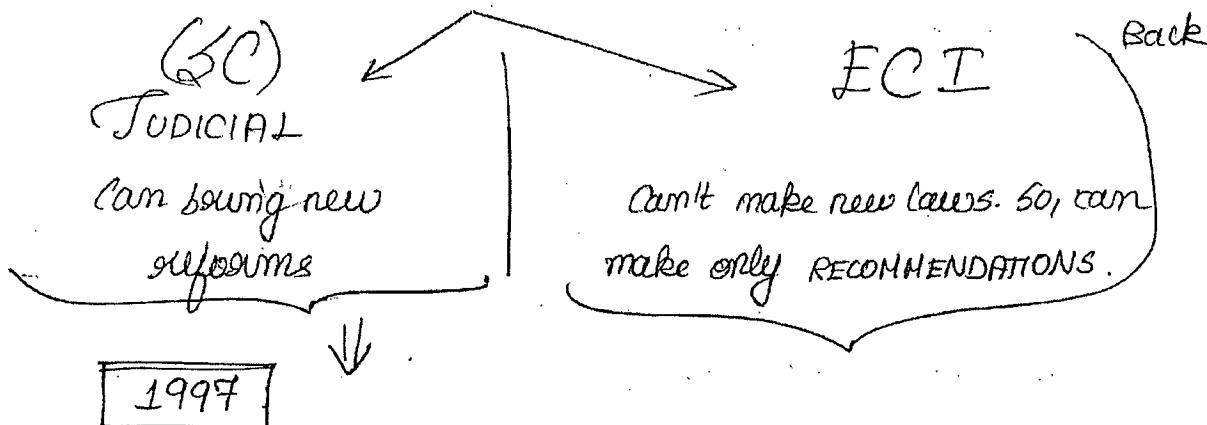
- iii) Lack of reforms from Parliament
- iv) Decline in v/s of society where it is acceptable to elect criminals.
- v) Illiteracy & poverty has made it worse.

## CONSEQUENCES OF CRIMINALISATION

\* "Law-breakers become Law Makers"

- Y discussion? To discuss various aspects the govt. may not have looked into: - Comprehensive view for public welfare.
- How could self interested criminals do such a discussion
    - ↳ Ability ↓, Credibility ↓, Quality ↓ of parl. discussion.
  - They want to take action for their investment in elections.
  - So they'll HANIPULATE, control govt. machinery.
  - ↑ BM, ↑ violence, ↓ Moral fabric of democracy & society.  
(Money) (Muscle) (Cults of nation)
  - Image of country - when criminals "REPRESENT" the people of country at global stage - that is the image on Indian people. → Education, culture, behaviour, opinion, ideas of those representatives reflect the Indian ppl as per global eyes & ears.
    - ↳ An investor might hesitate as she would have to deal with criminal politicians in the system. — X Employ<sup>t</sup>; X Govt.
    - ↳ Not about corruption but Granda problem - Rule of law not there. That is the investor's problem.

## REFORMS



SC gave direction to all HCs that if there is an appeal bfr guilty/not.. from their conviction shouldn't be suspended but punishment can be only suspended — so that they don't contest elections. until case is over.

2002

BG of contestants in elections: Edu, Assets, Criminal records.

TO INFORM PEOPLE WHO ARE CRIMINALS.

But still decriminalisation hasn't happened.

"Ppl get what they deserve" — Society also has to improve.

Aoothashastra — As is the king so is the citizenry.

Today → As is the citizenry, so is the ruler.

We choose them. Need to vote after proper thought.

2018

Lok Brahini vs UOI - extension of 2002

BG of candidate's ASSOCIATES (i.e) Family, friends.

Also, the interests they have in Govt. contracts should be disclosed in BOLD LETTERS.

\* 2005 Parmesh Dalal Vs UOI

5-8 of RPA, 1951

- (1) } categories of
- (2) } Offences / Criminal offences
- (3) }

for candidates

- (1) Convicted + 2 yrs <sup>(min)</sup> sentence → Disqualified
- (2) Convicted + 6 months (min) → Disqualified
- (3) Convicted → Disqualified

(4) → For ppl who are already elected - NP/NLA/LC

If present elected representatives are found guilty on any of (1), (2) or (3), then disqualification in 90 DAYS. But amendment <sup>original RPA - not</sup> they'll go for stay & remain in office bcos of this 90 days. Even <sup>to prevent</sup> 1 day is enough for them. Also sitting MPs thus can <sup>strength of house</sup> contest elections due to this 90 days while normal candidates can't. This judgement stopped this - Hence, Landmark.

"SC held that a sitting member of P or LA/LC will be disqualified if they stand convicted by a court of law on the day of filing the Nomination."

→ 90 days - only for MPS/MLAs  
Once you are candidate in election - no 90 days.

2013 Lily Thomas Vs UOI

No 90 days to HPs/MCs also → Convicted the day court convicts you - disqualification the same day. - Court said UNCONSTITUTIONAL

Always ask why? this judgement

[AW]

For any answer on Criminalisation

① Parmesh Dalal

② Sec 8 of RPA, 1951.

How Unconstitutional?

Union A-102 ⇒ Disqualification of Membership.

+89 Only for parliament.

State A-191 ⇒ Disq. of Memsp.

applicable for state LA.

only till 111

After 111, +90.

↓  
> unsound mind

> Office of profit

> Foreign membership

> Or any law of parliament

RPA, 1951

bcoS 201 → extra veto of Governor -

To refer/reserve it to Par.

A-101(3) → Actual disqualification provision, after

A-190(3) → fulfillment of provisions in A-102 & A-191.

So 90 days is against 101(3) & 190(3) - unconstitutional -  
Immediate disqualification as per 101(3) & 190(3).

1st victim of this Judgement → Ms. Jayalalita. She lost  
the seat the moment trial court convicted her. Then she appealed  
& conviction stayed yet seat lost is lost & she had to contest  
against to become CM which she did - not all can do it but

② # \* PUCL Vs. UOI → Right to -ve Vote & Not  
Right to Reject.

NOTA → legally not a vote.

As of now, nothing happens. But has potential to  
become Right to Reject in future.

Rayastham, Maharashtra - Judgements of NOTA

Tell Right to Reject → But applicable only to  
state elections under state law → can't overrule SC CB but.

But has created debate & possibility →

Demotivate party to give ticket to unworthy candidate, once it becomes RIGHT TO REJECT - then that rejected candidate can't contest again for same seat.

### 2014 - Public Interest Foundation

"SC gave a direction to Trial Courts to dispose the (TRIAL COURT → 1st original jurisdiction of a criminal case) criminal cases of MPs/NLAs within a year of court ~~fit~~ framing the charges."

1st step → FIR : Criminal procedure statute.

Next ② step → chargesheet by police : list of crimes & sections.

(But they can also create <sup>any</sup> chargesheets as we know).

Then court looks into it & may drop = all prima facie =

③ step → Final chargesheet by court . Touch only on this sections.

→ For speedy trial.

But after 5 yrs - zero cases disposed.

So, to enhance it, SPECIAL COURTS are now being looked into.

Update on this regularly.

## ECI Reforms

ECI issued directives to RO that the person, if convicted (even if his sentence is disqualified suspended), on the day of nomination - then he/she is disqualified.

— Thus ECI clarified the 1997 judgement —

Recommendations :

① 2 Ballot system instead of FPTP system — so that candidate must get at least 50% vote share.

— Write in the name of any commission: like <sup>2nd</sup> ARC.

— India doesn't need any new solutions, all solutions are known, we need to do them actually —

② Right to Reject must be conferred on voters.

<u>Present NOTA</u>	<u>Future NOTA (R to Reject)</u>
Vote <u>invalid</u> —	Vote <u>valid</u> — Candidate rejected.

③ A person <sup>found</sup> declared guilty by a commission of Enquiry shall be disqualified from contesting election until released by the court. They have power of court ← Commission of Enquiry

| Headed by Justices/Judges

| But they can't punish

Always know by its name of chairperson.

shah Commission — Enquiry.

(in NCERT)

Statutory Commissions.

Commission of Enquiry Act, 1965

### Returning Officers

One who receives nomination & return the winning candidate.

— But none will accept this, but we still write it so that future generation must know what's IIDEAL —

At least one should know what to do even when one doesn't do it. So ideal recommendations are also needed.

④ EC should choose some notorious owners with potential punishment of at least 5 yrs, in which court has framed charges, if there shall be a reasonable ground to disqualify until the court releases him/her.

Last year PIL in SC to implement this but SC has rejected it.  
On basis: "You are INNOCENT until you are PROVEN GUILTY."  
Let 100 culprits be out but one innocent must not be punished.  
But also SC left a window: let legislature decide on it. (- which it will not)

⑤ Sec: 125 A, RPA 1951  
Deals with false affidavits by a candidate.  
declaration that info is true

Max - 6 months imprisonment & NO DISQUALIFICATION.

Recommendation → Increase the punishment to atleast 2 yrs, so that disqualification happens.

## EVM

Germany, Freeland, etc.. have told EVM unconstitutional.

### Advantages:

- ① Elimination or reduction of malpractices like:  
Booth capturing, rigging, ballot paper smuggling  
— So more free & fair election.
- ② Reuseability ; Paper-less  
Cost effectiveness.
- ③ Counting & results faster.
- ④ Reduction in Fraudulent votes.
- ⑤ No. of ppl who can vote in a certain time is also more —  
faster polling.

### VVPAT

Started trial in 2013 - Nagaland.

Last year state elections had it all.

2019 - 1st time use in LS elections.

≈ 14 lakh polling booths.

After election → random 5% polling booths will be checked.

If it doesn't match - VVPAT result is final.

Later → will be checked only if contested or conflict arises.

Only 2 PSUs Manuf

✓ BE - Bharat Electronics

✓ EC - Electronic Corp.

But SC said FAITH  
in EVM must be ↑ :

among ppl: →  
VVPAT true come

How do we make Democracy more VIBRANT by expanding the citizens from just voting to enable them to participate in governance?

### DIRECT DEMOCRACY DEVICES (DDD)

i) Right To Recall (RTTR)

ii) Referendum

iii) Initiative

iv) Plebiscite.

#### Right to Recall (RTTR)

Switzerland, Netherlands & most EU countries have RTTR.

\* Switzerland: Best ex of Direct Democracy

But to be compared with Indian situation:

\* URUGUAY

→ In INDIA - also some local bodies (Panchayat, Mun...) have RTTR → MP; Chhattisgarh; Rajasthan.

Only after 50% of time total

If ≥ 25% voters come forward to recall. EC will do elections

If ≥ 50% voters agree to recall - By election

✓ Accountability is more continuous

✗ More instability in Govt.

✗ Oppositions will do this as their full time work to mobilise people against govt.

Referendum — We ask ppl

Any issue of public importance is referred to ppl for voting. Ppl will decide.

India against Corruption - NGO

Need a Permanent Referendum Commission -

✓ Legitimacy to ppl's decision.

✓ Controversial decision among parties can be solved by ppl.

Problem:

X Limited use. Not every qn is YES or NO. Not all policies can be put to vote — need experts on certain policy decisions.

X When ppl vote their personal interest & not necessarily national interest. Say none will vote to increase tax.

X In such a diverse country, 59:48 majority — creates more problems.

→ It will enable ppl to take ownership / responsibility for their decision. ← It will make leader a PEOPLE'S LEADER.

Initiative — Ppl themselves propose

↳ Reverse of referendum.

Ppl can propose a law they want — Initiative; then legislative drafts & puts it again to ppl for referendum.

As it starts with ppl, result is binding

Ex: Uruguay \*

In 2006, ppl came together and got a CAA to include a new FR to clean drinking water.

### Plebiscite

≈ Referendum. But limited to only one issue:

Right to Self Determination. (i.e) future of the region.  
No country in the world gives this.

In such a diverse country as India - can't be.

Moscow Declaration, 1993

India is also a signatory.

It accepts the right to self-int. of a diverse nation by divisive forces of ultranationalists - religion; language; state...  
Hence if the const. of the country provides basic rights to every citizen & protects rights of minorities guaranteed by const. then no need for right to self-determination.

We do these: but not right, discretion of Govt.

Ex: India-Bangla Land Agreement - ppl asked.

## Right to Recall

Right of the ppl to remove their representatives on the ground of non-performance.

The legal systems of Switzerland, Uruguay, Argentina, some states of USA & local self-govts. of some states in India - MP, RAS, CHAT - provide R.to. Recall to citizens.

### Advantages :

It empowers ppl to control their representatives by making them continuously accountable.

Pol. parties will be forced to nominate clean candidates.

### Issues/Concerns :

It may lead to political instability.

It may lead to frequent elections, leading to policy discontinuity + Corruption, BN, violence.

For this system to succeed people shall display certain level of political maturity while electing & removing reps.

It may be misused by opp. pol. parties to destabilise the elected rep. by signature campaign.

It may be impractical for a vast country like India with large no. of registered voters & diversity in population.

## Referendum

It is an electoral process in which the govt can refer any issue of public importance including const Amendment to ppl by approval for vote.

The outcome is legally bound unless the country's law is otherwise. Almost all countries of EU; Switzerland; Thailand; Columbia etc. make provisions for holding referendum.

"INDIA AGAINST CORRUPTION" movement had demanded introducing provisions for holding referendum & establishing a REFERENDUM COMMISSION similar to EC.

Advantages:

It is true democracy bcos ppl can directly express their views on major issues. It empowers citizens w.r.t govt.

It gives legitimacy to the decision.

It can help resolve difficult issues also which are otherwise complicated for formulating political decisions.

It can also help keep a check on any motivated decision of the govt.

Issues / concerns:

It has limitation in terms of complexity of qns. That can be placed before the ppl bcos not every qn. can be reduced to a simple Yes or No.

Citizens may not be able to place National interest above personal interest.

Hence outcome may not always be rational or in nat.-interest.

The outcome tends to reflect the POV of majority community many times ignoring minority interest. Hence it is particularly not suitable for a diverse population.

Voters may not have complete info for decision making & hence can be influenced by pol.-messaging of popular leaders.

The legitimacy of Referendum is virtually lost if the margin of division is narrow. This may complicate the issue even more.

### Initiative

It is a kind of referendum proposed by electorate & not govt - It is an electoral process where certain % of voters can propose a legislation on issue of public importance which shall then be considered by the parl. Subsequently the issue is put to the vote of ppl as an initiative.

The outcome is legally binding on govt. The const. of Switzerland & Uruguay confers R. to. Initiative on citizens. In 2006 → Ppl of Uruguay through an initiative forced the parl. to amend the const. & provide new FR : R. to. Health & Access to drinking water.

## Plebiscite

An instrument through which ppl can exercise their R-to. Self determination. It is a kind of referendum held only for one question.

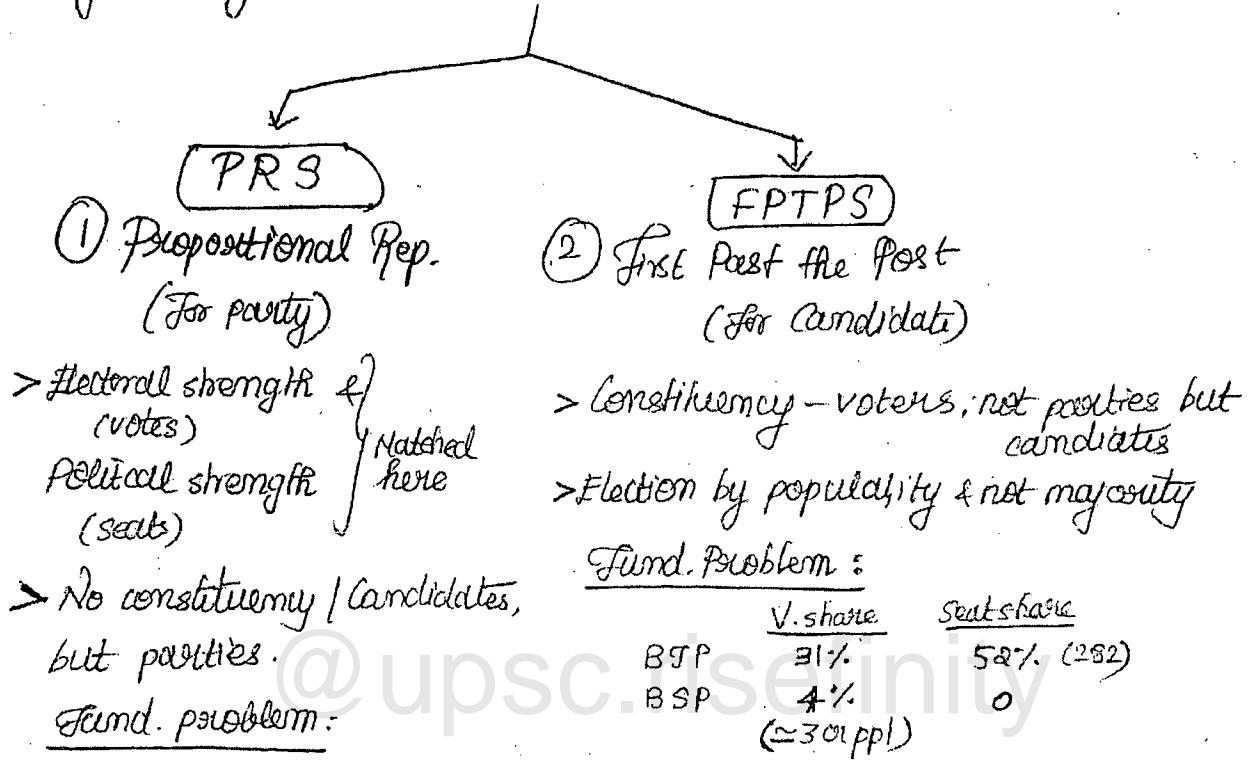
Since plebiscite has potential to endanger the territorial integrity of the country, the outcome may/may not be legally binding & most legal systems of world do not explicitly confer this right to any section of their population.

### India's stand on R-to-self Determination

India is a signatory to Moscow Declaration, 1993 which recognises the threat faced by diverse ethnic & multi linguistic states to their territorial integrity from the forces of aggressive nationalism & religious fundamentalism. Hence, it states that Ⓛ of a country confers certain basic rights on all sections of population w/o any discrimination & these r constitutionally protected then no section of population enjoys R-to. Self determination.

# ELECTORAL SYSTEMS

Fundamentally only 2 basic methods from which other types may be derived:



who to hold accountable?

No direct link b/w actvty & ppl & representatives.

- ✗ No direct link
- ✓ vote & seat share - mandate of ppl more fair.

Candidates chosen individually selected by party & not people

- ✓ But, minorities better voiced
- ✓ If PRS is in India - no. of ppl voting will increase
- ✓ No By-election: Party only gets votes.

Over & Under Representation

- ✓ Direct link b/w ppl & reps.
- ✗ vote & seat share - not fair
- ✓ Stability: clear majority
- ✓ Simplest election method, suitable for large country like India with many ppl uneducated.

✗ Rule of Majority is Democracy but only 31 wanted while 69 didn't but still 31 rule over 69

2 major problems

i) It tends to promote & strengthen Parochial Potencies. It will divide people further. Hence not good for diverse nations.

Yes everyone gets a voice but too much voice becomes NOISE.

ii) Motivation to create more no. of small parties/separate parties → Lack of stability - no major vote consensus

0/16 - 50% votes in India

8/16 - stable govt.

Ex: ISRAEL; PORTUGAL; SPAIN;

ARGENTINA; S. AFRICA

X Many votes are wasted. Either win or lose not proportional rep. (or) unrepresented

X Criminalisation of politics is not discouraged by FPTPS.

### Reforms

Make it 50% min. to win

Note: Well devd. countries are still monarchies

Ex: COMMONWEALTH COUNTRIES.

### (3) 2-BALLOT SYSTEM

1st time: Top 2 candidates

2nd time: Those 2 go for 2nd ballot & get 50%.

Ex: RUSSIA; FRANCE

✓ Adv are same as FPTPS + Majority rule.

✗ Pol. parties may not be properly represented.

✗ Expenditure

✗ Corruption, BM, Violence

✗ It may lead to unethical alliances - opportunistic rather than ideological.

✗ Extra constitutional power centre arises due to influence of small parties (power w/o responsibility)

ECI, Law Commission, 2<sup>nd</sup>, 7<sup>th</sup> ARD

#### ④ SINGLE TRANSFERABLE VOTE / Preferential Vote:

No vote is waste.

50% majority in 1 round of election

Adv:  $\approx$  FPTPS.

✓ single round 50%; Rule by majority

✗ ~~fund~~ Pol. parties may not be represented properly

✗ complex system - diff. to understand.

Ex: AUSTRALIA (In Federal legislature)

#### ⑤ MIXED / HYBRID SYSTEM

Some seats by PRS & ~~other~~ other by FPTPS.

Ex: • GERMANY

L-house: Bundestag  $\rightarrow$  50% seats PRS; 50% seats FPTPS.

• ITALY

Last year 1st time  $\rightarrow$  37% FPTPS; 63% PRS (earlier 25%: 75%)

• S-KOREA      • BOLIVIA

2017 - Parliamentary Committee on India recommended  
this system.

## MODEL CODE OF CONDUCT (MCC)

What? Conduct guidelines (Do's & Don'ts)

Only 6 pages

By? ECI or consultation with pol. parties.

Started around 1960s but actual significance from 1991

Why? Free & Fair elections

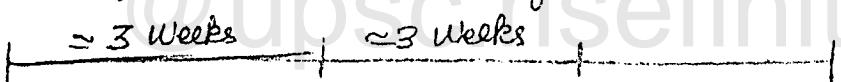
How? Level playing field for all stakeholders.

⇒ No legal backing → No punishment by court of law.

Some overlap does exist with some laws (i.e.) IPC.

⇒ But, it has been accepted by SC as integral part of Indian Election system.

When apply → Entire process of Election ⇒ ≈ 2-3 months.



Schedule Announcement of EC	Notification on Gazette by Prez - CM.	Election Day(s)	Declaration of Results
≈ 3 Weeks	≈ 3 Weeks	1	

Unique to India: No other country has such a document.

To whom apply: Any person or entity involved in election process.

All Govts; Pol. parties; Candidates;

Civil servants on Elec. duties

MCC

- ⇒ No new policy, scheme or Program.
- ⇒ Ministers shall not mix campaign with official work.
- ⇒ Can't use state machinery for campaign: Exceptions - PM & CM, but party must reimburse.

⇒ No alteration - posting, promotion, transfer - of Civil servants during this process w/o consultation with ECI.

## STATE FUNDING OF ELECTIONS

what? Govt. funding the operations of pol. parties.

Now, money comes from corporate legally also, but there is huge unaccounted BM.

- i) \* Illegally sourced ✓
- ii) \* Vested interest - influence.
- \* Promotes Crime, Violence.

# DINESH GOSWAMI Committee, 1990 - For Election Reforms

Based on this - ALL PARTY PARL. Committee, 1998

Bill introduced in 2003 (Not passed)

### Aspects

1) Only for recognised parties - based on vote share in last elections.

Problem - No level playing field.

2) Only partial funding

3) No cash, Only kind

Electricity; Telephone; Ads...

4) Election corpus fund - contributed by SCB & UG

Rs. 10 / voter / annum - each from SCB & UG.

5) Ban on govt. companies from funding.

(Pvt. companies - atleast accountable - so till state fund & rule can be thru)

6) Parl. must decide on Pvt. companies.

## Issues :

P. to. Equality of pol. parties may be hurt.

But, unaccounted money can't be handled by this.

Law Commn → state funding alone not enough: Need other reforms.

RTI for pol. parties.

Ceiling on party expenditure (Electoral bonds..)

Decriminalisation Reforms.

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# POLITY

## CULTURAL DISCONTINUITY IN INDIAN CONSTITUTION

- Tilted heavily towards west
- DHARMA, SATYA, AHIMSA would've been inculcated for Indian touch.
- Timeless ideals of the longest living civilizations not included.

What does Modern Constitution imply? → LIMITED GOVERNMENT

The purpose of the govt <sup>const.</sup> is to limit the powers of Govt.

Objective: To protect the LIBERTY of the people

Liberty vs Freedom:

FREEDOM is the umbrella term - Ex: Bird in the boundaryless sky.

LIBERTY is what man has in an organised society - Our freedom ends when neighbour's freedom starts.

ARTICLE 21 talks about LIBERTY & not Freedom.

Primacy between L, E & S? → JUDICIARY

1973 - Basic Structure Doctrine

1980 - Onwards Journey of JUDICIAL ACTIVISM - Unparalleled in the history of Judiciary.

Ex: Govt is supposed to follow law of land. Justice Joseph's approval by Govt - bound by the law.

## Representative Democracy:

Ours is REPRESENTATIVE unlike DIRECT in Athens.

- 99<sup>th</sup> CAA - SC struck it down despite parliament & state legislatures passing it.  
- Criticised as Judicial aggression.

Karpagi Vs TN, 2001 - Jayalalitha, Prevention of Corruption Act.

- Prevented her from becoming MP for 6 years [as per RPA, 1951]
  - Despite the act, she was invited to form govt.
- Will of people in Constitution → Permanent  
→ Will of people in Elections → Temporary.  
→ She must not have been called to form govt by Governor as it is against the NORALITY of the constitution.

- CONSTITUTIONAL SILENCES is also part of law -

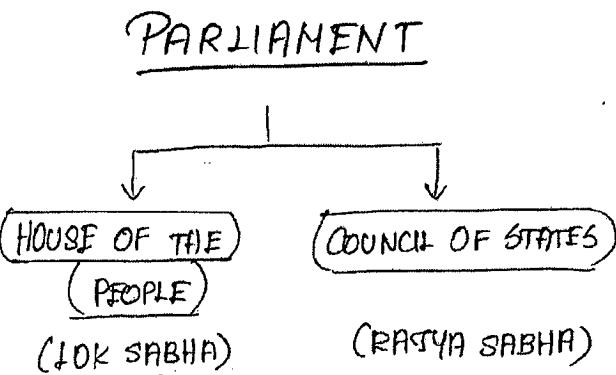
Constitution can't speak for itself

↳ Judiciary is the one giving life & protection - Final Interpreter of the constitution.

Separation of Powers (Not watertight in India as in US)

- ✓ One who makes law, can't implement it → LEGISLATURE
  - ✓ One who implements law, can't exercise punishment → EXECUTIVE
  - ✓ One who exercises punishment → JUDICIARY.
- 'spirit of laws' - book.

## PART V    CHAPTER II



### BRITAIN:

First came parliament } DUAL ROLE of King/Queen  
Then came the Executive } in both places.

### INDIA: (Same as Britain - DUAL ROLE)

A-86 → Right to address Parl. by Pres - Though not exercised.

A-87 → Duty to address Parl. by Pres - 1st day of 1st session of the year (1st day of Budget session) - Mandatory - can be → Acts as Pres. in Parliament | challenged in SC if not.

\* Executive's accountability to Parliament - Pres addresses both members of LS & RS - Motion of thanks passed afterwards in both houses.

\* Solemn Ceremonial Beginning - Most legal proceeding in parliament - of functioning of Parliament

A-74

→ Pres. in Council - when listening to Com.

## FUNCTIONS OF PARLIAMENT - 5 Fold.

### ① LEGISLATIVE

→ Far wider than state legislature - state law < Whole country +  
 Territorial  
Ex: Italian Machines Case, 2012 Jurisdiction.

IPC - 3 & 4 - India's territorial waters (12 NM) - Power to prosecute - even if in International waters - concerning Indian citizens.

### ② GVK Industries Vs Income Tax Office, 2012

No absolute power outside territory unless the objective of law is in nexus with Indian territory.

A 35(A)

Through.  
 - Not part of const.  
 - A 370 - Pres-order  
 1954 may retain its sanctity

### TERRITORY

### SUBJECT MATTER

A 245

A 246

→ 5<sup>th</sup> schedules

↳ 3 legislative lists - U, S, C

Order: ① U ② C ③ S

Non obstante clause

A 250 - Parliaments on state list - may

A 253 - Int'l agreement - Parl. on state

↳ Numerous provisions on constitution allowing

## ② ADMINISTRATIVE

- umbilical chord
- Com collectively responsible to LS - LS can overthrow Govt.
  - Spirit of alliance was not respected by BSP - present times
    - ↳ Not deliberative as it is not discussed with other parties.
  - Legislature also exercises admin. control over Govt (Executive)  
can't implement something denounced by Parl.

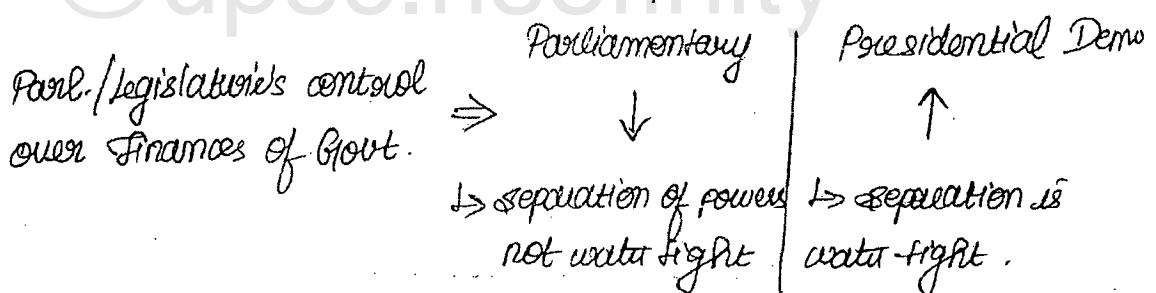
## ③ FINANCIAL

→ WALLET Of Administration with Parliament -

→ A 265:

No tax can be levied without sanction of Parl.

→ A 266: CFI can't be touched without parl's consent -



## ④ DELIBERATIVE

→ Parliament is 1st a Deliberative body, next a leg. body

→ 'Parle' - French 'To talk'

→ TRIPLE TALK: Not enough discussion in parliament →

↳ How can a person in jail give compensation to wife?

The greatest erosion of Deliberative function  
Casualty of parl. fn

{ 1950's - NEHRU moving a Bill. Freudent

Rajaji wanted to propose an amendment

Nehru told you don't have enough numbers.

He told - I have logic which you don't have.

Nehru laughed & told members to support Rajaji's motion.

Late 50's & Early 60's - FEROZ GANDHI

LIC scandal - Against his own party in parliament.

→ Quality of Deliberation & Accommodation.

## ⑤ INFORMATIVE :

→ 1950 - 2005 - Still a meaningful Democracy without RTI  
due to this Informative fn.

J.N. DIKSHIT - Foreign policy expert - 2<sup>nd</sup> NSA

"India should be referred as World's largest Fully  
Functional Democracy".

(No western country has Anti-Defection Law)

↳ Our poverty that an MP can be sold & bought.

(Emergency).

→ RTI, 2005 - Radically transformed.

⇒ Privilege motion can be moved for false info in Parliament.

⇒ Informative fn becomes Deliberative fn. when answe<sup>g</sup>, qn.

⇒ Transparency & Accountability

Under A-49 Parliament is composed of P.M., RS & LS. though, Separation of powers is one of the basic features of the Constitution, P.M. is regarded as Part of both Executive & legislature as there cannot be a water-tight division between EXECUTIVE & LEGISLATURE in a PARLIAMENTARY DEMOCRACY.

P.M. performs a DUAL ROLE like a Queen of England who acts as Queen-in-Council & Queen-in-Parliament.

When P.M. listens to the advice of his/her C.O.M. & he acts as part of Executive when she addresses parl. under A-86 or A-87 & she acts as Part of Parliament.

### FUNCTIONS OF PARLIAMENT

#### I. Legislative Function:

Legislative powers of parliament are far wider than that of a state legislature.

Under A-245,

while a state can legislate only for its Territory, Parl. can legislate for the entire Territory of India & even beyond. This power of EXTRA-TERRITORIAL LEGISLATION is distinct to Parl.

Under A-246,

The power of a state to enact on state list is made subject to the power of Parliament to enact on union & conc. list.

## 2]. Administrative Control:

Though administration falls in the domain of EXECUTIVE, Parliament exercises control over the same as Council of Ministers is COLLECTIVELY RESPONSIBLE to the Lower House.

## 3]. Financial Functions:

\* While the SWORD of Administration is with EXECUTIVE,

\* the PURSE of Administration is with PARLIAMENT—

→ as the govt. cannot impose a Tax without the sanction of parliament [A-265];

→ Nor it can spend money from CFI (Consolidated Fund of India) without sanction of parliament [A-266].

## 4]. Deliberative Functions:

Though Legislation is the foremost function of Parliament,

DELIBERATION is its 1ST FUNCTION as there can't be a Decision without DISCUSSION. The greatest casualty on the functioning

of Indian parliament over decades has been the loss of Deliberative Function.

## 5]. Information Function:

Parliament acts as an Organ of Information, as the govt. is DUTY BOUND to furnish ANSWERS to the questions sought by the members on its floor, by which

TRANSPARENCY & ACCOUNTABILITY are ensured.

## RASHA SABHA

① PERMANENCE + ② CHANGE  $\leftarrow$  PARADOX.

①  $\rightarrow$  RS is term based House — Institutional permanence of Consti<sup>Parli:</sup>

$\rightarrow$  there can't be election poll without RS unlike LS.

$\rightarrow$  RS is aimed never to be dissolved.

$\rightarrow$   $\frac{1}{3}$ rd members retire once in 2 years.

Began like this  
1st  $\frac{1}{3}$ rd — 2 yrs  
2nd  $\frac{1}{3}$ rd — 4 yrs  
3rd  $\frac{1}{3}$ rd — 6 yrs

$\rightarrow$  Decided by lottery — 1st  $\frac{1}{3}$ rd to 3rd  $\frac{1}{3}$ rd.

②  $\rightarrow$  Periodic Infusion of Fresh blood — Dynamic

$\rightarrow$  In LS, not much changes in faces — Not dynamic.

$\rightarrow$  Collective opinion of RS — reflects changing political opinion of ppl.

$\rightarrow$  RS modelled on American Senate — World's 1st Federal house  
- called upper house; Bonapart's is unitary model.

$\rightarrow$  only our BICAMERAL system is modelled on — BRITAIN

$\rightarrow$  LS membership more powerful — elders clinging there.

$\rightarrow$  RS members — Elected by Representatives of people  
LS members — Elected by People.

$\rightarrow$  Hence called HOUSE OF ELTERS — Constitutional presumption

RS members  $\Rightarrow$  Representatives of Representatives

$\hookrightarrow$  Hence expected to express older wisdom.

Why RS is a Back door entry?

While a small constituency rejects a person, an entire state decides to choose a person  $\Rightarrow$  Hence it does not dilute the legitimacy.

\* Quality of Reasoning \*

### \* (Quality Of Reasoning) \*

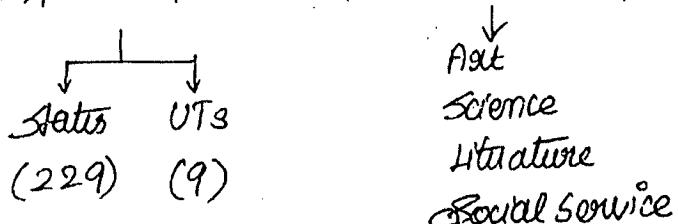
✓ Very important while writing answers.

✓ Even minor factual errors would seem negligible if it is there.

Composition of RS:

A-80

RS  $\neq$  238 members + 12 Nominated members = 250.



Sachin - under S. Service - challenged in Delhi HC.

R.S. SISODIA VS UNION OF INDIA, 2012

$\hookrightarrow$  Hence, he was then told to be under Arts

$\hookrightarrow$  If categories are not exhaustive but only illustrative or Indicative.

## Non federal features of RS:

i) UTs are also represented unlike in:

US - Washington DC } not represented in Federal house.  
AUSTRALIA - Canberra }

ii) States not equally represented unlike in:

| US -  $50 \times 2 = 100$  members -  
| → No territorial equality but only population equality.  
| as we've only single citizenship unlike US.

UT's are different from states:

- No sharing of federal relationship with centre.
- Administrative & legislative control of centre
- Properties of UTs are not of centre.

| [ Delhi - Semi-state - bit higher than UTs but far less than State  
|                      ↑  
|                      political term & not legal term.

- No distribution of powers unlike states  
Parl. can regulate

## TREATY OF CESSION, 1955

French govt. handed Pondy to India.

Assurance by India - Unified existence + representation in all possible levels of Govt.

### 14 CAA, 1962:

A 239(A) ✓ LA to Pondy

✓ 1 Member to RS

✓ 1st UT to get representation into RS.

### 69th CAA, 1941:

✓ Delhi population > 1 crore

✓ LA to Delhi

✓ 3 Members to RS.

Present / Statutorily sanctioned strength - 229 + 4 + 12 = 245

Under A-80,

RS is composed of + 238 members representing States & UTs along with 12 members having special knowledge / practical experience in Art, Science, Literature & Social Service, nominated by President. Thus the maximum strength of RS is 250. As UTs don't share Federal relationship with centre, Constitution authorised Parliament to regulate the representation of UTs by enacting law. Parliament limited it to 1 (PONDY) + 3 (DELHI), thereby limiting the present strength of RS to 229 + 4 + 12 = 245.

## Qualifications to Contest RS Elections [A-84]:

✓ shall be an Indian citizen & shall subscribe to an oath or affirmation declaring allegiance to Indian Const.  
God      No God  
-conscience-

✓ shall be of age  $\geq 30$  in case of RS &  $\geq 25$  in case of LS.

✓ Parliament by law, may stipulate any additional qualification.

$\Rightarrow$  As per REPRESENTATION OF PEOPLE ACT, 1951 as amend. in 2002:

✓ A contestant shall be a voter in any parliamentary constituency of the country.

► Before 1951, only a resident in that constituency can contest

2002

► Delhi resident can't contest in Assam - this changed in 2002.

$\Rightarrow$  KULDIP NAYYAR VS UNION OF INDIA, 2006

- How can one residing in a state can contest in other state.
- Will proposed by representatives of people is primary.
- We are not limitation of us.
- Hence 2002 CAA to RPA, 1951 stands valid.

## A-102 :

Prohibition on being & becoming an MP. on <sup>5</sup> grounds of disqualification

## A-103:

Req. Pres. to act in accordance with recomm. of EC.

Ex: AAP issue of disqualifying legislators - Natural Justice - HC  $\rightarrow$  EC

## 5 disqualifications under P-102:

### ① Office of profit

- But is not defined

[In RPA, 1951 → Not defined;

In MPCP (of. disqualification) Act, 1959 → some offices of profit]

All yet not defined ← cannot be enumerated

- SC has the responsibility in case to case basis.

- SC gave 3 basis for office of profit.

- i) Office
- ii) Profit
- iii) Government

chain independent salary  
of holder. (allowances  
not included)

Examine the nature of office

✓ Aided college professor - Ex: KURIEN

✓ Govt school Teacher

Exemplary  
allowances  
however are  
cons. as profit

PPL's Union for Civil Liberties Vs U.O.I., 2003

- 3 Judge bench - 1 ✓ 2 X 3 - agreed  
with 1st

Rajya Sabha, 2005

Rajya Sabha MP + Film

JAYA BACHCHAN Vs UNION OF INDIA - SC Judgement

only nature of office is our concern - irrespective of if you  
are using the allowances or not

Upheld her Disqualification as per EC → Perez → HC.

Officers of Indian Oil Companies, 2016

Y resign to contest elections, we are in PSUs not Govt. service.

RASBALA VS S.O. HARYANA

- Right to contest elections & Vote - Constitutional right.

- Likely to be told PER INCURIA (not based on proper base)

KULDEEP NAVYAR Vs UNION OF INDIA →, 2006

- Right to vote & contest elections - only statutory rights not constitutional

A 19(1)(g) : Fundamental Right to Livelihood.

Industrialists not under Govt. - Ex: MALLAYA case.

Pension receivers also not under Govt.

Can MPs allowed  
to practice as  
lawyers?  
Ex: KAPIL KIBAL

## ② Medically Unsound

[SC pending].

As declared by Court not by medical practitioners

## ③ Undischarged Insolvent

In 2002, SC said it to be a specific legal status to be declared by a court

These Norms are  
borrowed from the  
Brit. parliament.

Under Sec. 79 of Insolvency & Bankruptcy code:

An undischarged insolvent is a Bank

A Bankrupt is an undischarged Insolvent

A Bankrupt can't contest elections on subsistence of bankruptcy

∴ Neither a Bankrupt nor Undischarged Insolvent can contest election.

## ④ Change in Citizenship

election.

A-84 Parliament by law - add. grounds of qualification

A-102 Parliament by law - add. grounds of disqualification

X Prevention of Corruption Act - Conviction

vs Sentence

Conviction alone will prevent Found Guilty

Term of punishment

you from becoming an MP for 6 years]

X Same for Dowry Conviction areas. ←

Sec 8(3) RPA → Convict + Sentence < 2 yrs - No elections for 6 yrs  
after sentence period

## SC Pending Case:

charges against MP in Criminal case of serious nature

chargesheet Vs charge  
↓ ↓  
Investigating  
agencies      court

must be disqualified to contest - PIL  
For Probability of Parliament, he/she  
must be disqualified even on charges.

Service law Vs Penal law

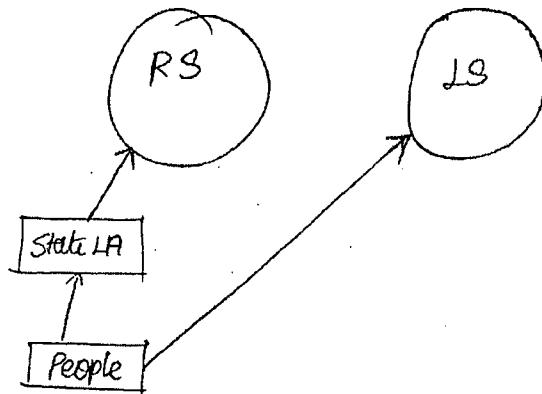
↓  
Beyond shadow  
of benefit of doubt  
not operative here  
correspondence  
of probability  
operative here.

Ex: LILLY THOMAS case - Default disq. on conviction  
Before 2014, RPA had a provision  
for appeal period which is excluded  
from actual period - This was misused  
so in this case, it was struck down.

A contestant shall not only fulfill the qualifications under A-84 but also shall not come under the grounds of disqualification under A-102 which impose prohibition on BEING & BECOMING an MP & grounds are following:

- ① Office of Profit under Government
- ② Mental Unsoundness as declared by a Court
- ③ Undischarged Insolvent
- ④ Change in Status of Citizenship
- ⑤ Parliament by law may prescribe any additional ground of disqualification.

For instance: Section 8(3) under RPA, 1951 - A person convicted & sentenced for 2 yrs is prohibited from being & becoming an MP for a period of 6 yrs after sentence serving.



✓ Proportional Representation

↳ List system - not applicable in indirect elections

→ Single Transferable vote

Quota we use: Droop's Formula

↳ Minimal vote requirement =  $\left( \frac{\text{Total no. of valid votes by MLA (elected)}}{\text{Total no. of Vacancies} + 1} \right) + 1$

↳ If vacancy > 1, value of 1 vote is 100.

MPs of RS are elected by the elected members of each state LA through the mode of PROPORTIONAL REPRESENTATION by means of SINGLE TRANSFERABLE VOTE.

$$\text{Min. no. of votes req. to get elected} = \left[ \frac{\text{Total valid votes cast by Elected members of state LA}}{\text{Total no. of Vacancies} + 1} \right] + 1$$

For ex: If there are 200 elected members & 3 vacancies:

$$\text{Min. req. votes} = \frac{200}{3+1} + 1 = 51$$

why LC - secondary chamber?

A bill originated by LC can be dismissed by LA

But, " " by LA can't be " " LC.

usual course A-108 - 3 deadlocks for joint sitting

① One house passed a bill - outright rejection

② " " " - unacceptable amendments

③ " " " - 180 parliamentary days  
not passed in other house.

→ To be convened by Pres @ Central Hall.

→ Not always will LS's opinion will prevail; Ex: NSAC act

It is a safety valve to ensure parl's functionality.

→ So far convened only 3 TIMES - 1961 @ Lowry prov. bill

1968 @ Repeal bill

2002 @ Rev. of Terr. bill

So, LS & RS are on equal powers here.

### BRITAIN

SALISBURY DOCTRINE, 1945

→ It is a convention

If they did PN can go to Queen

→ House of Lords - no amendment - Bill of election manifesto  
no rejection

will of people > House of Lords.

extraordinary course Central Emergency:

Federal becomes Unitary for all practical purposes

Only for 30 days unless RS & LS separately passes it by  
special majority.

## State Emergency:

Only 60 days unless, LS & RS must pass separately with (sp) majority.

No CA Bill can become act if RS doesn't pass separately with SM.

In 1950s, General Crisis

→ Imposition order - Good under state list

External trade under central list

→ RS came to help by authorisation A-249

≠ 2/3<sup>rd</sup> of members for national interest - for items in list for 1 year & will cease to exist after further 6 months.

In 1980s, Militancy in J&K.

→ Public order - under J&K but authorised to VG by RS

→ But Parl. didn't go for implementing it.

A-312

All India services originating here.

If RS resolution - 2/3<sup>rd</sup> National interest - VG can create All India services (even All India Judicial Service as insisted by I. Gandhi)

Parl. can create a law for it.

Diffr. b/w A-249 vs A-312

<sup>1 yr</sup> <sub>no time</sub>

A-249 is bound by Time, A-312 is not bound by Time.

A service created by A-312 by Parl. law - can it be destroyed by Parl?

Greater can abolish. But in this case:

A:169, A:312

↓  
create & abolish      Only power to create explicit.

## Primary role of RS:

Revisory role to check haste of LS which is under Public pressure  
Qualified person to come in w/o uncertainty  
of elections - REPRESENTATIVE & ACCOMODATIVE Democracy

Constitutional debates - Read

## In an Age of Prime Ministerial Govt:

RS is more relevant than ever.

RS may seek to reclaim the leg. space of LS which maycede to UG.

Balancing wheel of Parliament

## Constitutional Structure & Significance of RS

Unlike LC @ state level which is regarded as the secondary chamber of state legislature; RS is regarded as the second chamber of Indian parliament having powers on par with LS not only during usual course of legislation but also under Extraordinary circumstances.

No bill can become an act unless passed in RS & the only exception is money bill which stands on a different footing.

Though A-108 provides for joint sitting to resolve a legislative deadlock b/w the houses, the fact that it was convened only thrice in the past [1961, 1978, 2002] testifies the political indispensability of RS as a legislative chamber.

⇒ Further, Extraordinary Circumstances like:

National Emergency } require the approval of RS by a  
State Emergency } special or simple majority as the  
Financial Emergency } case may be, so that the declaration  
as the case may be. Likewise;

⇒ No Constitutional Amendment (CA) Bill can become act unless it is passed in RS by a special majority.

⇒ Apart from the above,

Constitution confers a few powers on RS which make it a chamber special & they are as follows:

A-249 If RS passes a resolution supported by  $\frac{2}{3}$ rd members present & voting as to protect National Interest, it can authorise parliament to enact law on state subject(s) mentioned in the resolution for a max. period of 1 year & a law so enacted, shall cease to operate at the expiry of 6 months after that 1 year.

A-312 If RS passes a resolution supported by  $\frac{2}{3}$ rd members present & voting as to protect National interest, it can authorise parliament to create 1/more All India Service(s) including an All India Judicial Service as mentioned in the resolution by enacting law.

Ex: Indian Forest Service was created in 1966 by invoking the special power of RS.

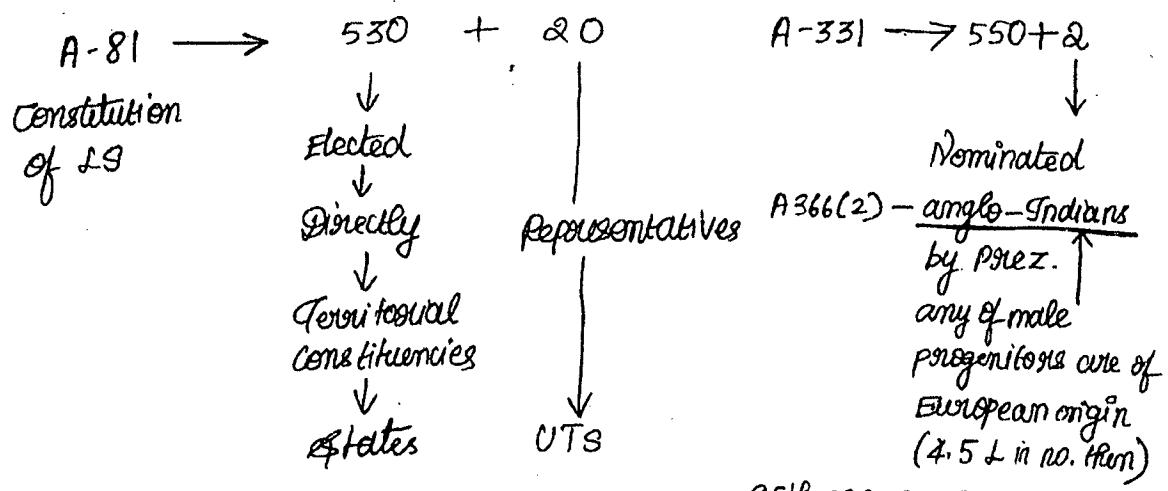
Most Fundamental role attributed to RS

Is to act as a REVISORY HOUSE to prevent or delay Hasty legislation initiated in LS which is always under the pressure of public opinion as it is a directly elected house.

Further, RS broadens the scope of our Representative Democracy by enabling the Talented & specially experienced to participate in legislation w/o undergoing the uncertainties of a contested election.

In the present Political Circumstances;

RS appears to be very much relevant as it can seek to reclaim the legislative space of parliament which LS is likely to cede to a majority Government; & in such a situation RS can truly emerge as the BALANCING WHEEL of Indian Federalism.



Maximum strength of LS = 552

95th CAA, 2009

From 2010  $\rightarrow$  2020

Under A-81  $\rightarrow$  LS is composed of  $\neq$  530 members elected directly from Territorial constituencies on states; along with  $\neq$  20 members representing UTs.

Further; under A-331  $\rightarrow$  if Pres is of opinion that the Anglo Indian community is not adequately represented, he/she can nominate not more than 2 members.

$$\text{Total strength of LS} = 530 + 20 + 2 = 552$$

As union Territories do not share Federal rel<sup>p</sup> with UG, const<sup>n</sup> authorised Parl to regulate rep. of UTs by law.

Parl by law limited it to 13 as a result of which,

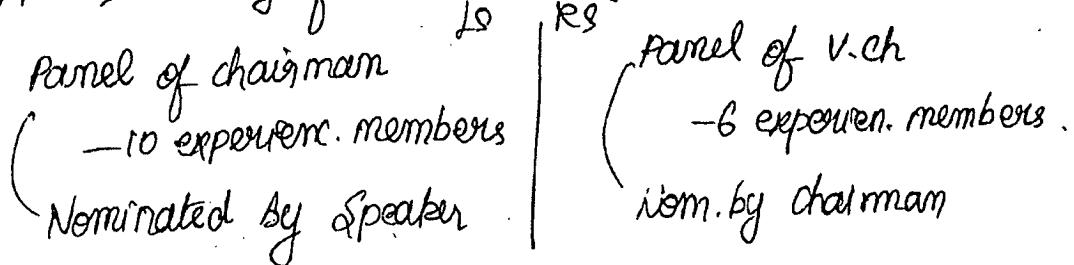
$$\text{Present strength of LS} = 530 + 13 + 2 = 545$$

@upsc.risefinity

# SPEAKER

- The best example - office of speaker - of representative Democracy
- Her NEUTRALITY is crucial for sustaining peaceful democracy.
- "Once a speaker always a speaker" - BRITAIN
- Anti-Defection law → Sp. won't be disqualified if she leaves & if she rejoins  
Not only of charm
- Speaker - oath of an MP & not as for speaker - Office of Trust  
Deputy speaker - Opposition party  
- ruling party
- Rules of Procedure → Many discretionary powers to speaker.  
(RoP)
- A-101 : MP can resign. ~~With~~ acceptance of presiding officer must. Speaker will examine if it is voluntary & genuine.
- A-93 : Election of S & DS - simple majority - 1st meet of house
- A-94 : Removal of S & DS - Effective majority
  - ↳ 14 day notice must be given for resolution.
  - ↳ House will decide, via R.o.P, who will be next presiding

R.o.P → actually of Const. Assembly: Absence.



Vacancy: President will decide  
(Simultaneously).

→ Money Bill:

Before it goes to RS after passing in LS, speaker has to ~~to~~ ensure it as a money bill. - A 109 - Decision of speaker final.

Favour of speaker will affect the functionality of RS. 'Aadhar' T E X T

P. Chidambaram: only final for LS but not for RS and other -argument.

But SC decided to leave it as final.

→ A 108 - Joint sitting, presided by Speaker

↓ safety valve to reclaim legisl. power of parliament

If speaker is absent → D. Speaker → D. chairman of RS  
why not chairman of RS? s(He) not a member of RS; just  
an ex-officio member.

Britain - conventions strictly followed.

→ Joint parliamentary Committee ⇒ constituted by Speaker.

Rajale case:

Not politically correct to have demanded SPC only  
after (the next day) of SC judgement. Y not before?

Intention - just to keep issue alive for 2019 elections.

Speaker also constitutes - House Committee

If he is part of committee - Then ex-officio chairman of that committee.

→ Speaker remains in seat till 1st meet of new LS.

'Institutional performance' of LS by way of heading (pol.).

The Secretariat [Bureaucratic arm] of LS. [Subash Kashyap]  
(Exe-head - Section of LS)

→ President will decide the person who is [most senior MP of LS].  
SPEAKER PROTEM 'for time being' (latin)

\* A-99 Oath to newly elected members (by Sp. protom & other few members app'd by speaker)

\* Preside the election of new speaker.

Special powers of LS:

S.G  
15 Times / 22  
NCM

i) NCM only on LS - Rule 198 of ROP - By Opp.

a) Power to overthrow — No ground is req. to be mentioned.

govt. — Moved only against CM, & not any indiv. Minister.

— @ 50 mem. support req.

ii) CM only on LS — Nowhere in rules — By Govt.

— emerged by practice in late 70s.

— N.S. Reddy vs Charam Singh

— R-184 Ordinary motion seeking confidence.

— Nothing like 50 mem. req. — None req. basis of R-184.

1st - 1963  
against Nehru  
after 1962 acc

- But just opp. to Govt; ordinary motion
- ii) Censure Motion - R 184 (not exactly envisaged censure as such) | NCM  
 - only in LS.  
 - expressing disapproval of Govt decision or Ind. NP | Outright Rejection  
 - Govt Indication of lack of trust in CM | Ag. only Govt.

Con. Not ~~Govt~~ later req. to reclaim legitimacy. - Convention & prove majority not rule

Convention: Oil for machine of Constitution.

In its absence, complexities.

Very systematic rules.

- iii) Adjournment Motion - R 56, 57, 58 -  
 Power to adjourn LS → Speaker's power.  
 Fix. liability on govt: specific instrument to censure govt.

Last day, last adjournment → w/o next date of meet.

'Sine die' → Power to terminate a session.

Prologue - By prez. only (exe)

The house by itself can pass adjournment & this indicates to censure of Govt - Happens in case of say rail acc. etc..  
 50 mem. req.

Speaker can permit or not - discretion.

Ideally CM should follow.

### iii) Money Bill

Senate can reject MB, but not introduce }  
H.R. Rep. - has Origination clause. } U.S.  
Final say only for LS.

### iv) Emergency : 352(8) - 44<sup>th</sup> CAA

Before 44 CAA, only conven. power - periodic control  
For A-19 safeguard → 44<sup>th</sup> CAA → Continuous control.

$\frac{1}{10}$  HR memb → 14 day imm. sitting

→ President must revoke emergency.

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A-93

Speaker & Deputy speaker are elected soon after the house meets for the 1st time, and by a majority of members present & voting.

A-94

Speaker or D-speaker can be removed by passing a resolution to that effect supported by an effective majority. However no such resolution can be moved w/o a notice of atleast 14 days.

L8

If S & DS are absent, one among the PANEL OF CHAIRMAN will preside.

Panel of chairman is composed of 10 members & is constituted by speaker.

RS

Panel of Vice chairman constituted by chairman & const comprises 6 members out of which anybody may preside if both presiding officers are absent. [S & DS].

## Special powers of LS Speaker

- ① ~~sole~~ authority to decide a Bill as Money Bill or not.
- ② It is speaker & not chairperson of RS who shall preside a Joint Sitting of houses under A:108.  
If speaker is absent → D. Speaker → if he is absent  
D. chairperson of RS ← will preside.
- ③ Speaker has a special relationship with PARLIAMENTARY COMMITTEES. TPC are constituted by speaker.  
Speaker appoints the chairpersons of 3 major FINANCIAL Committees.  
Speaker constitutes many HOUSE COMMITTEES by nominations including:

PETITIONS Committee

PRIVILEGES Committee

BUSINESS ADVISORY Committee etc-

If speaker happens to be a member of such a committee,  
she becomes ~~the~~ chairperson ex-officio.

- ④ When term of LS gets over, all its members shall cease to be in office except speaker who remains in office till the eve of 1st meeting of new LS. →

As she represents the INSTITUTIONAL CONTINUITY of LS  
by heading the Secretariat of LS.

### Special Powers of LS

- ① NCM & CM can be introduced only in LS.
- ② Censure motion & Adjournment motion can be introduced only in LS.
- ③ Money Bill can be introduced only in LS, and the decision of LS shall prevail over the suggestion of RS, as RS cannot amend or reject a money Bill but can suggest amendments.
- ④ Under A-352(8) : LS has the power to disapprove National Emergency at any time. If not less than  $\frac{1}{10}$  members of LS communicate in writing to speaker if the house is in session - or to President if house is not in session, the intention to pass resolution disapproving National emergency then a special sitting shall be convened within 14 days & if LS rejects National Emergency, president shall revoke the declaration forthwith (immediate effect)

## IMMUNITIES & PRIVILEGES OF PARLIAMENT

Difference

Immunity → To individual MPs

Privileges → To institution as such

Ancillary character - for autonomy of house.

A 108 — some privileges, Parliament by law may codify,

A 194 till that unspecified privileges may remain that of Both House of Commons at time of commencement of Indian constitution.

Ques:

Why still refer to Both H. of Commons? they thought

But it would affect the privilege of MPs. So,

44<sup>th</sup> CAA — 20<sup>th</sup> June, 1979 — dependence will continue w/o

A 105 explicit reference to B.H.of Commons 😊

## ① F. of S&E

No MP can be questioned before a court for either in house or committees of house or even outside house with authorisation of house.

Even non-MPs of LS have this while speaking in LS.

Ex: ARUN JAITLEY - MP of RS but speak as Minister in LS.

Attorney General - Can speak in LS.

(PAC chairperson - claimed to go against Att.Gen but not valid)

### Restrictions:

① 118 - R.O. procedure - speech subject to rules.

i) Sankhi Mahajan (RS MP) → expelled - derogatory to women

ii) Sub. Samy (CRS MP) → expelled - derogatory to houses.  
(Emergency - F.Gandhi)

② A:121 - No talk against SC judge except in impeachment.

Ex: No reference to collegium of in house permitted - KURIEN.

## ② F. from Arrest:

✓ 40 days prior to session

Not applicable

Contempt of Court

✓ During session (3 sessions)

Preventive detention

✓ 40 days after session

Criminal cases

Applicable

Judicial custody - MP can participate with discretion of judicial officer.

only to Civil or revenue cases.

Detention - Judicial officer must inform to house & also when release from detention - or else

Contempt of Parliament

### ③ F. from Tury Service:

No MP can be compelled when parl. in session.

Even bribe takers got protected by 105 in case of bribe during NCM.

T.M.N. Bribey Case

P. V. Narasimha Rao Vs State (CBI) , 1998 (after RG death)

AIADMK support from outside.

He didn't have numbers.

He didn't even come to house on day of NCM,  
as he was so confident.

1st successful minority govt. to finish 5 yr term.

PCA, 1998: SC → i) Not public servant: Rao.

but representative

1979

ii) Instantly could be  
be prosecuted.

Kannanbhai case

- Min/ MP is  
public servant.

SC ans: i) Yes, a public servant

ii) 4 MPs of T.M.N who received bribe & supp. Rao -

onus - taking money & casting vote.

Ajit Singh - didn't come to house after taking Bribe.

Proceedings against: Ajit Singh & Rao

But acquitted on Benefit of doubt.

## INSTITUTIONAL PRIVILEGES

- ① Power to exclude outsiders.
- ② Right to publish or not publish some of its proceedings.  
[EXPUNGED]
- ③ Power to punish individuals on contempt of parliament  
(67A LS - post emergency - expelled IG for disrespect of previous LS - imposed on Tihar - The next LS however took her out)

Parliamentary privileges vs FR.

### BLITZ CASE

Defamatory article of MLA of UP.  
Privilege motion in UP LA. Summoned the journalist - by  
Privileges committee - didn't appear.

Speaker → warrant against him - detained in hotel  
for 5 days.

### Ganupathi vs Nafisul Hasan, 1953

Produce in court within 24 hrs.

FR > Parl. privileges.

19(1)(a) - 105 - must be harmonized. No one absolute.

If privileges are codified by law; it will come as  
law by A-13 - may affect autonomy

- Against Outsider
- Disciplinary proceedings on MP.

### RAJA RAMPAL CASE

Bullock takers expelled by LS

1960s  
Keshwan Singh

He influenced in  
LA decision.

SC  
Top parliament - UK  
A-226 - SC stays

A 105 - MAY codify

No plasticity to respond to new situation.

2003-04 :

2 constituencies in Delhi

Material on  
Portal

Campaign Expenditure

Dwarka - 30 lakh - 1 step - 2 weeks 40 lakh  
Chandni Chowk - 3 lakh - 1 step - 2 weeks 40 lakh.

✓ POLITICAL EQUALITY

✓ Informed choice - Lack of connect with voters.

✓ MPLAD Scheme - 50% for 30 lakh  
3 lakh.

\* Periodic re-org of ~~re-d~~ delimitation of ~~new~~ constituencies.

Delimitation Commission - Statutory

A: 81, 82, 170,

Delim. of parl. const Delim of LA const - Both by Parl. Law.

## (Boundary commission - USA)

A: 81

### ① National principle

As far as possible, ratio - pop: seat of state - shall remain equal for entire country. - ALLOCATION

### ② Local power principle

As far as possible, all parl. constituencies may have equal population strength. - DISTRIBUTION

LS seat share of states	RS. seat share of states
Not in Constitution schedule to RPA	original allocation - population foundational - no matter what 4th schedule

A: 82

Parl. by law must do delim. comm. after every census.  
Constitutional duty

### Past delimitations :

- ① 1952
- ② 1961      ↘ share of seats in LS underwent change.
- ③ 1972
- ④ 2002      But later it was realised, it would affect 5 states who were successful in Pop. control.

### 42<sup>nd</sup> CAA, 1976

- i) No delimitation till 2000. (earlier, it was mandatory; now, it is discretionary)
- ii) Till 2000, share of ~~the~~ seats of states in LS shall be frozen. (and based on 1971)

### 84<sup>th</sup> CAA, 2001

- i) Fresh delimitation on basis of 1991 census (as 2001 census was not available yet)
- ii) To retain protections of 42<sup>nd</sup> CAA till 1st census after 2026 (i.e) 2031.  
uniform pop. strength atleast within states as Pan-Indian was not favoured.

2003 - census figures came of 2001

### 87<sup>th</sup> CAA, 2003

- use of 2001 census figures.
  - Prez. order - notified on 2008 - from then on started.
- A 329 - Prez. order not questionable on court. Once it is notified in operation - ABSOLUTE BAR.

(last delimitation - semi delimitation  
2002 delimitation Act effect in 2008 - )

BCLT, now said pop. stability will only be in 2055.

How long can pol. equality be denied?

15<sup>th</sup> FC - TOR - 2011 census to decide dist. of tax revenue

- radical departure from 1971 figures.
- states good on pop. control - req. to be rewarded for it also mentioned on TOR

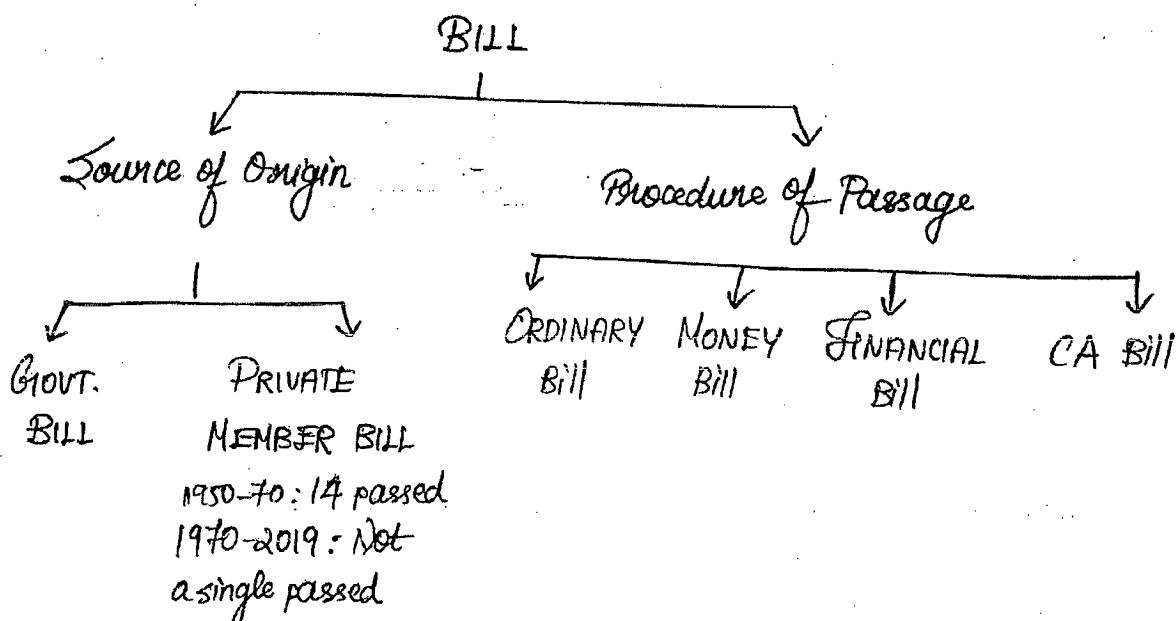
(Wrong understanding the ecosystem

(states don't have seat share but people have)

## PASSAGE OF BILLS

what is a Bill?

Draft legislative proposal that becomes law on enactment.



## Private Members Business: (PMB)

Private  
Member Bill

Private Member  
Resolution

Every Friday, last 2.5 hrs for PMB.

If not possible then on some off day must be held.

Committee on LS for PN. Bills & Res.  $\xrightarrow{\text{recomm. to}}$  Business Advisory Committee of LS

Business Advisory Committee of RS will decide for RS. No separate committee.

i) Since 1970s:

Parliamentary proceeding complex due to Globalisation — uniformity of legislation to match with the world.

Ex: Environment: Stockholm convention

Trade, Education]  $\rightarrow$  Parl. leg. became mandatory

Indian Patents Act

42<sup>nd</sup> CAA, 1976

State list  $\xrightarrow{\text{to}}$  Concurrent list

Edu & Env

Parliament burdened with Govt. Business & it is preferred over private business. So very less time  $\rightarrow$  comitted to back burner. Hence sidelined.

ii) Since 1989:

Increasing disruptions in Parliament.

× ↑ Regional parties ; - regional > National aspirations.

× Adversarial politics by Opposition at Centre

thus, the limited time is also getting disrupted.

iii) Pt. Members Bills are not that good in draftsmanship.

→ Attorney Gen, Add. solicitor Gen, Departmental counsel, Ministry Bureaucrats, Min. of L&T ⇒ Huge paraphernalia or machinery support for govt. but absent with Pt-members.

If yet PM Bill is important, govt will bring changes in provisions & enhance the bill, so will tell PM Bill to be withdrawn.

Any judicial intervention invalidating legislation is an embarrassment to Govt.

2015: DMK Member → Transgender : PN Bill

Asked to withdraw due to Nandamuri from SC. But unanimously passed in RS but failed in LS.

SHASHI THAROOR → To ban Censorship of literature.

iv) Political Vendetta / Hostility ↓

See:

EVEN NEHRU was not exception:

12/14 → By Congress backbenchers

2/14 → By independent candidates.

0 → By opposition.

1) CHURCHILL

2) NEHRU

To capitalise on past-flaws.  
- speeches.

1970: SC enlargement ..... Act

✓ fast PM Bill to be passed

Why PM Bills are important?

i) ✓ They contribute to Selection — ↑ Creative space - PM Bill  
Govt Bills → Admin. necessities — ↓ Creative Space

Ex-a) 2016: Shashi T → Asylum Bill proposed for transparency.

b) 2016: " → Decriminalise Homosexuality.

2009 - Decr: Delhi HC

2013 - Decr: Homo : SC - leaving it to leg. by parliament.

But. S. Tharoor was not allowed to introduce the bill.

The house voted & stopped introduction.

c) UPA govt - Manish Tewari - for Parl. control over UK Intelligence agencies (US, does it, though limited but completely absent in India).

ii) ✓ Instrument by which govt. can overcome Judgements disturbing the society / adverse one.

Ex: Recent SC/ST Atm. Act - leg to overrule Judgement.

Ayodhya ordinance - not promulgated by Pres. does it may affect the renewed synergy b/w Exe & Judiciary.

So pm. Mem. Bill can be an instrument to overrule Judgment w/o disturbing synergy b/w E & J.

24<sup>th</sup> CAA - Golaknath judgement

- iii) ✓ Backbenchers - to enable their abilities or showcase  
↓  
their talents. Ex: Manish Tewary  
Part of Maj. party in Parl. but not part of Govt.
- iv) ✓ Parl → has become a ratifying house rather than an active legislative institution / proactive house.  
To regain its splendour - need non-partisan approach to Bills. Ex: American Congress.
- v) ✓ Govt. will never propose bills to curtail its own power, conferring powers more rather. Only PN. Bills can atleast introduce a balance / restriction on their power.

Parl - must be more powerful than Govt.

Restore Pt. Member to status of owner.

### BASED ON PROCEDURE

#### ① Ordinary Bill :

A-107] No need prez recomm.

Intro in LS or RS.

Pres. absent choice of Pres.

## ② Money Bill

A-110

Most defining feature: Exclusivity - One or more money matters on A-110

→ Info. only on LS

→ Pres. recomm. mandatory

Govt. asking money from LS - only subset of coll-responsibility  
why? To prevent a situation of P.M. Bill on Money getting introduced arbitrarily.

Govt: Preemptive say even in introduction of M. Bills.

Simple Majority

Speaker shall certify it on 2 Oc

After passed by both RS & LS

Before taken to Pres for assent

A-110(4) : Personal signature of Speaker

why? In course of passage, character might change.

14 days: From date on which Bill is received by the office of RS. Must be passed but once can make recomm.

(sec 53 of Australian Const<sup>n</sup>)

Ex: Aadhaar.

Is it mandatory for Pres. to give assent to M. Bill?

usually she gives. But no direction by Const.<sup>n</sup> like in OA Bill,

Parl. is intentionally to give Govt. the final say in

case of Emergency happens after passage of Bill, so can recommend to Bill.  
Govt - collapse & new Govt. may not want it.

Pres. can't resend Bill for recommendations. get stuck.  
A-111 - No suspensory Veto over M. Bill.  
So parl. power/ wisdom retained by Pres.

## AADHAR BILL

# Justice. K.S. Puttaswamy (Retd) Vs UOI, 2018

→ Contention: Aadhar not M. Bill but fin. Bill - affected RS as it was introduced as M. Bill.

Sec 23 of Aadhar act: Power to UIDAI  
Sec 54: Regulation making powers of UIDAI  
→ Not money matters

← Govt reply: A-122 - No court can inquire into proceedings of Parliament.

Sec 7: Head of Act - Subsidies, Benefits & Services from CFI.

So, all other aspects are subsidiary to Sec. 7.

A 110 (g) → Anything new than (a)-(f) can be part of M. Bill.

(i-e) Ancillary matters - Sec: 23, 54 are these.

SC: Examined Govt. Par. rules/leg.

Accepted Govt's argument & upheld it as money Bill.

Speaker: Here SC said review over speaker not relevant as Bill is correct as M. Bill. So qn. of SR over speaker unanswered.

## # Mohammad Siddique Vs S.O.F. U.P., 2014

3 Judge Bench.

- Power of UP LA under A-199(3) certifying Bill as LB cannot be under TR - in this regard/case.
- This will be basis of operation till overruled by higher court.

~~Dissent~~  
2018 T. CHANDRA CHUD → Aadhar is substantive ~~to~~ irregularity & not ~~just~~ irregularity of procedure.  
So JR available.

- Overruled Siddique judgement
- Aadhar unconstitutional.

M-Bill

Exclusivity

L-Bill

Not exclusive

Non-money matters also.

Category A:

### ③ Financial Bill

i) category A: Non money matters + Money matters  
A-117 (1)

(6 mentioned in A-110)  
(+ 1-(9) ancillary  
enumerated)

→ only on LS + with Pres. recomm.

Ex: salaries, allow, pension of MPs.

ii) category B: Expenditure from CFI ← it involves  
117 (2) - see

Purpose → To create institutions.

Ex: 1993, HRPA → NHRC  
Lokpal Act

Money is only incidental / subsidiary to purpose .

→ No need for Pres. recommendation for introduction, but  
however need pres. recomm. before it could be considered  
for passage of house. → Info. in RS & LS

#### Passage of Bill:

i) Introductory — 1st Reading → No discussion

ii) Consideratory — 2nd Reading → General discuss

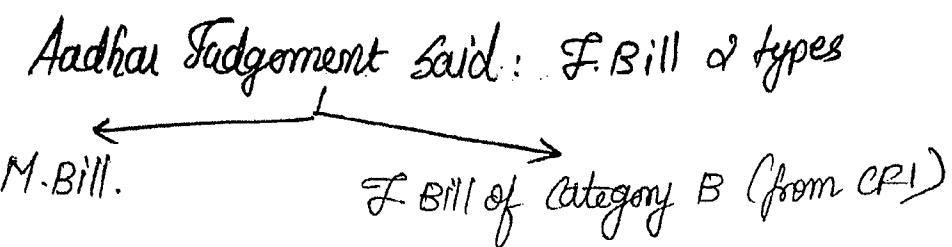
iii) Final — 3rd Reading → Clause by clause discuss

↳ In exceptional case,  
amendments allowed.

↳ Then passage.

◦ To Committee or Gazette for  
Public recomm.

◦ Amendments can be made



Note: Different from Parl. rules. We must go with Parl. rules

#### ④ CA BILL [A-368]

No req. of recomm. of Pres.

why? Need special majority -  $\frac{2}{3}$ rd Constituent Majority) >  
Simple majority -  $\frac{1}{3}$ rd Govt. Majority ←

No joint-sitting. Deadlock possible.

If cont. aff. distribution of Powers, then need  $\frac{1}{2}$  of  
state ~~legislatures'~~ legislatures' approval  
both LA & LC.

Q4<sup>th</sup> CAA - Pres. must give assent to CA Bill.  
(1971)

103<sup>rd</sup> CAA → Abt. distribution of responsibilities under  
part III & Empowerment of SG & OG is subset of resp.  
Hence SG's approval was not required.

→ Court will probably pass it. - 10% reservation.

✓ will help alleviating caste consciousness among GCS.  
So it will be a healing touch, hence across party consensus.

India Shawney: A-15 & 16 only subset of A-14 (Basic Structure)

→ overcome by legislation of 103 CAA.

→ 50% ceiling on equality principle.  
Now 60% ← E.g. Opp of OBC not on 10%. reduced to 40%  
— creamy layer ppl of OBC also affected.  
Competency

Nagauraj Case (for CAA validation)

\* Width Test \* Identity Test  
W. of Basic Strut. Id. of each of basic features of BS.  
A-14 one in PRes.  
So, 10% may be violating PRes.

Lack of quantifiable data allegation:

Opinion of state - lack of representation  
removed to facilitate even the absence of quant. data.  
Now it can't be questioned, as constn doesn't mention qvd. as necessity  
An CAA can't be struck down based on arbitrariness

Sunil Patra, 1980s

CB judgement.

Peril laws can be struck down based on arbitrariness.

However, A govt. order or legislative / law can be struck down - so during notification it may be challenged by court.

changes to Sch. F → Means only addition or deletion of items on it & not the provisions under each items. Hence 103<sup>rd</sup> CAA doesn't require state acceptance.

Can NCA election procedure be changed by CA Bill?

A-368

If change is to entire nation, not req. SG approval.

Ex: Delimitation.

Ratification of sch req. only for 5 heads under A-368.

Pocket Veto:

Anachronistic. Not mentioned in const!.

Can be challenged by SC, if not on CON advice.

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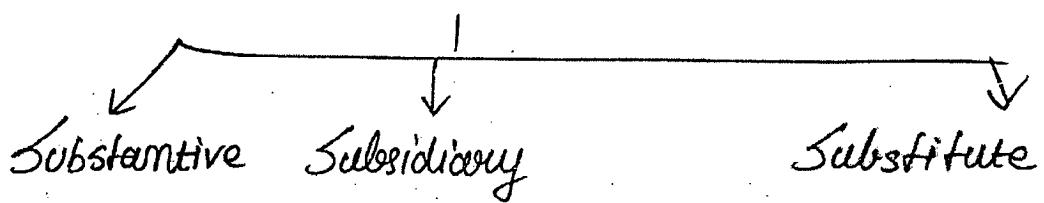
# MOTIONS & RESOLUTIONS

Motion - Procedural device enabling House to express its opinion.

Every decision has to be taken by House.

H. Ensures the functionality of House.

## MOTIONS



### Substantive Motions:

Self contained or Independent - Not dependent on any other instruments/devices.

- Ex: • NCM  
• AM  
• Con. M  
• M. of thanks on Pres. Address

### Subsidiary Motions:

Not Independent, dependent on other <sup>Pending</sup> instruments/devices

- Ex: • Amendment Motion - only come if the Bill is pending.  
• Only when motion is passed → Bill is passed.  
• Faceless / Tiny / Utility Motions - Ancillary Motions  
Used in course of completing procedures & no own character for themselves!

- o Superceding Motion

### Substitute Motions:

Substitute to a substantive motion.

If admitted by a presiding officer, house will  
testimonials to merit of sub.M.

discuss both but will vote only on Substitute motion.

~~Ex:~~ Usually not invoked.

- In NCM - not allowed SM.

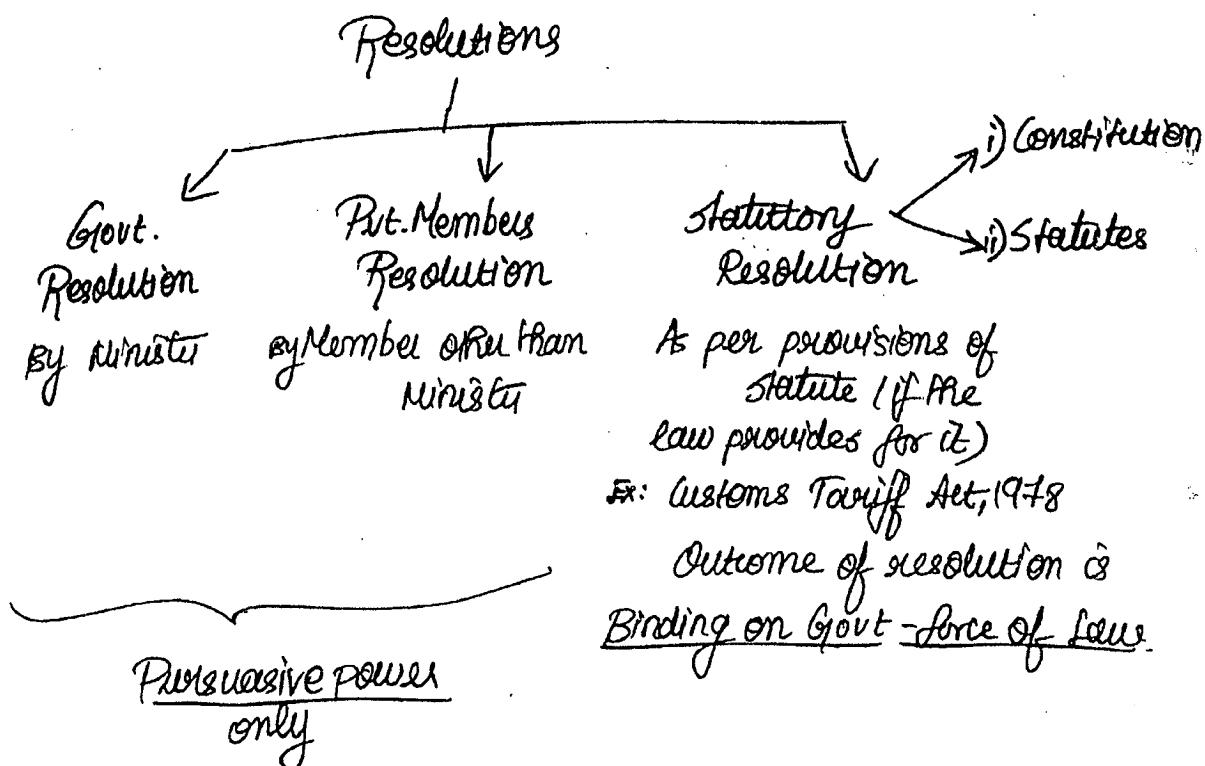
### RESOLUTIONS

Motions with an element / fragrance of Resolve / solidarity

~~Ex:~~ Resolution on Shimla agree -

All resolutions are substantive motions.

All resolutions are voted open, unlike motions



Shimla agt. after 1951.

Parl. expressed solidarity to govt. resolution.

But passage doesn't mean the govt. can't come out of S. Agreement.

Stat. Resolution:

CONST.<sup>N</sup>

Ordinance provided in Const.?

A-356, A-352

STATUTES

## LEGISLATURE'S FINANCIAL CONTROL OVER

### THE EXECUTIVE

- Control is ↓ in Parl. system than in Pres. system
- More procedural than substantive
- Less conflict b/w Leg. & Exec. in Parl. system.

#### 2 Cardinal Provisions

A - 265 ↙

Naturally  
leads to  
ensuring it

↘ A - 266

: Money of Govt.

> No tax can be levied and collected w/o authority of law (i.e.) parliament.

Philo: we tax ourselves

> Trust of republic to keep money of ppl safe.  
To prevent Embezzlement.

> All revenue, income receipts & loans received must be put in [CFI]—custody of Parliament

> CFS — custody of state ~~state~~ legislature.

> Delhi & Puducherry — CF under the concerned parliamentary legislature.

## v) Doctrine of BASIC STRUCTURE

SC said - It was there in const.<sup>n</sup> from beginning & we just DISCOVERED it & didn't INVENT it. It is a technique to test the constitutionality of CAA. Magic word is const. SC.

High water mark of Judicial Activism - KESH BHAR. Case.

→

SC of INDIA is regarded as the MOST POWERFUL JUDICIAL INSTITUTION OF THE WORLD on the foll. grounds:

- ① Unified Judiciary with SC at the apex, having jurisdiction over all courts & tribunals in the territory of India.
- ② Appointment of Judges of superior courts through the system of COLLEGIUM.
- ③ Power to do Complete Justice - A 142 - SC has the power to pass any order as is necessary for doing complete Justice in any cause or matter pending before it.
- ④ A 141 - Law declared by SC shall be binding on all courts in the territory of India.
- ⑤ A 144 - All civil & judicial authorities shall act in aid of SC in territory of India.
- ⑥ Doctrine of BASIC STRUCTURE

→

## JURISDICTION OF SC

Multiple jurisdiction - Diverse - Powerful.

A-131  
ORIGINAL

APPELLATE

ADVISORY

REVIEW

The most fund.  
purpose for which  
SC was created

- Writ
- Suit
- Transfer-A-39A
- Election

Except writ, all  
other exclusive to  
SC.

\* The idealism of CA reflected in Part-III → FR. Same idealism  
only in one other place Part-II ch.4. A-32 connected these both,  
hence A-141, 142, 144. Why? SC is the custodian of Part-III-FR.

A-32 → Writs power - illustrative & not exhaustive (i-e) not  
limited to only 5 writs - plenary in nature. Ch.3 → SC can give  
writ power to any other court. (A-136 also shows power)

\* A-131 → SC becomes a TRIAL COURT - exclusive power to  
adjudicate disputes b/w:

- > UNION vs 1/more STATES
- > UNION & 1/more states vs 1/more STATES
- > 1/more STATES vs 1/more STATES

} Union territory not included  
in Original suits (A-131)

## # State of Rajasthan Vs UOI, 1977 - SC 5 JB

under A-131, congress ruled states went to SC on a LETTER → SC said you are not bound by a letter. Hence SC declared political controversies (Doctrine of Pol. Qn) not in SC jurisdiction

✓ Question of Law ✓ Question of Facts  
Exceptions to 131

i) X Pre-constitutional agreements & Treaties not under original jurisdiction → To prevent Balkanisation.

ii) X River waters - Not just claim but CARE & SHARE - Federation only for admin. convenience. So, non-legal factors also must be considered to take in a/c diverse POV.

A-262 [Parl. by law may provide for Resolution of River water disputes & parl. can exclude SC from its jurisdiction]

R.W. Dispute Tribunal - 3 Member (sitting / ret. Judges of H/C/SC)

A-311 → Matter ~~referring~~ referred to Tribunal excluded from SC.

iii) X T.O.R to 15<sup>th</sup> FC - 2011 census figures

A-280 - Matters to FC is discretion of OG & SG can't go to SC

### TRANSFER JURISDICTION

Not for SRF (bcos only on 42 CAA)

Substantial qn. of law

① From H.C to SC - 139 A (1) - of general imp. to be by SC.

② From 1 HC to another HC - 139 A (2) - In interest of Justice

\* A-138 → Parliament has power to enlarge SC jurisdiction.

S-406 of CrPC → Criminal case from 1 HC to another HC.

[Sayalalitha Case] ; S-25 of Civil Procedure Code ]

### 3 ways of Transfer

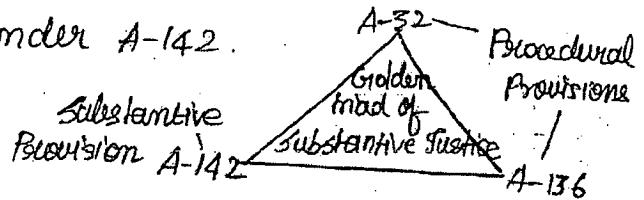
1. On request of ATTORNEY General
2. On request of PARTIES
3. SVO-MOTO.

Civil Case	Guinal Case
No sole of state	Foremost role of state.

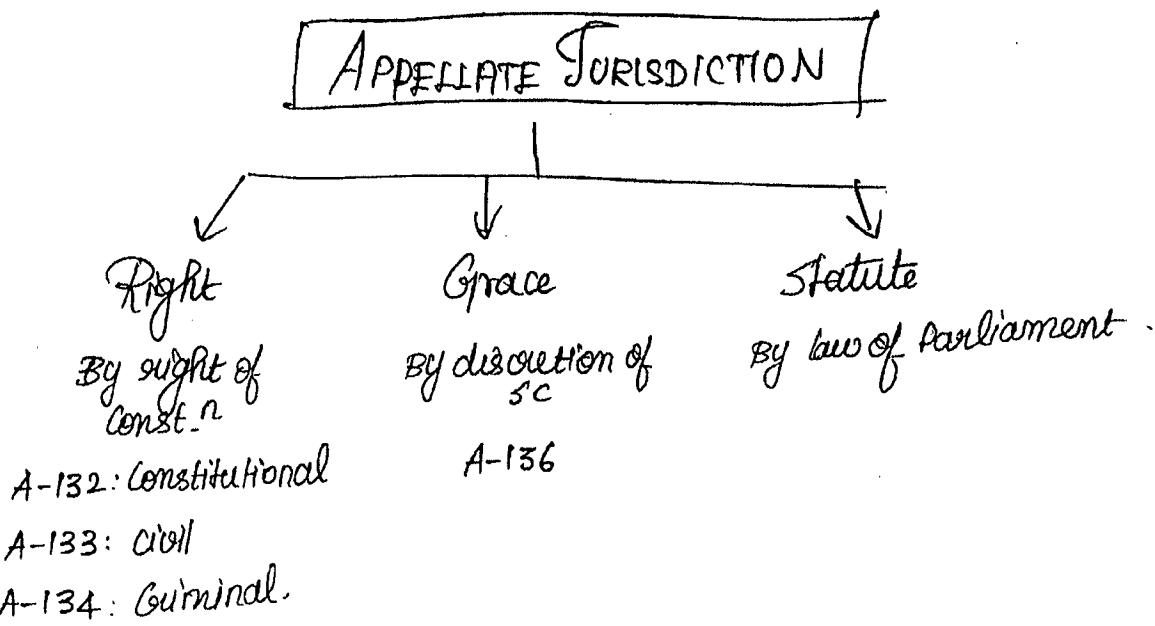
# A-142 - Most often controversial but one beautiful case.

Wait for extending 139 A to S & K. CB of SC expressed its opinion that it couldn't do it by judicial order. Come under A-32 so that we can do it under A-142.

### ELECTION JURISDICTION



SC - Exclusive jurisdiction to adjudicate disputes of UP & Prez Elec.  
At least 20 members of State Electoral college can file & a 5 judge CB will examine.



### RIGHT

A-132 → Appeal against HC judgement on any case, only if HC certificate of question of constitutional interpretation.

A-133 → Appeal only on civil case. HC Certificate - substantial qn. of law of general importance.

A-134 → Appeal only on criminal case. HC - Fitness Certificate.

↳ occasions exceptions - w/o certificate

i) HC took case to itself from trial court & gave death penalty

ii) Trial court acquitted but HC gave death penalty

### GRACE

A-136 → Armed forces excluded. Power of Discretion

to entertain appeal from any court / tribunal - any order can be appealed & not just final order / judgement.  
80% cases on SC - A 136  
↳ 80% of these cases dismissed quickly.

unlike in 187, 137, 139 & AFT act

## SPECIAL LEAVE PETITION - A 136

File is petition until leave permitted when it becomes an appeal.  
R. Kaveri case

A dispute is a dispute only till it is not adjudicated. So, an award of Tribunal can be appealed.

### STATUTE

NGT act, 2010 - statute

↳ Permits appeal to SC after tribunal award.

CP act, 1986 - statute

↳ Appeal permitted.

AFT act, 2007 - statute

↳ Judgement of Armed Forces Tribunal can be appealed to SC.

s-30 & 31 - Only final order can be appealed & not intermittently.

# Even if statute doesn't allow appeal, Ppl can approach by:

A-32, A-226 as writs.

A-138

Parl. can enlarge jurisdiction.

## ADVISORY JURISDICTION

A-143 - Pres has power to seek advise from SC on question of law / fact of public importance which has arisen or to arise, after examination SC may give non-binding advice. (However, report may not give advice - but 5 min. Judges with open hearing & opinion is declared as judgement) - US SC can't do this. - No jurisdiction - so far, 15 times it has been sought in India. Something adjudicated already can't be asked for advice. Pre-const. treaties & agree. can also be asked for advice.

KESHAV SINGH - UP LA - Contempt of Court LA

LA convicted him for 1 month.

Lucknow bench gave bail. LA gave orders / resolution to arrest judge also. Judges went to All. HC & got stay. LA again summoned judges to LA.

President referred this <sup>to</sup> SC for advice.

LA told pres. can't seek advice in this case as it is not related to him.

SC → Pres. has power as it is of public importance.

SC told LA can't take HC's power.

## REVIEW JURISDICTION

A - 137

To review its own judgements.

SC rules, 2013

[US]  
ROBERT JACKSON.  
Supreme though  
fallible.

Review petition within 30 days (not strict though) must be filed & it will circulated in chambers of original judges who are on service & will decide if necessary.

Ex: SABARMALA Case.

40 - As far as practicable, no oral hearing

Scope of review petition - very limited - No re-hearing, just review.

Not intra-court appeal but just rectify error apparent.

(i.e) On face of court, the error shall be so grievous as to be reviewed.

⇒ Review petition for Death sentence must be heard in open court.

Ex: Mohd. Ajif's <sup>2007</sup> review pet. got rejected in chamber itself & he appealed to SC for open hearing & SC accepted it: with ~~5~~ 7 judges + 3.

HC also have review - But not by Const. " but by own rules

SC → Const. " itself gives power to review. But no scope beyond review error.

Rupa Ashok Heera Vs Ashok Heera, 2002

SC has power to entertain CURATIVE PETITION beyond review stage to ~~rectify~~ prevent gross miscarriage of justice.

## 2 Grounds : CURATIVE PETITION

- ① Violation of principles of Natural Justice.
- ② Failure of Judge to disclose interest on one of parties of case.

Will be circulated to original judges + 3 seniormost judges for SC. <sup>(in sequence)</sup> or newest judges if origin selected. Not required.

Yakooz Nemon Case Vs S. of AH

As far as possible, no open court hearing but only in chambers. No time limit for petition but asap.

@upsc.risefinity

# ORGANISATION OF SC

A-124 - (CT+F)-8. Parliament may by law increase them.

<sup>Recent</sup>  
SC (No. of Judges) Act, 2008

Max. sanctioned strength - (CT) + 30

Now - only 28 judges in SC.

A124(3) - Eligibility for SC judge → JUSTICIABLE

A-124(2) - Suitability: Only those eligible would be suitable.  
→ NOT JUSTICIABLE

## Eligibility:

i) Judges

5 years as HC Judge  
in 1/more HC

ii) Advocates

10 years as HC advocate  
in 1/more HC

iii) Distinguished Scholars

Not on original draft of CA.  
But inspired from US model  
of Prof- app. Academicians.  
But HII now not app. in India.

## SC advocates:

No @ provision for app. of SC advocates  
as SC judges as CA felt it would send  
a wrong msg.

But since 2014, the practice of appointing  
SC advocates as judges has increased,  
though in name of Delhi HC.

There is a suggestion to bifurcate SC

Y not?  
In US - Court sits en-blank  
(call together)  
In IND - Court sits Division  
Bench.

Academicians - good in  
subsstantive law even > career  
Judges. But in procedural  
law they may not be good.

CONST'N Court

NATIONAL Court of Appeal

In this case, Scholars  
will help in evolution of  
law \*

Suitability: A-124(2)

Preq. appoints under his hand & seal, after consulting as many SC & HC judges. It is mandatory to consult CJ to appoint other SC judges [Puisne Judges]

A-217 (1) - Appointment of HC Judges

CJ of HC is app. by Preq. under hand & seal after consulting CJ & Governor.

For other HC Judges, Preq. must consult CJ of HC also.

A-222(1) - Transfer of HC Judges (incl. CJ of HC)

Preq. can transfer a HC Judge in consultation with CJ

Meaning of "Consultation"

In initial 2 decades, Indep. struggle leaders didn't meddle much with judicial appointments - so ✓ Judicial Independence.

Conventions:

Senior most SC judge made CJ.

HC Judges asked before order of transfer.

1ST LAW COMMISSION:

A chief Judge has also an administrative role which demands leadership skill & a longer time period to institutionalise reforms. Ex. Social Justice Bench discontinued by successor.

Justice SADASIVAM : Min. 2 yrs for CJI.

Justice LODHA : Doctrine of legitimate expectation - If a person after 65 yrs stays still the next ppl in line will be affected as they deserve to be CJI by seniority.

1<sup>st</sup> LC - 14<sup>th</sup> Report, 1948

Seniority may not be sole criteria for CJI.

But nobody actually implemented due to wide consensus on seniority rather than search for best which may politicise & turn the criteria from objective to subjective.

After April, 1973 KESH BHAR CASE - DBS

Political class was angry about Patel's power diminished.  
3 Judges in line were superseded to appoint <sup>①</sup> A.N. RAY as those 3 were in support of DBS. - vindictive step, so those 3 resigned. Ray was app. with a mandate to overrule DBS.

Justice B.K. Mukherjee - Refused NEHRU's offer - Exceptional Judge.

Justice Hansraj Khanna → Deciding vote in the 13 JB of DBS review.  
↳ He was superseded  
② by another Judge.  
↳ Habeas Corpus Judgement - lone dissent -  
Illegal detention can be quashed in Court,  
This costed him CJI post - COURAGE

## JUDICIAL PRONOUNCEMENTS

In 1980s:

(CJ of HC)  
On a single day, 16 HC Judges transferred.

Jan, 1980: IG back on power.

Govt. became aggressive. Transfers became arbitrary. After this came:

I. **[1st JUDGES CASE] (SP Gupta vs UOI, 1981)**

(F JB), 2 issues

Poz. - 124(1), 217(1), 222(1), - Is the opinion of CJL binding as the word is "CONSULTATION" only.

Can a HC Judge be transferred against will?

⇒ Opinion of CJL Not Binding on Poz. Because, IE is "CONSULTATION" is not concurrence.

⇒ A HC Judge can be transferred against will.

REASONING:

Error in app. possible.

→ CJL is a human being fallible; But Poz is advised by a plural C.O.N. hence CJL can't be binding. But if Poz makes error, LS has power to overthrow Govt.

(Q SB)

II. 2nd JUDGES CASE (*SC Advocates on Record Association vs UOI*), 1993

Writ petition - On nature of app. of SC Judges.

Overruled 1st Judges Case.

Opinion of CJI binding on Parez. But CJI must give not individual opinion but with consultation with 2 senior-most judges of SC called Collegium. (within it, CJI has primacy.) As far as possible seniority principle must be followed. If Parez sends back & again colleg stands for same, final.

\* Integrated, Consultatory, Participative process to get the best judges on board - both Jud + Exe & complementary role.

↳ Only Judges can have more informed opinion on Judicial capacities in certain cases.

↳ In other aspects, Govt. is more informed about suitability such as - Integrity, BG of Judge (By IB)

### Reasoning:

① If exco. makes error, LS can question. Good. But in case of app. of judges this is just a exploded myth. SCOS under - A-121 & 211 - No discussion on conduct of Judge in parliament. So once warrant of app. issued, then no discussion in parl. possible.

② CJI is the Admin. head of Court & is answerable to Par on performance of judges app. during his tenure.

③ To bring plurality of opinion - Collegium setup brought.  
2 Seniormost SC Judges.

III. 3rd JUDGES CASE (<sup>& transfer</sup> In re app. of Judges / Reference 1),  
1998

Point: If it is consultation then why CSIPrimary in Collegium  
Under, A-143, Pres sought SC advice on doubts.

UG told: We will comply with your opinion - gave it in writing.

CSJ shall consult 4 Senior most Judges while appointing SC Judges & Transferring HC Judges.  
CSJ shall consult 2 senior most Judges for appointment of FIC Judges.

At any point, if the Collegium judges are in a situation such that they won't succeed CSJ, that judge who shall succeed CSJ will also be part of Collegium for admin. continuity.

CSJ shall have primary but if 2 or more Judges contradict with CSJ that opinion can't be given to Pres. Also if CSJ is contradicting an opinion, it shall also not be given to Pres. — so consensus becomes necessary - Democratic

CONSULTEE JUDGES - Senior most judges having familiar knowledge of the HC in context.

If procedure is not followed - then TR possible.

All correspondence in writing — to Pres & to CSJ

Hear. ① Concurrence ② Judiciary dominance

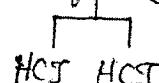
Legal Criticisms on 1993 Judgement

The procedure drawn by ex- in 1978 stand with 1995 judmt,  
Memorandum of Procedure (M.o.P)

⇒ Procedure will be initiated by CJI → M.o.L&T

i) App. of SC Judges ii) CJI iii) CJ of HC

⇒ Procedure will be initiated by CJ of HC  $\Leftrightarrow$  CM  $\xrightarrow{\text{M.o.L&T}}$   
i) App. of HC Judges



X Collegium is criticised for Transparency & accountability.

Justice Chalemeshwar - Dissenting Judge in NJAC criticised collegium.

Justice Deepak Nishtha - Online decisions of collegium. But only final outcome uploaded.

NJAC Case - Nullified 99<sup>th</sup> CAA.

To reform & bring new M.o.P by Govt. in cons. with Public & CJI.

SC  
outcomes  
of NSAC  
new M.o.P. } - National Security clause  
} - Collegium Secretariat in M.oF. L&T.

X 50 M.o.P is now in contention.

- X Informal system for app. relatives as SC Judge  
Judicial families playing (200+)
- X Ego clashes among judges obstruct the bringing up of best judges on board. Ex: KABIR & BHATTACHARYA issue sister

### 99<sup>th</sup> CAA - (NSAC) 2014

The Constitution (99<sup>th</sup> A) Act, 2014

- i) A-124(2) ; A-217(1) ; A-222(1) were amended to replace the expression ~~in~~ "CONSULTATION" with "On the Recommendation of NSAC" referred to in A-124 A."
- ii) A-124 A was added. Under A-124 A(1) → there shall be a NSAC consisting of :
  - a) CJI
  - b) The next 2 senior most Judges of SC.
  - c) Union Minister for L&T
  - d) 2 Eminent Persons nominated by a committee consisting of PM, Lop in LS & CJI, for a non-renewable term of 5 years.

iii) A-124 B was added which specified the functions of the commission including the:

- ✓ Recommendation of names for - Appointment as SC & HC Judges &
- ✓ Recommendation of Transfer of HC Judges

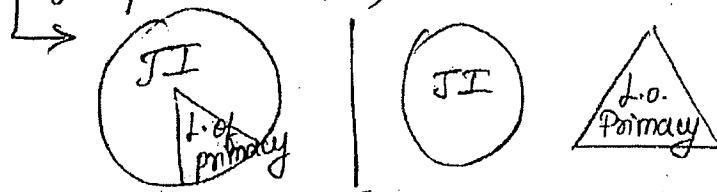
iv) A-124 C was added by which Parliament was given the power to enact law governing the procedure of NTAC.

**[NTAC Act, 2014]** was passed under **[124 C]**

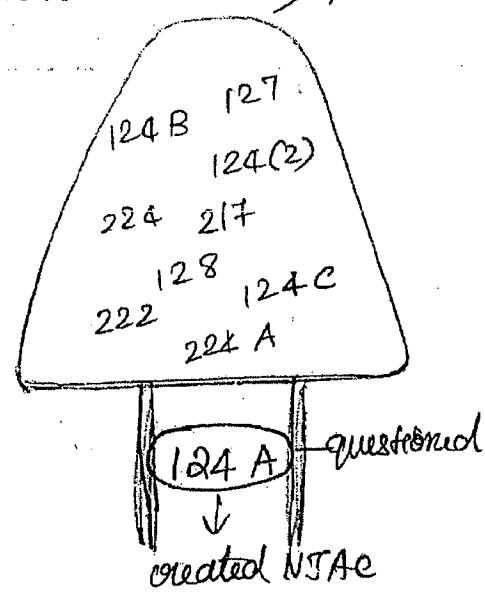
v) A-127, 128, 224, 224 A were amended to enable NTAC to recommend on the appointment of Ad-hoc judges in SC, sitting of retired judges in SC, appointment of Additional & Acting judges in HC & attendance of retired judges in HC respectively.

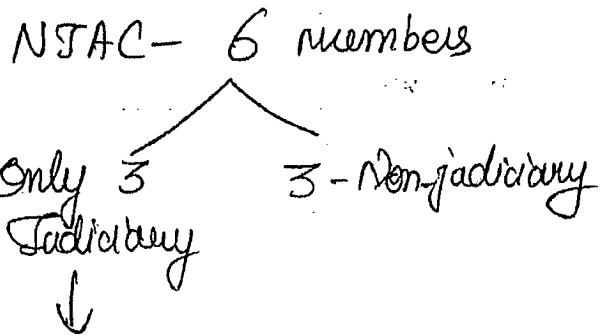
IV. **[4<sup>th</sup> JUDGES CASE]** (**SC Adv.on. Record association vs UOI**), 2015  
**(5 STB)**

Law of autonomy of Judiciary's opinion is part & parcel of Judicial Independence (JI).



1. Dissent: S. Chalmeshwar  
These 2 are different.





To struck down the non-jurisdiction

X 124 A - a) & b) 2 SC T's.

Govt. is the largest litigant, so can't be dec-mak. in app. of Judges

X 50 124 A - c) UM of L&T struck down.

Eminent person may not have expertise in judicial affairs.

The term is too vague & can be misused.

X 50 124 A - d) 2 Eminent ppl struck down.

1] Parl's power to amend (e) shall not be violative of Judicial Independence which is a part of Basic Structure.  
In 1993, SC had ruled that LAW OF PRIMACY OF OPINION OF JUDICIARY in appt of Judges is integral to Judicial independence & so, an amendment cannot violate the law of primacy of opinion of Judiciary

2] A-124 A (1)a) b) - are null & void as they provided for representation of Judiciary in the 6 Member NTAC, wherein only 3 members represent Judiciary, thereby violating the law of primacy of op. of- Judiciary

3] A-124 A (1) c) — is null & void as Union Minister for L&G who is made a member represents the UOI which happens to be the largest litigant in the courts of the country. Allowing a litigant to sit on the panel for appointing judges violates Judicial Independence.

4] A-124 A (1) d) — is null & void as the expression "Eminent Persons" is too vague & may result on <sup>nomination</sup> ~~app~~ of persons having eminence but no expertise in judicial affairs & hence potentially violative of judicial independence.

5] As A-124 A (1) happens to be the most important provision which is referred to in the other amended provisions, A-124 A being declared null & void invalidates the entire amendment act.

Way Forward:

[A-266 contd.]

But, not all govt. money is Money of Govt. as it has public money.

\* See Public Account Of INDIA (PAI) & For Every State.

(A-110) Transactions in PAI not mentioned in any law.

So, Govt. has complete control.

All money other than Revenue, Income receipts, Loans.

\* CONTINGENCY FUND

→ constn. talks abt. it but doesn't create it.

→ Parl. by law creates it & states also bring law for it.

→ In custody of Prez.

→ Can be replenished after usage from CFI by Money Bill.

→ Revolving Money

→ Upper limit: Q5 Cr - 1st

500 Cr - 2005 Amendt. Act

Note:

PRIME MINISTER'S RELIEF FUND

For disasters. (500 Cr not enough from Cont. Fund).

Purely Executive Fund. Created by voluntary contributions of indiv. & corporatis. Can be allocated from Budget also based on accounting.

→ Short term facilitation.

## Railway Budget

Not Separate from General budget from 2017 +  
Earlier it used to be pending & fund from Contingency.

Feb 31 J

Feb 1 proposed.

### A-112 - Annual Financial Statement

✓ Estimated Expenditure

✓ Ways & Means to generate Money for it - Revenue.

→ From 2017 - On Feb 1.

Discussion on General Principles of Budget.

↳ No motion to be moved during this

After completion, adjourned for 3-4 weeks (Recess)

(1994) Dept. of related Parl. Committees will scrutinize  
Budget on this period - demand of grants of dept.

originally - 17 (1994) - 45 members.

Now -

35 members.

25-LS ; 10-RS

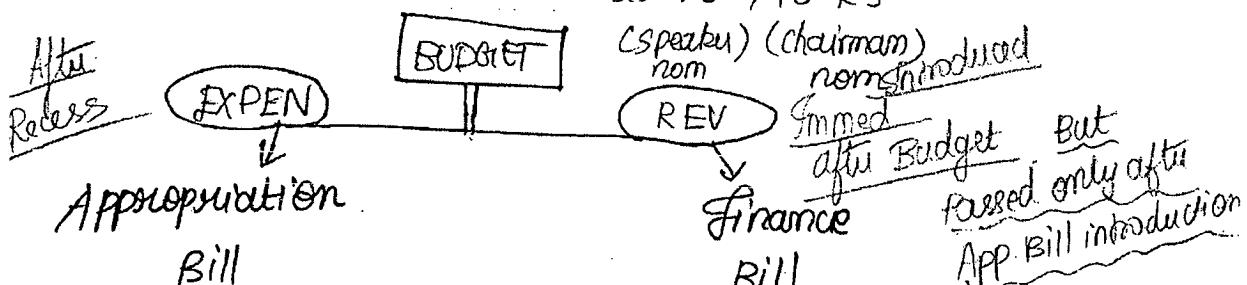
(Speaker) (Chairman)  
nom nom introduced

Immed

after Budget

But

Passed only after  
App. Bill introduction



> Demands for grants  
examined by D.N.S.C.

> 112(3) - charged  
Expenditure - Parl.  
and discuss but can't  
decide / Vote.

## Removal of SC

shall not be removed except -

A-124 (4) — SC Judge — proved misbehaviour or incapacity upon a motion in ~~each~~ house by sp.maj — address ~~to~~ passed by both houses provided motion & address are in same session.

A-217 (1)(b) — HC Judge same as SC Judge removal.

A-124 (5) — Parl. by law may provide for investigation, proof & address.

## \* Judges (Inquiry) Act, 1968

A motion for removal:

- > In LS — atleast 100 members
- > In RS — atleast 50 members

But it is not mandatory for presidng officer to permit the motion. He may also disallow the motion.

Ex: DIPAK MISHRA case — RS chairman didn't allow.

He shall keep pending & appoint Panel of Enquiry (P.O.E)

- i) SC Judge
  - ii) HC CT
  - iii) An eminent Trust
- } To frame charges & investigate into same.

Once a motion is passed in 1 house, other house has to wait. (e) One house at a time.

It may also be passed simultaneously in both where presid.off. can file & appoint P.O.E jointly

In case of Incapacity → If Judge refuses to be examined by medical board

## 2 Major criticisms

- i) Only parl. can initiate proceedings.  
Ppl are deprived of statutory platform to remove judges.  
Also Ruling party & many members from state must support at a time - very difficult.
- ii) The law does not define clearly what is "MISBEHAVIOUR".  
So many minor misbehaviours go unacted upon.  
or deviant behaviours

## 4 Times Motions passed

1st - 1991 - Justice. Ramaswamy - For embezzlement

Panel → proof found → He was asked to come & defend  
guilty      (though law doesn't mandate it)  
Politicians failed (C) ← But INC didn't favour ←  
removal

2nd - 2011 - Justice Soumitra sen - Corruption

RS moved motion - He defended - But RS passed sp. m<sup>y</sup>  
He resigned as ←  
he was guilty

3rd - 2014 - Justice Dhinakaran - HC CJ of Atka to be elevated to SC  
Land grabbing (TN) - so transferred to Sikkim HC -  
Motion in parliament - He resigned

4th 2016 - Justice Ganguly - Sexual harassment -

Motion in parl - Admin. Jud. Enquiry - Panel - No proof  
Proceedings closed ←

### Escape route - Misuse:

Judges of HC & SC can send Resignation letter to Perez.  
It is not mandatory for Perez to accept unlike MPs of parl.  
This is said to be part of Judicial Independence.

Because — Freedom to Resign — Law of Resignation — not necessary.  
to record reasons — won't hurt any party —.

\* 'Justice. KRISHNA IYER' — Judicial Independence is only Creed of Independence — See..

UPA Govt in 2010 — Bill —

### The Judicial Standards & Accountability Bill (JSA Bill)

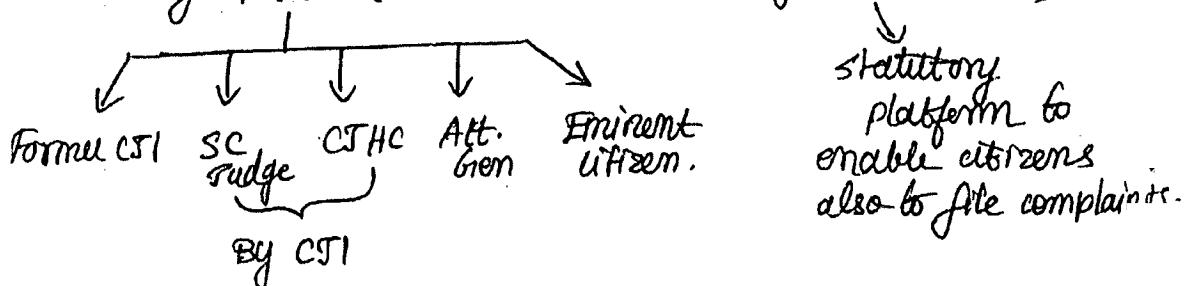
The 2 major outcomes were attempted to be addressed.

i) "Misbehaviour"

1997 — Full court passed a Resolution

Restatement of values of Judicial life — standards upholding dignity of Judiciary

→ these norms were included in bill to make them enforceable by NTOC (Nat. Judicial Oversight Committee)



The bill lapsed after passage in one house due to objections of judiciary.

Complaint → Investigation committee after checking genuinity  
on CJT

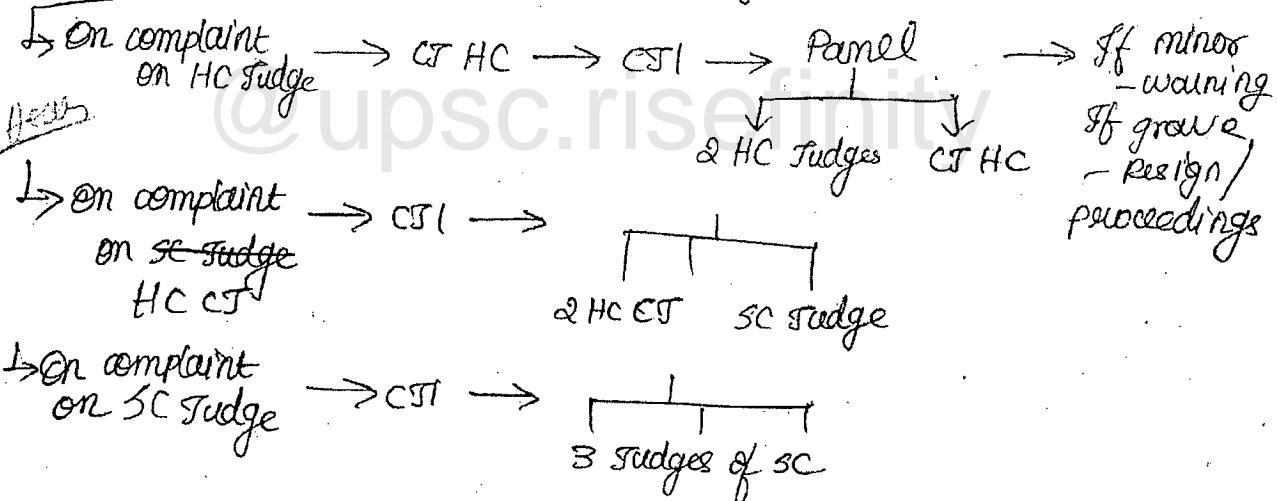
Other judges → Complaint scrutiny Panel → Investigation Committee

If minor - Warning / If not tell PRC to  
If grave - Resign / initiate parl-proceedings.

### Criticisms on Bill:

124(5) - Mandate is very limited. But NTOC is very big.

NTOC - Creation of a stage prior to parliament replacing the adhoc panel with NTOC - this is not necessary as there is Inhouse procedure & Judges (Inquiry) Act.



### Problems:

+ Transparency & Accountability - NTOC better in this

+ If complaint against CJT - Silence - No procedure.

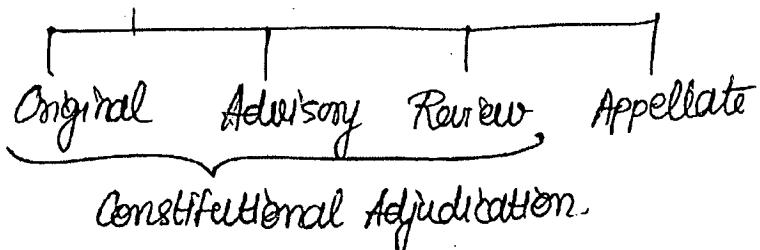
### Desirable changes to NTOC:

Attorney General, Eminent citizens - Replace them with Distinguished Scholars (1 or 2)

# NATIONAL COURT OF APPEAL

## | A Constitutional Necessity? |

Jurisdiction



→ 70% of total cases - appeals only - so SC acting as majority appeal court.

FRANCE - Court of Cassation → last appeal court, different from a constitutional court.

⇒ 1986 - Const. Bench of SC - Bihar Legal Supp. Vs CSTI Society

SC expressed desirability to see the creation of National Court of Appeal by 9th amendment  
constitutional court

so that SC can reduce appeal cases burden.

⇒ 2016 - PIL - V. Vasanthakumar Vs UOI

A Chennai lawyer approached SC - Writ petition seeking judicial intervention for EA for N.C. of Appeal in 4 regions - D, M, C, K -

Awaiting consideration of Const-Bench Now.

## MERITS

i) Access to Justice itself is Justice.

SC far from NE & Southern India - Most cases from North only,  
so N.C. of Appeal in 4 regions - ✓

ii) Affordability to Justice is Justice.

Ligation expenses high in Delhi - SC.

In Kolkata - low expense - many ppl can benefit. &  
same lawyer can represent on appeal also.

iii) Quality of Justice is Justice.

70% - 80% cases dismissed at threshold itself in SC.

A-136 → SC can also be not compelled to take up cases.

Justice is not seen to be done - so, N.C. of appeal can  
give better patient hearing.

iv) Better evolution of Constitutional Law.

> 1993 - Umnikrishnan Vs S.O. And. Pradesh

→ R. to - Primarily EDU as FR - Direction to ~~par.~~ Govt.  
to include A-21 by CAA to give effect.

> Parl. amended - 86<sup>th</sup> CAA 2002 - A-21A

2018 - Transformative Year

o Aadhaar decision

o Decrim. of homosexuality

o Adultery provisions

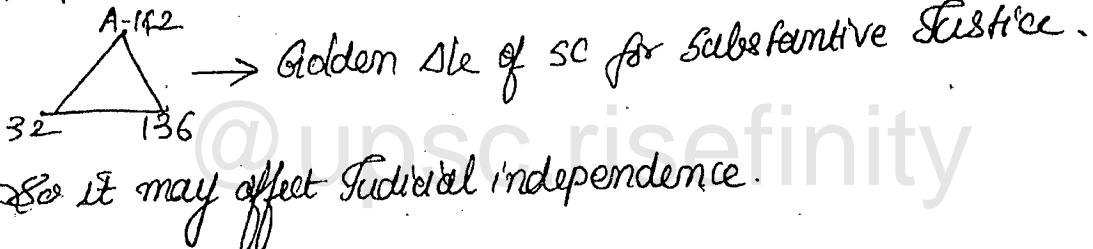
o Sabarmala judgement.

} Affecting public at large  
rather than just litigants.

This will happen more often with a separate N.C. of Appeal  
& SC will get more time for such cases.

## CONCERN'S

- i) Pendency of Judiciary will increase manifold.  
 Courts on 4 regions - cases will increase due to vicinity of court. (Even if SC pendency will reduce, this is bad in total).
- ii) Extensive constitutional amendment required.  
 N.C. of - Appeal - may be intermediate court.  
 Even if last appeal court, it will be b/w HC & SC - as 3rd layer.  
 A-136 - has to be deleted to do this effectively  $\downarrow$   
 A-142 - can't be invoked on collateral - need A-32 or A-136.



So it may affect Judicial independence.

## REGIONAL BENCHES OF SC

18th Law Commission - suggested this as an alternative to N.C. of appeal.

A-130  $\rightarrow$  SC may sit in Delhi or any other place as decided by CJI with prior consent of Perez.

so no need of CAA here - Admin. decision enough.

Chennai/Bangalore ; Kolkata ; Mumbai ; Delhi

6 Judges to each Regional Bench :

$$6 \times 4 = 24 \Rightarrow \text{on Reg. Benches}$$

$$31 - 24 = 7 \Rightarrow \text{on SC, Delhi.}$$

Court travels for citizens  
"National Integration"

## CONCERNS

- i) It may affect SC's power to command to constitute Benches.  
It may reduce competence as less no. of judges with limited choice of judges is available in regional courts - may result in incorrect judgements.
- ii) It may also lead to Regionalisation of SC → May dilute the national stature to regional flare
  - ✓ i) Sol for this: Periodic transfer system
  - ✓ ii) Sol for this: ↑ no. of SC judges over years (10-15 yrs) so as to match the resources - may be upto 61 - 12/15 judges to regional benches.

## Way Forward:

This idea is worth pursuing.  
May do pilot project & experiment. May be test on Eastern part to access NE. Try it for a year or so & see how it goes.

# JUDICIAL REFORMS

⊗ Huge pendency of cases

3.3 Cr cases - 2018

The Way Ahead

\* Sub-ordinate courts

2.84 Cr cases - 2018

"Delayed Justice is  
Denied Justice"

\* HC - 43 lakh cases

\* SC - 58,000 cases

Justice itself becomes Injunctions.

⊗ Judge pop. ratio - very poor.

IND - 15 Judges per million

US - 107 Judges / mn

CAN - 75 Judges / mn

UK - 51 Judges / mn.

# 2002 - SC - All India Judges Association vs VOI

SC → Direction to Govt. → to ↑ 50 judges / mn. from prevailing 10.5-13 / mn within 5 years (by 2007)

But even by 2019 nothing has happened beyond 15.

⊗ Govt. Investment in Judiciary

Each last 3: 5 yr Plans - 0.07% of GDP.

not even a marginal increase

\* Consistent underinvestment.

## (X) Pattern of Pending Cases

50% cases pending on 4 HCs:

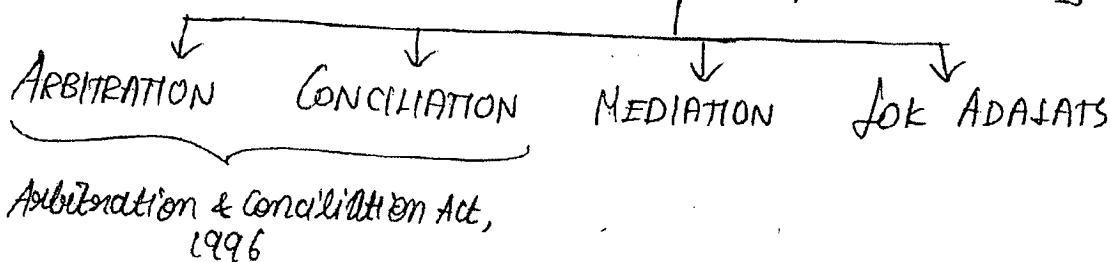
Allahabad, Bombay, Calcutta, Madras

50% cases pending on District level in 5 states:

UP, MH, WB, BH, GUJ.

Need customized focussed plans.

## ADR Mechanisms - [Alternative Dispute Resolution]



### Arbitration

(Passive adjudicator)

Arbitrator - Pvt. Judge funded by parties itself - Winner & Loser

Conciliator - Active adjudicator → Win-Win situation desirable.

### Mediation

Fazl Nazirman - Conciliation & Mediation one & same - but if need to be differentiated:

Conciliation - 1996 Act.

Mediation - No streamlined law.

But SC has mediation centre with high success rate.

HC & District courts also have them. Very useful in matrimonial cases.

Recent Proposal: Indian Mediation Act

#  $\downarrow$  in  
Koushnamurthy Vs New India Assurance Corp, 2019.

Mention of mediation in legislations but no 1 law.

> Civil Procedure Code

> Commercial Codes Act

> I & B code.

### Lok Adalats (Ppl's Courts)

Estd. under National Legal Services Authority Act, 1987

Each Lok Adalat: 3 Members

a) 1 sitting/lst. Judge

b) 1 Lawyer

c) 1 social activist

Decisions only by consensus  $\rightarrow$  No appeal beyond this

If gross violation  $\rightarrow$  TR available.

\* 2002 - LSA Act -  $\frac{sec}{add'l}$  (b) - Amendment

Permanent Lok. Adalats made possible.

Most efficient among 4 ADRs.

Subsidy - 18,000 now -  $\frac{Max.}{(₹5/mn)}$  allowed

For ₹2/mn  $\rightarrow$  40k additional Judges required

+

Help Staff + Buildings  
 $\simeq$  flats

\* National Judicial Infra Fund → can be est. by revenue from ADR mechanisms to built courts in villages.

UK → Court fee - £1000 for leave petition

NZ → Court fee - \$1200.

IND → Court fee - Rs. 1500 - very low compared to lawyer fees.

→ Ad valorem fee for appeals / special leave petition can be brought - Corporates can afford it. Civil cases & realistic Recovery of Court Fee. benefit basis.

\* Management Principles to enhance efficiency + productivity

(Toyota → 5 cars per person → 50 cars/person)

Change in Work Culture → through training to staff & Judges  
In 3-4 yrs, tremendous change possible.

Management experts can be consulted.

Problems with Ecosystem variables

DNA test - 1 to 2 yrs.

what Judges can do on this?

\* Increasing Retirement Age of Judges

Now life expectancy has increased well.

UK - 75 yrs → one of the youngest SCs.

CAN - 75 yrs

IRE - 70 yrs

US - no age limit.

IND - 62

\* Technology to dispose Cases

18<sup>th</sup> Law Commission - Cases of similar nature can be clubbed & heard together.

Too many vacations for Courts

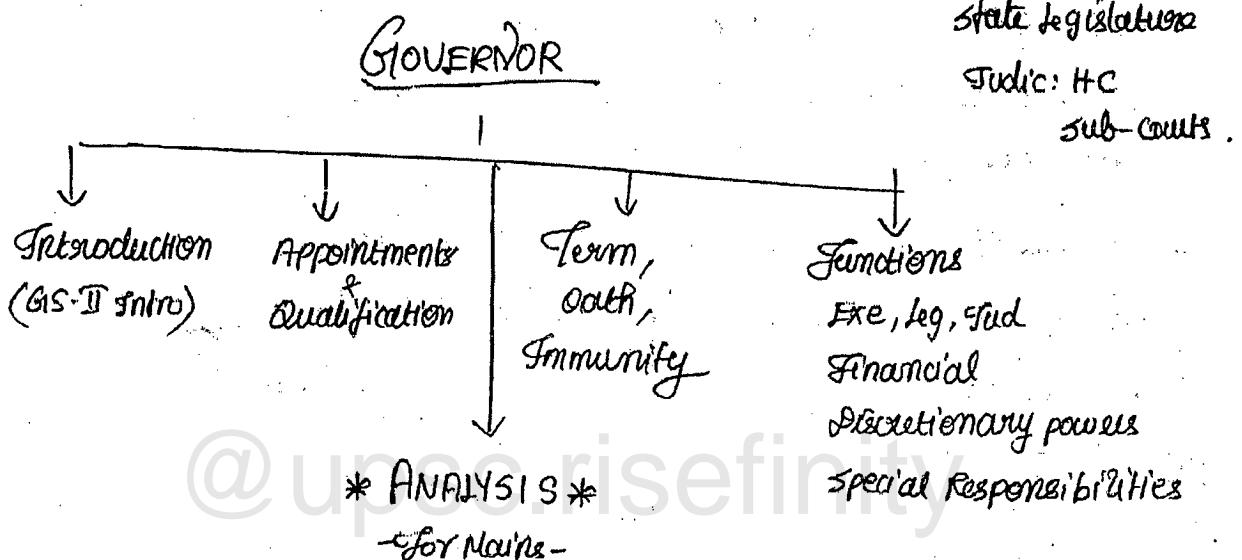
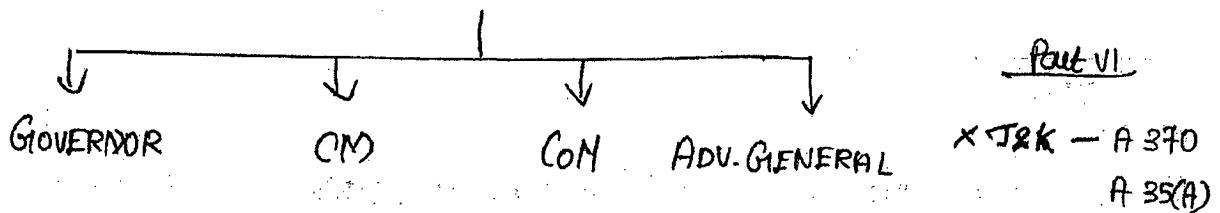
~~Too~~ Procession of vacations - ⑤

@upsc.risefinity

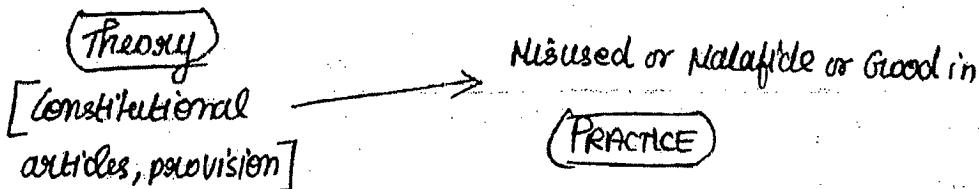
# N.R. SATVIK BHAN - POLITY

## STATE EXECUTIVE [PART-VI]

GIOV  
CM  
COM  
Ad.Gov



? Analysis? [For Qn: 1-5 on GIS-II]



Ex: A 356

Theory  $\Rightarrow$  In case of breakdown of const. machinery, Gov. can write a letter & recommend PREZ. RULE on state

Practice  $\Rightarrow$  Once breakdown of const. machinery is not clearly defined in const. Gov. uses it as discretion to understand it as L&O; Fin. forg; corruption; Mal. admin.

6 States (from 2016-18) - Don't give example of states but only misuse.

A-116 B - Vote on Account

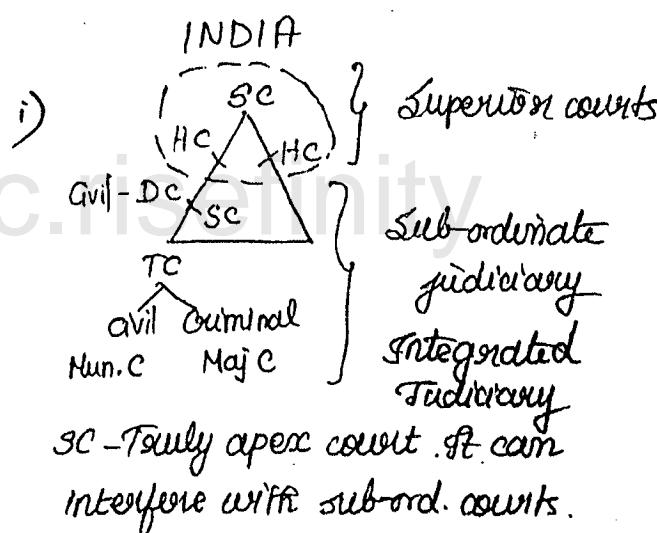
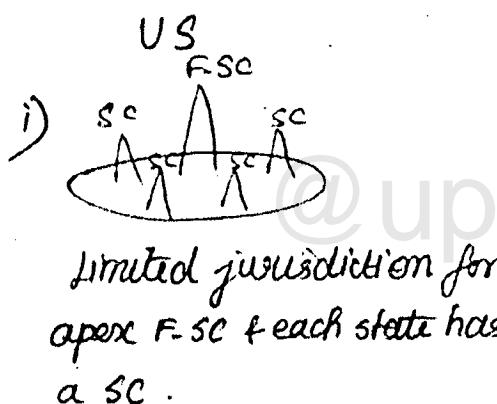
1/6 th of total expenditure for 2 mnts.

## PART-V

### CHAPTER-IV

#### THE UNION JUDICIARY

JUDICIAL REVIEW originated in US in Narbury vs Madison, 1803.



ii) Appointment of Judges  
President can appoint any Tom, D & H. Const. n't specify qualifications. But nominee of Pres. must be approved by Senate & usually it confirms. EXECUTIVE ✓ ✗

ii) Judges Appoint themselves  
Collegium. Only in India  
Till 1993 - Executive dominated.  
Then Collegium came by SC Judg.

iii) A-142 - Power to pass any order on any matter with it. The power to do complete Justice. It can fill the vacuum in law to give justice to litigant.

In case of absence of statute, it can't violate or transgress it but at many instances they had been transgressed.

Since 1980 - Judicial Activism - 'Fountain spring' of it is A-142 - K.K. Venugopal.

### # VISHAKA JUDGEMENT

← classic ex:

SC passed an order under A-142, a set of guidelines for prevention of sexual harassment at work places (not physical assault) & told it will prevail until parl. legislates a proper law (to keep up sanctity of A-32 also)

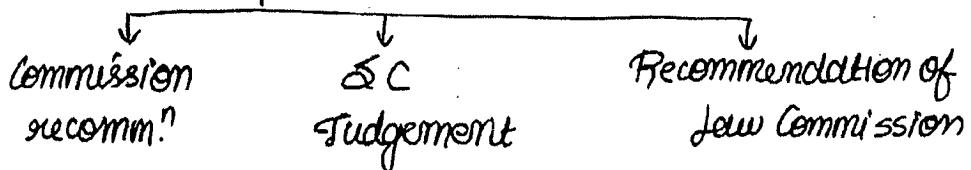
iv) A-141 - Law declared by SC is binding on all courts.  
(or even a casual observation)

COMMON LAW COUNTRY - statute-skeleton; Interpretation <sup>Creative interpretation</sup> flexible - BRITISH

CIVIL LAW COUNTRY - Most countries of EU, L.America - Judges not bound by judicial precedence (i.e.) Apex court's law/judgment not binding on other courts.

v) A-144 - All civil & judicial authorities shall act on order of SC.  
SC doesn't have enforcement agency but an adjudicating body. But these authorities act as arms of SC to implement orders so as not to be in contempt of court [A-129] Ex: Nag. Rao sat in court.  
⇒ 1995 - Vasudeva - 1st IAS impounded # Dhamayaya vs Vasudeva

Conclusion: Either



QNS

I Out of all the powers & Functions available with the Governor, it is the exercise of Discretionary powers that has been the most controversial. Discuss.

II In recent times, the role of Governor has transformed from being a nominee of UG to an agent of UG. Discuss.

Ans: Intro: Const. gives discretionary powers for both nominal heads - G & P - but ambit of dis.p. of G is more except in wider.

✓ 163(1) → CON → Advice + → G → so far  
↓ And as he is required  
↳ Est. disc. power. to act on his discretion.

✓ 163(2) → Discretion of G or not — decision of G final.

↳ Examine the disc. power

Body: C → E, L, J, F → G → but exercise of → Disc → Controversial of fell. reasons

a) Dis. 356

Article
Misuse

b) Dis. 164


c) 200


Try to sketch  
the story of events

Law Comm?

BCCI UCC  
Gramb, Bett. not  
reqd. necc. now

Polyarchy  
Kashmir 491 377

INTRO: (10x.)

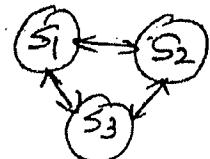
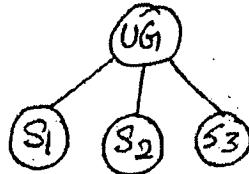
① → G → Disc. pow.  
163(1); 163(2)

Concl:

	I. Separately	OR	II. Continued way
Sark.	Purnchi		3rd para after controversy
356			✓
164			✓ - Here _____

Way Forward: Federalism  $\longleftrightarrow$  Governor

2 Models of Federalism:



Challenges in Federalism:

RECENT  $\Rightarrow$  \* Inter-state River water dispute

SC  $\rightarrow$  Ground water into consideration

Jud.<sup>c</sup>  $\rightarrow$  If River basin on Global city

Kaveri; Narmada R.; Mahanadi; Sutlej & Ravi

$\Rightarrow$  \* Separable Category & status

Telangana separated.

Extra money



National Development Council [Non-statutory body]

EVERGREEN  $\Rightarrow$  \* FISCAL FEDERALISM

Before 2014: PC also; + FC.

PC - politicised body

Now  $\Rightarrow$  \* COMPETITIVE FEDERALISM      Ex: 26/9/18 - Ad of TN.

A-280 | Compete for resources — Business summits era

Fixed criteria  
of fund alloc.

Inequalities arising post-independence

# GOVERNOR

Sim. to CANADA  
Diff. from USA  
- Elected Gov.

## INTRODUCTION

- i) As per A-154; executive power of the state resides in the Governor (Implied meaning)  $\Rightarrow$  Governor is the Head of state Executive.
  - ii) He is only a NOMINAL [Titular/Constitutional] HEAD vs REAL EXECUTIVE [C.M - C.O.M]
- A-164(2): C.M shall be collectively responsible to L.A of state.

Note:  $\left\{ \begin{array}{l} \text{A-74} \Leftrightarrow \text{A-163} \\ \text{A-75} \Leftrightarrow \text{A-164} \\ \text{Pres} \Leftrightarrow \text{Governor} \end{array} \right\}$

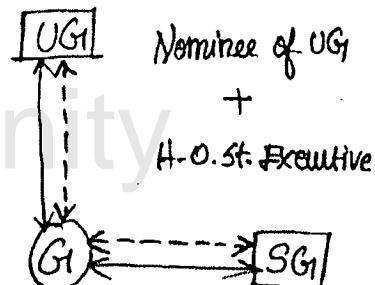
- iii) DUAL RESPONSIBILITY / Role of Governor:

- a) A-154: H.O. state executive
- b) A-155: Gov  $\xrightarrow{\text{appointed by}}$  President

'Nominee of UG'

I. Eyes & Ears of UG

II. Vital link b/w. UG & SG



F  
E  
D  
E  
R  
A  
L  
I  
S  
M

$\longrightarrow$  Federalism & Governor will be our way forward

## APPOINTMENT

As per A 155, the Gov.<sup>n</sup> is appointed by the Pres. by a warrant under his hand & Seal.

As per A 155 it can be concluded that he is a NOMINEE OF UG.

Note: Similar appointment for CAG. See other offices which have similar appointments in const<sup>t</sup> & Non-const<sup>t</sup> bodies ➤ [YB-II]

In 1979, SC remarked that the Governor is not under the employment of UG. He is not under the control or <sup>ordinate</sup> ~~subsequent~~ to UG. He is an independent Constitutional office.

## QUALIFICATION

\* Constitution provides for only 2 qualifications:

- i) Indian citizen
- ii) > 35 yrs of age

\* Apart from constitutional provisions, there are 2 conventions:

- ✓ He/she is an outsider (not from state of appointment)
- ✓ The CM has to be consulted. (but actually not followed now)

Note: Another convention, Deputy speaker is always from opposition party.

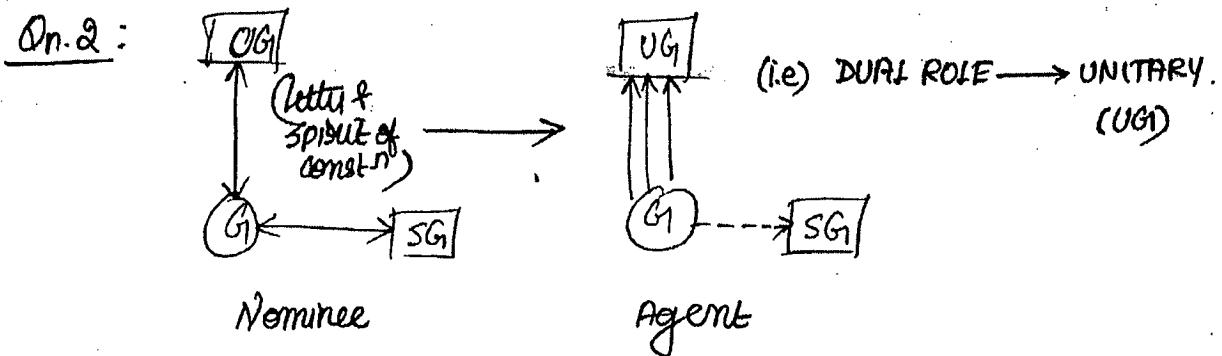
## TERM

A 156 : 5 year term  $\xrightarrow[\text{to}]{\text{subject}}$  PLEASURE OF PREZ.

Refer
YB

Note: CM - 5 yr term - A:164(1) - Just this article, no mention of 5 yrs.  
+ CM

BUT, A:164(2): Coll. Resp. → so Gov.<sup>n</sup> can exercise pleasure & remove CM & Com only when no maj. B. Rule on LA.



intro:

A-155 : Nominee

1979 SC : Not sub-ordinate  
But, recent dev → agent.

Body :

Article

Exercise of power

Concl :

Comm. & econ.  
Comm & Punjhi

TERM :

case of Telangana ⇒

Gov.<sup>91</sup> dissolved LA of Telangana → On advice of COM  
[legislative power]

Why this? In light of LS elections 2019, to avoid disadu.  
in case of simultaneous elections.

Note: simultaneous elections - accountability of Gov. decreases  
How? 1 time vote vs. 2 time votes.

DEMERIT OF SIM. ELEC:

National parties adv. at cost of Regional parties.  
May affect factor's of federalism.

In 1982, RASTASTAN HC in SURYANARAYAN VS U.O. INDIA remarked that the pleasure of president is not justifiable. The Governor has no security of tenure nor a fixed term. He can be removed by the president at his will but this "PLEASURE" can't be exercised in an ARBITRARY MANNER.  
[From 1967 - 1994, it was misused w.r.t. breakdown of const'l mach. In 1994 came S.R. BONNAI Judgement with certain provisions]  
In Future: A-155 & A-155 → In 1982 → <sup>though</sup> Agent → Imp. const'l authority & act in letter & spirit of Constitution.

### Facts for PRELIMS

Resigns by writing to the Presz.  
const'l doesn't provide for any ground of removal  
Can be reappointed to same state / new state.  
Can be transferred from one state to another  
Serves only the remainder term in the new state  
Assumes office until the successor is appointed  
(could go beyond 5 yrs also)  
In case of contingency (death), the Presz. may appoint CSHC to discharge the functions temporarily.  
There could be a Governor for more than 1 state.  
A governor could also be given additional charge of ADMINISTRATOR of an adjoining UT while discharging his resp as Admin of UT, G exercises CONSTITUTIONAL DISCRETION

where he is not required to consult the CoM of the state  
where he is the Governor

## OATH

Administered by CTHC [Oath to CoM, CM is by Governor]

## IMMUNITY

A-361 → Not answerable to any court of law.

- Personal immunity → can't initiate criminal proceedings
  - (can't be arrested / imprisoned for it)
  - Civil proceeding (only 2 month prior notice)

In case (G) actions are malafide + Arbitrarily,

JUDICIARY CAN INTERVENE. EX: UTTARAKHAND - G1 - A 356 - SC

Ex 2: GOA - Total 40 seats.

INC - 17/40; BTP - 13/40 ⇒ Hung assembly - No 1 largest party /  
Indep. parties pre-poll coalition.

DISCRETION of (G) ⇒ Agent of OA - invited BTP + Indep. post-poll alliance

SC → Not wrong. But perfect ex of discretionary powers.

Ex 3: MANIPUR ≈ GOA

Ex 4: KARNATAKA ⇒ Hung assembly  
1st - BTP ; 2nd - INC ; 3rd - SD(s)

HW

See previous yr  
B & Naiman

(G) - BTP - 15 days for floor test

INC → SC → Can't go into Discretion of Gov. But cut down 15 to 2/3 days.

## UPSC-2018 Nains

Q11: whether the SC judgement July 2018 can settle the political tussle between Lt. Governor & elected G.O. Delhi:

A-239 AA - Special provisions for Delhi

Delhi - NCT - Elected assembly - 70 members

Any matter - CM  
 vs President [app. Trans AGMUT ]  
 LG DANICS  
 DANICS

Delhi HC (AG vs CM)

LGI is all powerful

SC

- i) LGI - NO independent decision making powers
- ii) LGI - Bound by advice of CM with CM as head.
- iii) Any matt.

Refer: Indian Express SC on AAP-LGI issue

Q12: How far do you agree with the view that Tribunals curtail the jurisdiction of ordinary court. In view of above discuss the const. validity & competency of tribunals in India.

TRIBUNAL - Quasi judicial body to deal with specific cases

E. T.  
 (Imp) ↓ (adj) (Laws)  
 ↓ Tribunals  
 members

app by Govt  
 & report to  
 ministries

NGT act, 2010  
 ENV (NGT)  
 Tax (ITAT)  
 Railway (RCT)

Refer: Tribunalisation of Justice - Oct/Nov 2017

THE HINDU

Law Commission - Assessment of Statutory Framework  
Source: Report On Tribunals in India  
Tribunals

⇒ Read full report (150 pages)

Qn: What are quasi-judicial bodies? How are they diff. from Judiciary? UPSC qn.

Constitutional premise

42<sup>nd</sup> CAA - 1976 → Part 14 A → Tribunals

A 323 A → Tribunals for admin. purposes

A 323 B → Tribunals for other purposes.

Qn: 15 Assess the importance of panchayat system in India.  
Apart from govt. grants, what sources can the panchayats look out for financing developmental projects.

D6 & E3 → 9 adv./benefits of Local Self Govt.)

|  
E

Problems of Local Self-Government

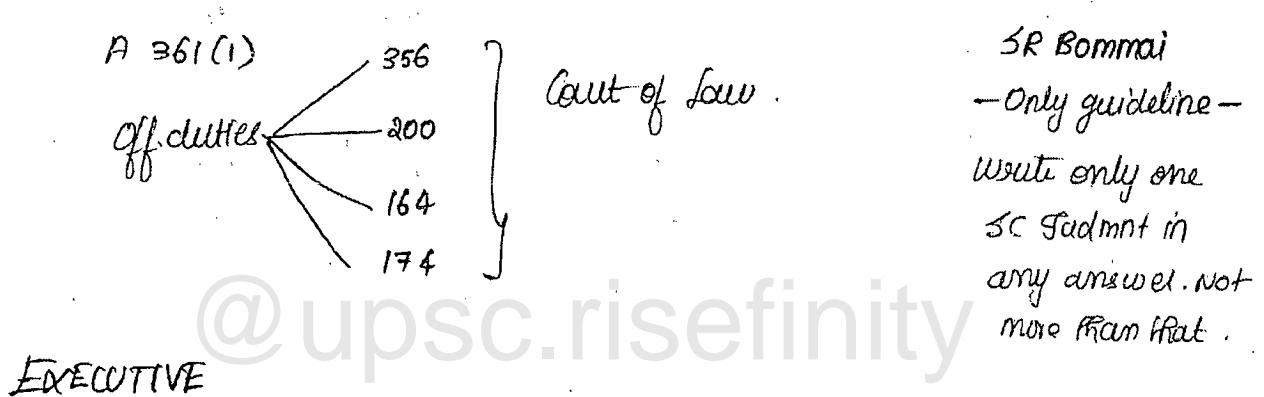
Refu  
Kishan Sir's notes  
(Pub Ad optional)

→ Volume - 1 Economic Survey 2017-18.

Source: Chapter: On problems of finances of G. panch + U.L. bodies  
⇒ Low Equilibrium Trap - understand this term

## Immunity of Governor

SC in Rameshwari prasad case, 2006: ruled that immunity granted to governor under A 361(1) does not affect the power of court to judicially scrutinise the attack made to the proclamation under A 361(C) on grounds of malafide intention or being ULTRA-VIRES (unconstitutional) to the constitution.



All Executive actions are carried out in the name of the Governor.

He makes rules for transaction & allocation of business amongst ministries.

He appoints CM, COM, Tribal Welfare Minister in CH, ST, MP & OD. A 164(1).

He appoints ADVOCATE GENERAL A 165

He appoints chairperson & members of SPSC [Removed by Perez]

He appoints the state EC [Removed by Perez]

He can seek information from CM on any admin<sup>ve</sup> matter. A 167(2)

He can ask the CM to put before CoM any such matter over which decision has been taken by minister individually but not by CoM collectively. — Const<sup>n</sup>! Safeguard

He recommends Pres. Rule under A-356 — poss. even w/o report.

Y Executive functions? — A 154 → Head of state Executive

Rules for transaction & allo. of business	Rural dev.	Health	Agricul
(CoM - 9 <sup>th</sup> CAA (15/.)		Sanitation	

Y GEC & PSC appt. by one & rem. by other? — safeguard for important functionaries for independence.

A 167(2) ⇒ 2017 TN : Gov<sup>r</sup> trying to meet DMs & SPs directly instead of talking to CM [Bypassing the CM]

# LEGISLATIVE FUNCTIONS

A 168 → state legislature comprises of LA &/or LC + Governor

— Governor is not an MLA / MLC but just part of s. legislature —

i) A 174 → the Governor summons & prorogues the session of assembly and dissolves the assembly. [exercised on aid & advice of CM]

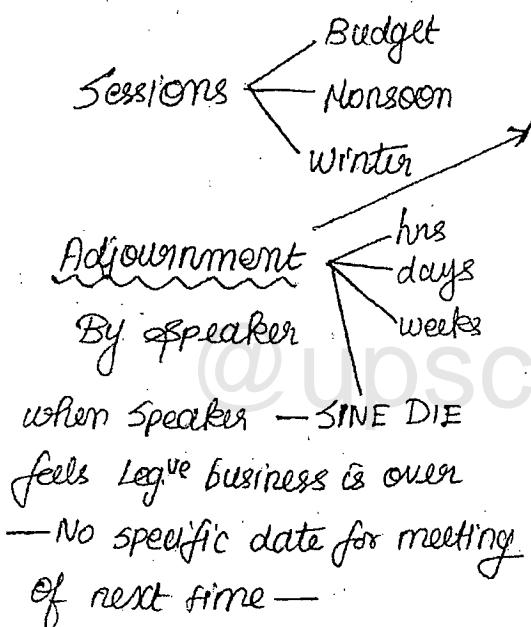
SUMMON: Calls for sitting

PROROGUE: End the session w/o next meeting date..

DISSOLVE: Term of assembly ends

— Re-election —

Ex: MP, CH, RJ, NJZ — recently



## GREY AREAS:

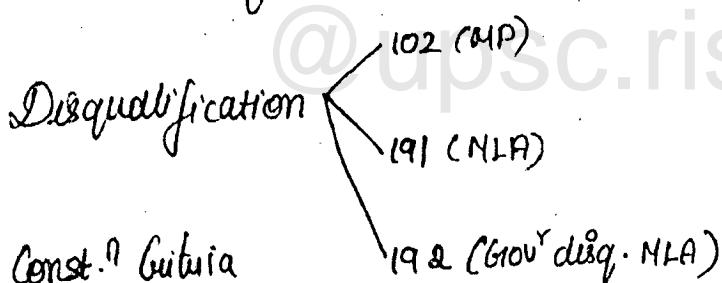
A 174 (Goa ex) —> Hanging assembly } 'Premature prorogation'  
—> Avoid debates } can be misused by CM  
on Governor

ii) He appoints 1 person from Anglo-Indian community to LA - A 333. [Pres. appoints 2 on LS]. Mandatory?

iii) He nominates  $\frac{1}{6}$ <sup>th</sup> members to LC from literature, Arts, Science, Social service & Co-operative movement\* [Pres. appoints 12 members to RS]. → On advice

iv) The Govt. appoints a member of the house to preside over the assembly in case when both offices of Speaker & Deputy speaker are vacant.

v) The governor disqualifies the MLAs on advice of EC - Binding



Vacancy	Absent
Resign (Dep. sp)	Temporarily not able to discharge his. → D.Y. Speaker
Removed	↓
Possess away	→ Member
MLA 102 (MP) disqualification 191	Panel of chairman
If S & Ds are vacant ↓	- App. by Speaker -
192 (Govt disq. MLA)	

o Unsound mind

RPA, 1951

o Conviction in crime

Anti-Defection Law

[52<sup>nd</sup> CAA, 1955, sch-I]

o Voluntary membership give up

o Disobeys party whip.

By Speaker (LA, LS)  
Chairman (RS, LC)

→ Guriasam on this \* Right to Dissent & etc

Ex. of. Telangana & TN - defected to Ruling party

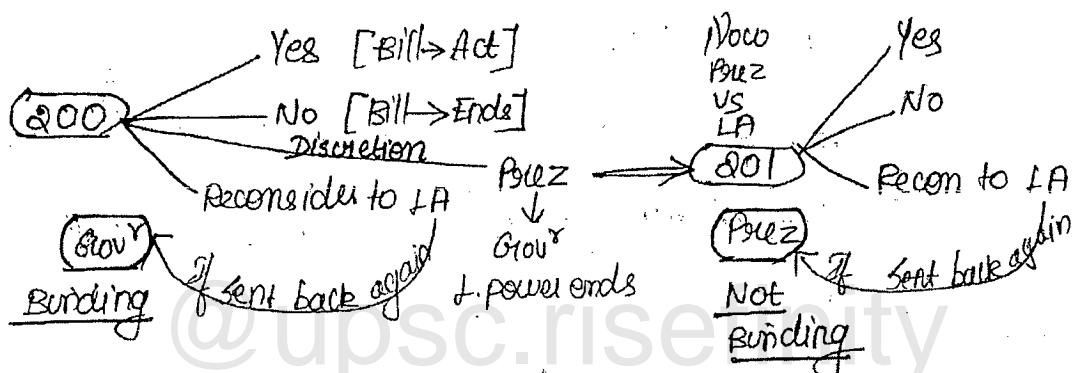
No Time limit - Ex. of. RSD & SD(U) ...

Law Comm.<sup>n</sup> & H Ali recommendation

- Give disqual. power to Pres & not Speaker -

## Qn: Anti Defection Law Vs Right to dissent of Politicians

- vi) A 200 → The Governor can grant assent to Bill, withhold assent to Bill, send the bill to LA for reconsideration [suspensive veto] & Refuse the Bill to president.  
 When bill has been refused by prez, he exercises power under  
 A 201 → prez can give assent, withhold assent or send back to LA for reconsideration.



200 → often misused — stalling leg.<sup>re</sup> process of state  
 (sent to Presz) → Gov<sup>r</sup> tries to act like SUPER LIMB OF LEGI<sup>RE</sup>  
 200 → If a Bill <sup>is</sup> reducing HC powers — must be sent to Presz

KARNATAKA: 1st state to bring GOOD SAMARITAN BILL &  
 refused it to President: V to Presz?

200 → Money Bill can be sent  
 ↘ CAA — not in power of LA.

## vii) Ordinance making power of Governor

{ A & 13 V/s A 123 of president }  
The Governor promulgates ordinance when LA is not in session during the recess period.

He promulgates & withholds ordinance on aid & advice of CM.

Ordinance is generally promulgated when there is need of Immediate action. Implement. max period - 6 months + 6 weeks

The ordinance has to be passed by assembly < 6 weeks.

Ordinance making power of Governor is subject to Judicial Review.

ORDINANCE HAS SAME EFFECT OF THAT OF LAW

PASSED BY LA.

### Re-promulgation of Ordinance

<u>BIHAR</u>	Recess <sup>2 months</sup>	Session	Recess <sup>3 months</sup>	Session
Ordinance promulgation	Not discussed	same ordinance re-promulgated	Not discusses again.	again.

⇒ common in state assemblies but rare in UG.

⇒ 1st done by UPA-1 → Land Acquisition Bill - landmark

2014 → NDA brought it as ordinance & re-promulgated twice - Pranab dissented but also gave assent.

viii) The Governor lays down the report of State PSC, State FC, & CAG report w.r.t account of the state.

## FINANCIAL FUNCTIONS

The Governor sees that Annual Financial statement on State Budget is laid before the house.

Money Bill is introduced in PA on his recommendation.

No demand for grants can be introduced except on recommendation of Governor.

He advances money out of CFS [Contingency fund of state].

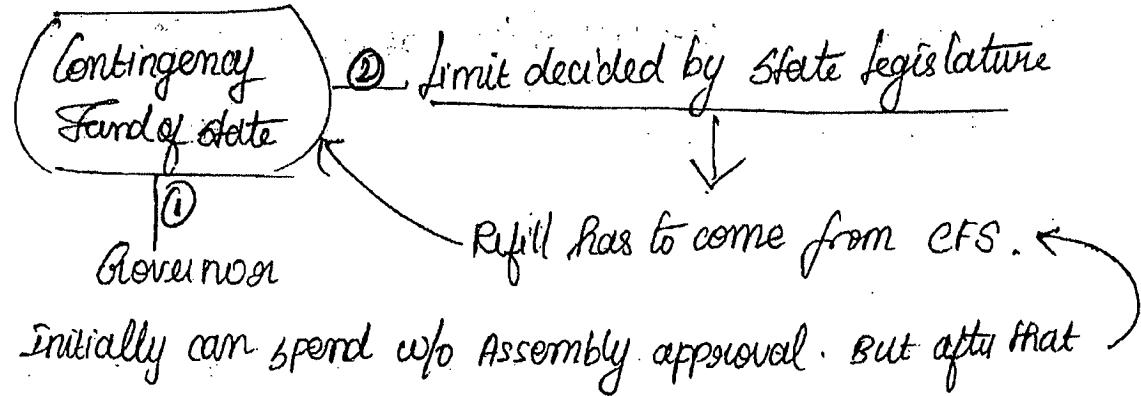
He constitutes a State FC to review the financial position of urban local bodies & gram panchayats.

{ S. FC → not followed by SG      Ex: MAHARASHTRA  
      280 : FC → usually followed by UG      5<sup>th</sup> FC  
    Time bound X } Read 

Budget  
Expenditure  
Revenue - Grants, Taxes, non-taxes.  
from UG  
Speech of Gov & Pres  
Kerala Gov Controversy  
Energy-latest paradigm  
Nutrition-

Refer: President's Budget speech

(CF State) → Demand for Grants  
→ Comes from Governor  
→ Ministry wise  
Y? Govt speech before Budget  
→ can't be debated/voted  
in RS / LC.



## JUDICIAL FUNCTIONS

i) Pardonning powers - Art 161 (Art 72 for president)

The Governor has pardonning powers which include

- a) Pardon (Read on self)
- b) Reprieve
- c) Respite
- d) Permission
- e) Commutation.

Pardonning powers are subject to Limited Judicial Review

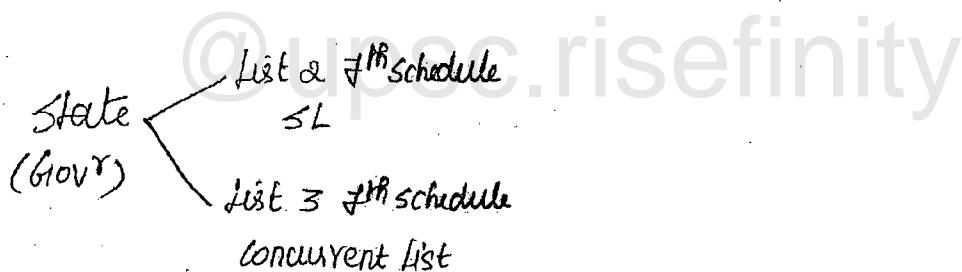
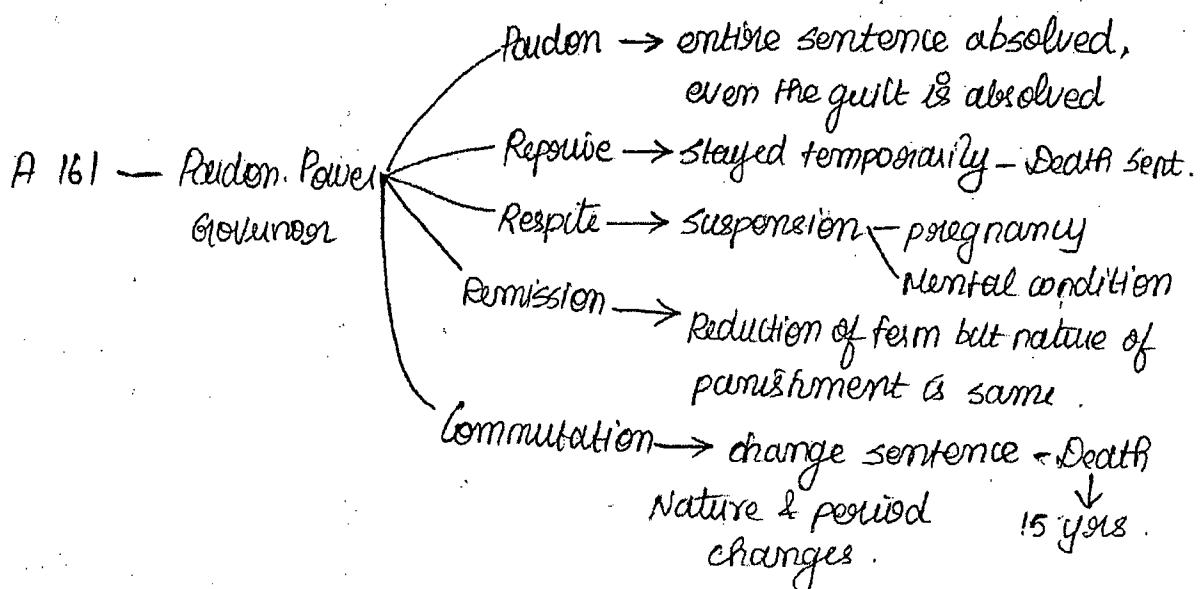
[Review only when the action is irrational, arbitrary & malafide]

The president has pardonning powers w.r.t offences committed under Central Laws ; Governor - State laws .

Only president can pardon death sentence.

Governor cannot grant pardon but he can grant Reprieve, Respite & commute the death sentence.

Only president has pardoning power w.r.t. offences committed under ~~Military courts~~, w.r.t. sentences delivered by military courts (Court Martial)



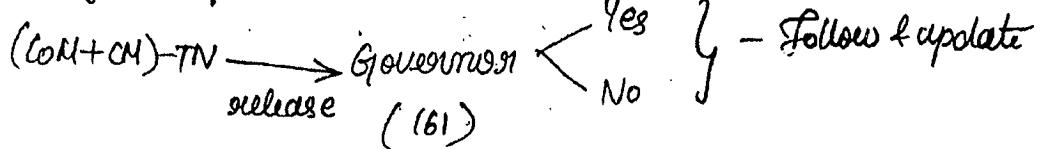
⇒ The Governor has pardoning powers under A-161 [A-12-Powz]:

- a) Pardon
- b) Reprieve
- c) Respite
- d) Remission
- e) Commutation

## RATIU GANDHI CASE

1991 - 7 assassins/convicts.

27 yrs imprisonment



Ideally - SC told

Com's advice is binding on Governor

Sec 432 of CrPC → SG can suspend, remit & commute sentences  
(even w/o governor's consent)

Sec 435 of CrPC → If investigating agency (here, CBI) is a central agency, then you've to consult (i.e.) take concurrence of UG.

Hence, SG couldn't release prisoners on own as UG refused.

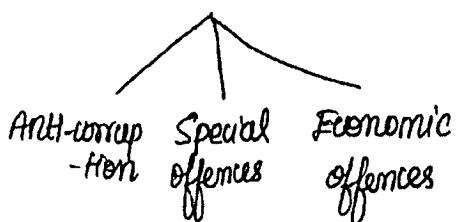
CBI's reports to DoPT on all matters except PCA.

DSPE act, 1946 → MoHome

under war & supplies to investigate war crimes - SPE

CBI, 1963 → DoPT

when CBI investigates SG issues?



loc & note

Under A-217, → the Perez appoints HC judges in consultation with Governor;

The Governor appoints persons for Judicial Services of State in consultation with state HC & state PSC.

The Governor decides appointment, postings, promotions of a District Judge.

In Reality:

SC Collegium advises Perez

Reports from IB

M. O. Law

Discretionary powers

> Constitutional premise

> Balancing SC judgements

> Areas of discretion

> Analysis

> Difference b/w disc. powers of Perez & Governor.

#### SUB-ORDINATE JUDICIARY

↓ (200+ Judgement)

> 300 cases 25,000-seats

pending

↓ 5000-vacancy

Y? a state HC does not inform the no. properly to SPSC.

◦ SPSC-exam not on time

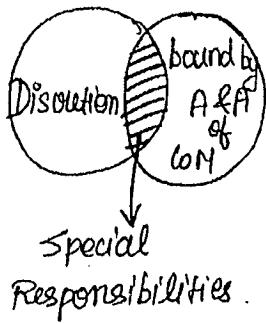
◦ Even in exam enough seats not filled.

In shorts

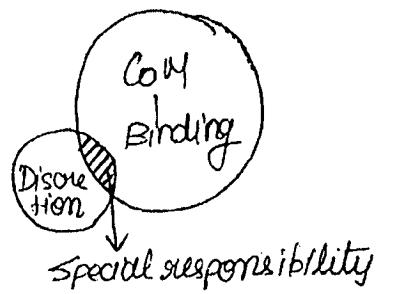
## Constitutional promise

163(1) : CO N → A & A →  $\bigcirc G_1$  → except 'DISCRETION'

163(2) : Q → If  $\bigcirc G_1$  has. →  $\bigcirc G_1$  → In so far  
discretion → decision FINAL



In theory



In Reality

SC(2016) →  $\bigcirc 163$  → Disc.

L① "Gen. Disc. power" =  $\bigcirc \times$

commonly misunderstood

L② Scope of disc → LIMITED

- Disc. One
  - arbitrarily x
  - Rationality
  - Caut'ion

## CONSTITUTIONAL PREMISE

Under A 163(1) & (2), (2) provides for discretionary power of Governor.

A 163(1) → There shall be a Cm to Aid & Advice the Governor except in so far where she is to act in her discretion.

A 163(2) → If a question arises, that a particular matter falls within the discretionary power of Governor or not, the decision of Governor is FINAL.

### NABAM. REBIA CASE

SC while analysing discrete power of Governor under A-163 ruled that:

- (i) The Governor does not have General discretionary powers as is often MISUNDERSTOOD.
- (ii) The Governor has limited area of discretion & even within this limited area, discretion has to be exercised by:

✓ Reason      ✓ In Good Faith      ✓ with caution

His choice of action cannot be × Arbitrary      × Fanciful.

In shorts

[ON OWN RATIONAL JUDGEMENT]

## Areas of Discretion (as per LAXMIKANTH)

(CONSTITUTIONAL)

(SITUATIONAL)

356 - report to Presz

164(1) - App. of CM on pleasure of G but

200 - Refer Bill to Presz

164(2) - CM collectively susp. to LA

167(2) - Info from CM on  
admin. or legal  
matter.

Hung assembly - (G)  
1<sup>st</sup>  
2<sup>nd</sup>  
post-poll coalition

239(2) - Govt given adjoining  
administrator of UT.

CM → majority → Gov. → Dissolve

6<sup>th</sup> schedule - The amount of  
state commission is decided

→ NCM

few  
dist/  
areas  
of  
ASSAN  
NEGHALAYA  
TRIPURA  
MIZORAM

Post poll coalition  
breaks

TDC - Tribal District Council

Alternative  
govt. → Dissolve

\* → Commission by Agency to  
SGI for Mineral exploration  
then given to TDC.

356 → 2 mnts → pass in parl. → DISSOLUTION  
6 mnts (after 2 mnts over)  
Floor test new party  
If no new party has maj.

< 1y → alter. govt. (bcs 4 yrs remain)

@ 1<sup>st</sup> y → Dissolution after 6 mn of 356.

## AREAS OF DISCRETION

### Constitutional Discretion

- (i) Reservation of Bill for president - 200
- (ii) Recommendation for imposition of Pres. rule - 356
- (iii) while exercising functions as an administrator of adjoining UT (in case of additional charge) - 239(2)
- (iv) Determining of amount payable by Govt. of ASSAM; MEG; TRIPURA; MIZO to an autonomous TDC as Royalty accruing from licences for mineral exploration. - 6<sup>th</sup> schedule states
- (v) seeking info from CM w.r.t. to Admin. matters of state legislative of state - 167(2)

[Judiciary can intervene only if Govt's action is found to (JR) be MALAFIDE or ARBITRARY.]

### Situational Discretion

Not implicit in C but discretion arises because of unforeseen circumstances in the polity.

- (i) 164(1) - Appointment of CM when no party has clearcut majority.
- (ii) Dismissal of CM who have lost confidence of house.
- (iii) Dissolution of IA when the CoM has lost majority.

## DIFFERENCE - Disc. power of GOV. Vs PREZ

(i) The constitution provides for DISCRETION:

- o 163(1)&(2) → Governor
- o No such mention for Pres under ← A 74

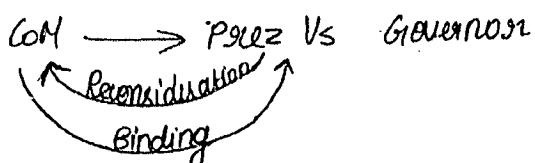
(ii) The Ministerial advice given by COM to:

- o Pres is Binding [42<sup>nd</sup> CAA, 1976]
- o Govt - No such clause [after enactment of 44<sup>th</sup> CAA, 1978,  
the Pres. can send advice for reconsideration, but after  
advice has been returned by COM, it is binding for Pres]

In short

A 163 → Discretion

A 74 → ✗



Y not Binding explicitly on Government?

✓ Bcos, Governor is an agent of UG. &

✓ he won't be able to exercise discretion as per Ⓛ  
say, in case of A-200 (Bill to Pres)

## ANALYSIS

— Refer photocopy of dictation.  
Remember sign

Issues regarding

UGI

155

Appointment  
of Governor

156

5 yrs @ pleasure  
of Pres.

Issues regarding

GOVERNOR herself

356

200

164(1)

174

Article

155

- ① By Pres on A of CoM under hand & seal Missing ink
- No criteria of app in ①, so MISUSED by UGI - Analysis

Party considerations

- o Ret. Politicians
- o Active politicians
- o Persons of political party

No criteria of app

No principle of app

CoM not consulted

Fun.Com: "Foot Ball"

→ POLITICISATION OF OFFICE OF GOVERNOR

- 156 → 5 yrs - pleasure of Pres
- pleasure of Pres → of PM
- UGI - Govr → Transfer app → Remove

→ NO SECURITY OF TENURE

⑥ can't exercise impartial  
const'l responsiblity

Dominant → Agent

Issues regarding

GOVERNOR herself

356

200

164(1)

174

② ch app. by Govr

164(1) Hung assembly

"Situational disc" - creeps in  
CONTESTED

No uniformity  
in appointment

Sankashti & Panchti recom.  
not followed by Govr.

EX: Goa & KAR

- 200 → ① Refuse any Bill to Pres  
(except CA Bill) & power of HC must be <sup>sent</sup> to Pres
- ② No time limit for P to act
- ③ Type of bills - Pres (x mentioned)

SUPERLIMB OF LEGISLATURE

Deliberately stall leg. process

→ Against Mandate of people,

EX: Del LG vs AAP Parl. democracy itself

③ Pres rule rec by Gir.

- 356 → Breakdown of ③ machinery  
not defined
- Mal admin
- Fin. irregularity / corruption
- Int'l subversion not amounting to phy. breakdown
- Inter party feud.

Harmful as per BOMMA judgement (1994)

Qn: office of (9) — outlined — Reason for — misuse of power by U.G.  
outicism Discuss.

## Intro:

- (i) C → DUAL ROLE

Nominee  
Head of S-Executive

(ii) No other instn has such dual resp → hence, Scope of Activism ↑  
as per C itself

High expectation from C ↑

## Main body:

A 155 & A 156

Recently → Govt. in news → App. CM w/o guideline/uniformity  
But it is UG responsible for this.

→ Explain articles here

Explain of misuse  $\begin{array}{r} 356 \\ \times 200 \\ \hline 71200 \end{array}$  + 174 recently

## Conclusion

# SARKARIA & PUNCHHI Commission (1988) (2010)

<p><u>174</u></p> <p><u>Agr. Pradesh Case</u></p> <p>For SL, A 33(2)(cc)</p>	<p>→ Govt. of Assam &amp; Assam Legislative Assembly S, P, D only on recom. of Com</p> <p>Office of G1 is @ can't involve in intraparty intr party</p>	<p>→ Agr. Pradesh mid 2015</p> <ul style="list-style-type: none"> <li>- Floor test - Feb.</li> <li>- BSP govt replaced INC</li> </ul> <p>1st. case to bring back dismissed govt. to power.</p>	<p><u>Agr. Pradesh</u></p> <p><u>mid 2015</u></p> <ul style="list-style-type: none"> <li>- One party numbers → BSP</li> <li>- Speaker disqualifies defected members &amp; INC again got majority</li> <li>- Session advanced - Dec</li> <li>- Speaker removed due to protests</li> <li>- 356 implemented - Jan</li> </ul>
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## A 174: Governor Summons, Prorogues & Dissolves

CASE In recent case of A.G. P (2015-2016), the Governor advanced the session of assembly by 1 month & summoned the session w/o A&A of CM.

SC in this case ruled that:

- (i) Governor is bound by A&A of CM (CM)
- (ii) Governor should not involve himself in any:

Discord, disharmony, disagreement, discontent or dissension with political parties

- (iii) The C does not give any authority to Governor to resolve INTER PARTY or INTRA PARTY disputes.

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	Sarkaria (80)	Bommai (90)	Panchayat (10')
① A-155	Consult CM, VP, SP - informally eminent person, outsider, defected, minority, rest rel.		
② A-156		5 yrs - extr. comp. abdum	
③ D&C powers 164(1)	Guidelines - 4 pts		
④ A-356	Spanning last session alt. govt Media crit. to Govt's sup Public scrutiny suspended animation bill passed by Parl.	Joint Estimate i) Malafitie ii) iii) iv) v) plus satisfaction JR - mandatory ← floor test - only method of muf.	

## ANALYSIS

A-155

⇒ As per the article, the govt is app. by Poz. (On the recomm. of CEN headed by the PM).

The CONSTITUTION doesn't provide any criteria for app of Govt.  
(It only provides & qualifications)

⇒ The OG while making app. to the office:

- Have framed NO GUIDELINES
- Formulated NO PRINCIPLES
- Fixed NO such CRITERIA for app. (Sarkaria Com has given criteria of app)  
Thus the appointments often have been made on  
PARTY CONSIDERATIONS, where active or retired politicians or  
persons connected to pol. party at centre are app't to the office.  
This has led to Politicisation of constitutional office of the Governor.

A-156

As per the article, the govt has a term of 5 yrs subject to  
the pleasure of poz.

In reality, the pleasure of poz has often meant to be the  
PLEASURE OF PM where every time there is a new OG in power,  
the govt's app. by previous govt. are either removed or  
transferred en masse. (PUNCHHI Comm-2010 has referred the  
office as Political football where the govt has No security of tenure)

As a result, the govt can't exercise his constitutional responsibilities in an impartial manner & it also compromises the independence of the office.

Qn: Out of the controversies associated with the govt. It is the exercise of the powers by a Central Govt. which has been the most controversial. Discuss.

### ISSUES REG. GOVT. HERSELF

A - 164 (1)

The govt appoints the CM. But in case of HUNG ASSEMBLY, the govt exercises situational discretion. This sit-disc has often been contested as:

- > There is NO UNIFORMITY in Procedure of appointing CM (<sup>in case of</sup> Hung assse)
- > The govt's have disregarded the guidelines of SAR-Comm (1998) w.r.t the priority order to be followed in case of hung assembly (Handout)

A - 200

As per article, the govt can refer a Bill for the assent of Pres. The const. does not specify:

- o Types of Bills that could be referred for his assent
- o Timelimit within which the Pres. has to grant assent to a Bill ref. by Govt.

In recent times, the govs. have often misused their position & referred the Bill to deliberately stall the legislative process of the state. Thus the govt. acts like superlmb of legislature where the will of MLAs (elected representatives), who have come with mandate of people is often disregarded by deliberate refusece of bills.

A-356

The SG could be put under Pres. rule if the pres. is satisfied that the SG is not running as per the provisions of the constn. This can happen on report of govt or otherwise.

Breakdown of Constitutional machinery has not been defined in the constn where the govs. have recomm. Pres. rule in state on following grounds:

- > Mal administration
- > Financial irregularity
- > Corruption
- > Internal disturbance not amounting to physical breakdown.

The above mentioned grounds fall under the category of improper use or malafide use of power by Govt as per guidelines of SC in SR-BOMMAI case (1994)

A-174

The govt. SUMMONS & PROROGUES the sessions of assembly & DISSOLVES the assembly.

(Recently, Dec 2015 - Jan 2016, The govt. of A.P. advanced the session of assembly by one month & summoned the session w/o acting on ad & advice of CoM)

SC on 2016, in this case, ruled that:

- > Govt. is bound by ad & advise of CoM while discharging resp. under A-174.
- > The court ruled that Govt. should not involve himself in any discord, disagreement, disharmony, discontent or dissension with political parties.
- > The const.<sup>2</sup> does not empower or assign any authority to govt. to resolve inter-party & intra-party disputes.

Note: SC can't go into factual accuracy of Report but can review the basis of report & breakdown of const. machinery link - if it is amounting to it.

- 164 (1) → i) Pre-poll alliance  
Sark. Comm ii) Single largest party  
iii) Post-poll alliance  
iv) Post-poll alliance with outside support.
- } Recommended Order of priority

# EMERGENCY PROVISIONS

Part XVIII - A-352 - 360

Prelims: o P. Rule (A-356)

Mains: > Analysis of working of A-356  
> changes introduced by 44<sup>th</sup> CAA, 1978.

## 7 heads of enquiry:

1. Who proclaims / passes order?
2. Grounds / Reason in const.?
3. Parliamentary approval + duration?
4. Revocation of emergency?
5. Effect on C-S. relations?
6. Effect on FR?
7. JR. allowed or not?

## 3 Types of Emergency

- 1) National Emergency 352
- 2) Pres. rule 356
- 3) Financial Emergency 360

### Taken from:

\* GOI, 1955

(Suspension of FR  
A-358 & 359. - Only three)  
taken from German const.)

### Why it was incorporated?

During drafting of C-nation  
was facing threats to unity &  
sovereignty

### Why still continues? in C

#### National Crisis situations

- War, Ext-Agg, Arm. Reb, SG-X(C),  
Natu. inst, CG threat in centre-

## National Emergency

- ① A-352: If prez. is satisfied that security of India or a part of it is under threat bcs of only 3 grounds:
- 42d CAA  
1976 a) War b) External Aggression c) Armed Rebellion
- Not discretionary power of prez. But only on and e advice of CON.

3 instances of National Emergency in India

i) 1962-68 → External Aggression

ii) 1971-77 → External Aggression

iii) 1975-77 → Internal disturbances

### War

- > Official declaration by GOI
- > 2 sided - both countries acting against each other.

### Ext-Aggression

- > No off. declaration by GOI
- > 1 sided - 1 attack, other just retaliates

## 44<sup>th</sup> CAA, 1978

- ① Before 1979 → Internal disturbance was a premise

After 44<sup>th</sup> CAA implementation → It was replaced by Armed Rebellion

## RAT NARAYAN CASE

RPA, 1951

Sec: 123 - Disqualification on electoral malpractices

A-102

ACLA HABAD HC → convicted her.

SC → Conditional stay - PN but don't go to parliament.

## JP Movement

Marched from Bihar → Delhi - to disrupt govt.

## Fakhruddin Ali Ahmed

On advice of IG, he proclaimed emergency even w/o knowledge of cabinet — On Telephone

- ① so, 4<sup>th</sup> CAA → Only on written advice of CABINET - only place where it is mentioned in constn.

## Shah Commission

- Int. disturbance → Armed rebellion.  
(wide - Public order)

- ▷ A-352 → Even on Imminent Danger, prez can proclaim emergency
- ▷ Elections can be held during Emergency, as ① doesn't say No to it.  
But in reality, 1 year extension of LS at a time & there is no upper limit  
& LA

## Parliament

Special Majority (50% total memb + 2/3<sup>rd</sup> memb pass & voting)

within 30 days of proclamation

In case LS not in session, special sitting

RS                      30 days              6 months              6 mnts              ...

↑                      ↓                      ↑                      ↓                      ↑                      ↓                      ...

No upper limit

6 months from passing of it in both LS & RS.

If caretaker govt. during emergency:

RS must approve within 30 days.

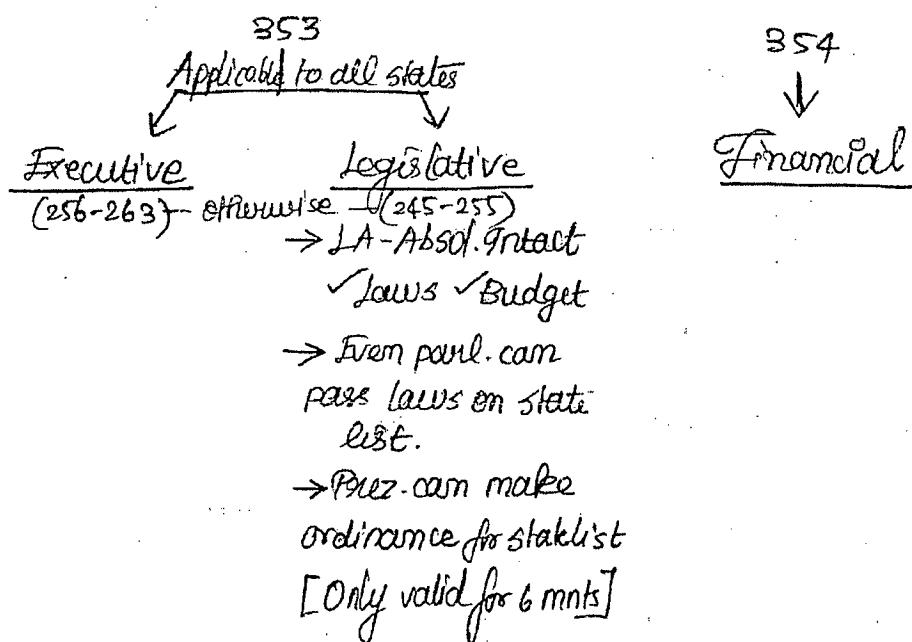
### Revocation

Formal order by Pres - in gazette of India.

EXCEPTION - (44<sup>th</sup> CA, 1978) - If 1/10<sup>th</sup> members of LS  
object in writing to Pres or LS, then within 14 days  
there must be a special sitting LS - if in this sitting,  
if a resolution is passed by simple majority - Revoked.

Revocation is different from automatic ending of  
emergency by virtue of non-passage in LS or RS.

Affect on C-S Relations — Ex; Leg; Financial



## EFFECT ON C-S RELATIONS

The const<sup>n</sup> discusses C-S Relations under the heads of

- Legislative relations,
- Executive relations,
- Financial relations

During National Em, nature of C-S relation transforms when const<sup>n</sup> becomes UNITARY.

A: 353 & 354 discuss the effect on C-S relations

[A-353]

### Legislative Relations:

When emergency is on operation, the parliament can enact a law on state list. The state LAs are neither suspended nor dissolved, it continues to discharge legislative business (All Bills, Budget...) but it is subject to overriding powers of parliament.

The law passed by parl. on subjects on state list becomes inoperative 6 months after emergency ceases to operate.

Facts- 1. The parliament delegate the law making responsibilities w.r.t. matters enumerated in state list.

2. Prez. can promulgate ordinances on the subjects on state list.

### Executive Relations:

When the national emergency is on operation, the UG can issue directions to SG on any matter. The state con headed by CM are neither dismissed nor removed. Their powers are intact - to implement laws & policies - subject to:

the executive power of the OG.

⇒ In normal times (when no emergency), the OG can issue directions to SG on following areas:

- ① To ensure that executive powers of state are exercised in a manner to ensure compliance with laws of parliament.
- ② To ensure that exec. powers of state are exercised in a manner in which they don't impede or hinder the executive power of centre.
- ③ W.r.t. maintenance of Means of Communication declared to be of military or national importance.
- ④ W.r.t. protection of Railways
- ⑤ This is issued by Prez: w.r.t the SGIs ensuring that there is provision of adequate facilities for instruction in Mother Tongue at primary stage of education to children belonging to linguistic minorities of state.
- ⑥ Directions w.r.t. Planning & Execution of schemes for the welfare of STs in the state: All issued by OG.

Above provisions are applicable to any state other than a state in which or in any part of which Emergency is in operation - 42<sup>nd</sup> CAA, 1976.

**A-354** - On Distribution of Revenues b/w S&C - Jn. Relations

- > The prez can modify distribution of revenue b/w C&S.
- > Every such modification continues till end of FY in which the emergency ceases to operate.

> Every such order has to be laid before the LS & RS.

Firm

Fin. Ad.

I govt. of LS

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# POLITY

Reference:

Newspaper

'Understanding in the way they ought to be understood'  $\Rightarrow$  SC  $\Rightarrow$  centre - to form  
Starvation death in Odisha

SC  $\Rightarrow$  Centre - to release food grains

Art 21: Violated

constitutional significance

concept  
+  
New item

$\Rightarrow$  SC is the guarantee of FRs.

$\Rightarrow$  Lingayat issue?

$\Rightarrow$  Karnataka - flag?

Centre  $\Rightarrow$  SC  $\Rightarrow$  Centre - to form  
Country Nan. Board

KARNATAKA ELECTIONS

State of - state Centre One - news item $\downarrow$ 1/3rd of Polity	- EC - SC - Governor - protest speaker - CM - CMs
--	--

Trace the Origin of Constitutional Form of Governance  
 in our Country. | Do you think that the various separatist & insurgent movements in India have posed a challenge to the very basis of Constitutional governance? What are the demands of these separatists & what is your suggestion to sustain & promote Constitutional Governance in these regions?  
 Do you think that India is still an illustration of unity in diversity?

FAITH

\* The Indian sub-continent (incl. Pak & Bang) Constitutionalism  
 has been a <sup>melting pot</sup> crucible of civilizations. Various Const Assembly  
 civilizations have left their cultural mark on it. Const. Document

In this diversity arose an illustration of unity (i.e.) India, the Bharat. We, the people shared a common **FAITH** that we could organise & govern ourselves on the basis of a single document  $\Rightarrow$  this was **CONSTITUTIONALISM** at work. It manifested in the est. of a <sup>299 aspirations</sup> **Representative Constituent Assembly** which drafted & adopted a single constitution for the entire country.

### Naga demands:

(1) NAGALIM - <sup>group country</sup> Combining Naga pockets into state including areas in Manipur  $\Rightarrow$  Ukhail, Churachand, Tarmonglong, Semapam.

$\hookrightarrow$  Kukis complain of Non-inclusive growth only for Meiteis.

**SUMMARY** ① ILP ② NAGALIM ③ Non-inclusive growth

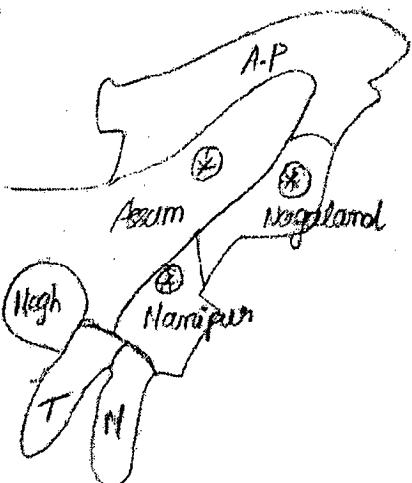
**Art 19** Right to free movement & settlement

Exception to tribal areas,

### MANIPUR

\* Manipur has:

- $\Rightarrow$  Ethnic diversity
- $\Rightarrow$  Aspirational diversity
- $\Rightarrow$  Aspirational conflict.



**MANIPUR:** latest addition

Mills  $\Rightarrow$  Nagas (Kukis)

Volley  $\Rightarrow$  Meitei

✓ Ethnic div.; Asp. div.

✓ Aspirational conflict

Meitei dominance

Tribal dominance

① Local Monarchy -

Aug 6 Oct 1947 - Forceful annexation - Bodlu Singh

② Kakaw Valley - Was

with Meiteis but Meiteis

gave it to Myanmar

contemporary scenario.

③ Forest like permit system

Designation of any area as excluded area

Mizoram, Nag, A.P. - Meiteis

want it to Manipur also.

Nagas & Kukis don't want it

Balun Sudum

Manipur blockade - ?

UNC - United Naga Council

⇒ Dif. Insurgent groups, for exa:

for Meiteis : UNLF (United National Liberational Front);

for Kukis : KNF (Kuki National Front);

for Nagas : NSCN (National Socialist Council of Nagaland);

Bone of contention / Reasons for Conflict:

① Meiteis want GLP (Inner Line Permit) system to be introduced but Nagas & Kukis oppose it.

② Nagas want

- i) Ukhrul
  - ii) Chandel
  - iii) Tamenglong
  - iv) Senapati
- } to be included in greater NAGALIM

But Meiteis & Kukis oppose it.

③ Kukis complain of non-inclusive growth against the Meiteis.

Suggestions:

I. Plurality should be accepted by all - (Marikom)

II. State should try to reach for flying inclusion pockets - (smaller districts for efficient administration)

III. Zero tolerance to Human rights violation.

IV. Job-Creation

V. Weeding out corruption from administration.

VI. Shri. Bishen Singh has proposed starting a new regiment in army <sup>for Manipur</sup>.

Story of Nagaland

1908 - Naga Club → Naga National Council (NNC)

1963 - established ← Naga Federal Govt (NFG)  
11 states) " " " Army (NFA)

June 1941 - if my child they won't join India (PAKISTAN)

→ 6th article - Admin of tribal areas -

Akhbar Hydari Agreement → 7th clause

1951 - Panchayat - 7th Amendment. Govt. of India Act.

1953 - Nehru speech - 7 police stations

1956 - Ordnance Army

1963 - Armed forces special powers (AFSPA)

1975 - Shillong Accord - NNC not included  
↓ all but 3 groups

Opp. to Shillong Accord - NSCN (T. Muivah)

1985 - my son for assassination of Muivah

② NSCN

1. N (T.M.)

Kokrajhar - Nyamraha based

3 PNS visited : Moraji Desai, D. Gouda, Valipai

Valipai - fondly remembered - "We accept our mistake. Sorry for blood bath. Appreciate unique contribution. Nagas never shot @ India - <sup>dim</sup> caught war;

2015 - Naga Framework Agreement (NSCN-JM)

Secret.

PN:

- ① Map of N.E. will not be withdrawn
- ② Autonomous institution - as per Naga culture.

NSCN - IM:

shared sovereignty

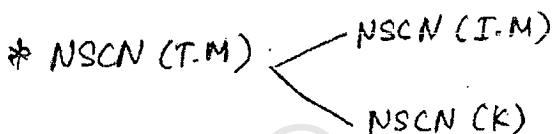
Kaplang - expel in Nyamdu.

Now - Khangor Konyak - In talking terms with Govt. "cannot & stick policy" -

Destroy camps in Nyamdu - China doesn't want NSCN-K to join talks → pressure on leaders; India - working along civil society - grassroots level → people.

NAGALAND

⇒ With creation of:



Started the "Mother of All Insurgencies".

Not many Govts. & PMs have cared to ascertain the wishes of Naga people.

However Shri. Vajpayee is still remembered with fondness. Modi's regime has picked up the thread from where Vajpayee had left.

Naga Framework Agreement - 2015

↳ Maps will not be redrawn.

↳ Self-dependent institutions would be est. in Naga dominant pockets.

↳ NSCN (I.M) would give up arms.

It is ready to coexist under SHARED

Suggestions:

Kaplang group should also be invited. In fact, India is in touch with emerging leadership. It is working among civil society to ensure that NSCN (K) also joins Negotiation.

STORY OF ASSAM

① porous borders Vs Bangladesh.

1951-61: Hindu migrants } from Bangladesh  
② Muslim migrants }

Landlocked - slow development -

DUAL PROBLEM : { Migration } porous  
{ Landlocked } frontier

► ULFA - sympatetic : Dimasas  
AASU - sympathetic : Karbi  
► BLF - sympathetic : Adivasis  
ABSU - sympathetic : Muslims &  
Khasis

Non-Brahmin MAJESTE

UAIC - Upper Assam Iking Committee.

1985 - Assam accord - AASU →

↳ AGP - Election 3 mbers

✓ 1951-61 ⇒ citizen + vote

✓ 61-71 ⇒ citizen + no vote for 10 years

✓ post-71 ⇒ No citizenship

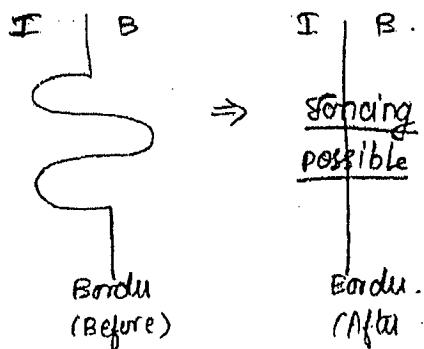
1993 - Bodo Accord - BLF → liberation  
Police, Sud, Admin Reforms Bodo  
Tigers.

Both accords not implemented.

SOVEREIGNTY

Achievements :

## ① Indo-Bangla Land Agreement



## ② SC - NCR 1951 - National Citizenship Registry

### Citizenship Registry :

- Monitoring of doubtful voters
- Foreign instit - Family tree - Out of voter list - deposit back to B-desh.

① & ② has lead to Surrender of Insurgent leaders - → of them ②

India - Myanmar ⇒ legally porous border  
Assam offices - maintain corridor  
Citizenship Bill - Except Muslim ②

### ASSAM

⇒ Assam suffers from the DUAL problems of:

- i) illegal migration - porous border
- ii) slow pace of dev - land locked.

Suggestions:

▷ Assam & Bodo Accords may be given effect to.

▷ Indo-Bangla Land Agreement has allowed fencing however in areas that don't allow fencing, Tech & sensors must be used.

- ▷ The SC monitored exercise of updating NCR (National Citizenship Registry) - should be followed in letter & spirit. the illegal migrants should be deported.
- ▷ Various cadres of separatist groups have surrendered. They should be rehabilitated.

### AFSPA - 1958

- i) Gov - Disturbed area
- ii) Armed forces absolute powers - without warrant
- iii) Immunity from criminal prosecutions unless central govt. permits
- iv) No definition of Disturbed area

#### Allegations of H.P. violations:

- 2004 - Manipura - Fired by team rifles  
SC asks: i) Is AFSPA permanent in Manipur  
ii) Scrutin of cont. Govt & Army

[Justice Jokha] → if SC find H.P. viol - we won't wait for c. o. to give permission - Govt. prosecutions have been taken by SC.

Now no AFSPA in Nagaland after 27 years

A.P. - only in 8/16 police stations

Assam - Manipur → state authority

Nagaland →

### AFSPA

⇒ When government declares any area as disturbed area then the armed forces & paramilitary forces enjoy:

- i) Power to arrest, detain, search,

seize without warrant.

i) Immunity to criminal prosecution.

↳ Due to alleged H.R. violation against AFSPA, SC has diluted it by directing criminal prosecutions in fit cases.

↳ Recently, the area under AFSPA has been considerably reduced. Power for review has been transferred to state Govt. in Assam & Manipur.

### Story of TRIPURA & NIZORAM

TRIPURA - illegal migration from B-desh

1989-90 - started

1997 - AFSPA imposed / insurgents lost

2014 - Election-Tumult / support at grassroots

2015 - Repealed / psychological

Measures  
↳ combative  
↳ Non-combative

### Psychological:

- i) Reconciliation - for feelings of hurt.
- ii) positive Media usage - leaders of insurrections - wealthy; cadres - poor - How India wants dev. of Tripura.

### Concrete:

- i) Job creation; Training
- ii) Salary - wage hike.

### Combative:

Tribals in combative form - better information gathering from P.A.W. intelligence

### NIZORAM (1960-86)

1967 - AFSPA imposed

↳ Assamese domination -

Jurahi & Non-Jurahi tribals threatened -  
Droughts - starvation deaths

### 1986 - MIZO ACCORD

↳ UT to statehood.

⇒ PUL-LAL-DENGA - Once innocent

trader - became CN.

### LEFT WING EXTREMISM

Maoist hit states:

1) Maharashtra

2) A.P

3) Telangana

4) M.P

5) Chhattisgarh

6) Odisha

7) W.B

8) Bihar

9) Jharkhand

Red Corridor

- Highest no. of Deaths due to Maoists.

- MHA → has published statewise data in their site.

- Maoists & Naxalites - cadres don't have any genuine concerns;  
- They just want power.

#### Concerns of MHA:

- ① Security of state - fortified police stations + Bullet proof vehicles
- ② CRPF - Effort to change force into welfare activities - Ex: Tubewells.
- ③ Rights to tribals at any cost
- ④ Niamgisi hills - Vedanta Mining -  
Tribal God-Habitat  
SC ⇒ If Gram panchayat doesn't want  
Bauxite mining, then don't do - Saved
- ⑤ Positive Media Usage.
- ⑥ [NIA - probing wealth amass of  
Maoist leaders]
- ⑦ Infrastructure development
  - 11,000 crores - Roads
  - 11,000 crores - Mobile towers]

#### SAMA DHAN - Acronym

→ New approach against Maoists.

- ⑧ Gadchiroli incident - success -  
Ex. of Technology ~~harnesser~~  
40 maoists killed - No other casualty

(126) → (44) ; (25) → (30)

By 2022, No Maoists

#### JAMMU & KASHMIR

Maoists  
↳ Combative  
Non-combative

#### Non-Combative:

36,000 GJ (80,000 in total)

#### Reconstruction:

↳ Basic services

↳ Rehab. of Cadres

↳ Infrastructure dev.

Chenani

Nashri

Kishan Ganga Power project

Zojila Tunnel

Banihal - Quazigund

#### Combative:

↳ 64 militants neutralised in last 4 years - but more cadres join for funeral - so now only hardcore kill, fresh can surrender.

↳ Robots

↳ Funding under scanner - NIA

↳ Positive Media - From CN Nuffi -  
Now -ve portrayal only.

## Unity or Diversity:

i) Even now, we follow same ideals as in preamble.

ii) Indian parliament - 16th Lok Sabha - Success

iii) Areas under insurgency - Turnout of voters:

- Assam - 80%  
Manipur

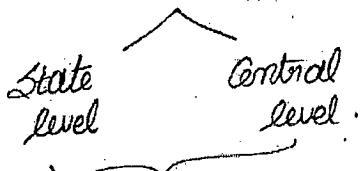
- Naga - 88%

- J&K - 50%  
(Srinagar, 10% than last)  
Arant Nag - (not much)

## NATURE OF INDIAN CONSTITUTION

① Federal Vs Unitary (Opinions)      Federal Vs Unitary

Federal: Polities at:



Essential features

Divides powers

i) DUAL polity

ii) CO-ORDINATE powers

iii) DIVISION of powers

Written

Supreme

Rigid

GCI

Derived  
features

X Quasi federal

- no single meaning for it

- no need for G.S. polity

### UPSM Mains

Not knowledge, but

Possessing of knowledge

should be such that  
none should be able to  
question it. - Essential  
points, ~~not~~ derived.

Written: Not entirely contained in conventions & understanding  
but contained in a single document

→ for clarity of power - scope for conflict  
& smooth admin.

Supreme: Over state and centre.

→ To avoid destruction of 'Division of power' by <sup>one</sup> exercising all powers.

Rigid: Which can't be unilaterally amended either by  
centre or state but by only combined effort.

→ To avoid destruction of 'Div. of power'.

ICJ (Independent Court of Law):

- (1) Arbitrate - deal with disputes (decision) b/w U & S.
- (2) Interpret - give meaning to Constitution (words).

Independent from both state & centre, not dependent on either  
only. → for fair, unbiased, objective interpretation of Constitution

Unitary:

Opposite of Federal

Parliament is Supreme, not Judiciary

- E: U.K. — No written constitution  
— No dual polity  
— No ICL.

DICEY

- (1) No man is above law
- (2)
- (3) what parliament says is law.

Qn 1: It is said that although Indian const. has all the <sup>ing</sup> federal features, yet it has a strong unitary bias / centralised tendency. Justify this statement. When there is a unitary bias then why was CA required to transfer land to Bangladesh during the recent <sup>(3)</sup> INDO-BANGLA Land Agreement (CJLAA, 2015) (A-368)

Federal Features of Indian Const.:

(1) Dual polity: Article 1(1) — UNION OF STATES

- Part IV — Leg & Exe @ Union Level
- Part VI — Leg & Exe @ State Level.

(2) Division of powers: Schedule 7 — 3 Lists (U, S, C)

Article 246

↓  
Aspects of governance

{ Security - U  
L&O - S  
Education - C

↓  
Items of list.

12 schedules

Details of  
Articles.

Items of list

Frumerated

(3) Co-ordinate: i) state & union

have supreme powers over their lists

ii) constitution decides the powers of U & S.

scope of authority

unlike in state vs.  
local bodies where  
state decides powers

a) Written:

Indian Constitution

Constitution of India, 1950

i) — written rules of  
constitutional governance

- Only the part I of  
Indian constitution. Not

ii) — but not all is written  
which are following

② & ③.

CONVENTIONS.

③ - Meaning given by  
the SC.

Indian constitution.

- a) Written rules of const. governance  
Unwritten rules of " " } WRITTEN.  
Interpolated rules of " " }
- b) Limited Government - means - SUPREME constitution. (Parl. is not supreme)
- c) Indian constitution is a unique mix  
of rigidity & flexibility } - RIGID

### Article - 368

① Empowers authority to Amend

② Method to Amend

- unilateral amendment - flexible
- can't unilaterally - combined - Rigid

After passing bill in parliament, it is sent to all 29 states for consent. (not UTs)

At least  $\frac{1}{2}$  of state legislatures should RATIFY it through RESOLUTION.

Only then it is sent to President - for consent.

MOTION: All proposals are motion.

RESOLUTION: those motions passed through voting - resolve of house.

List of Articles to be amended by : A-368

\* RIGID method:

- i) A 54, 55 - Elections to office of Pres.
- ii) - Extent of executive power b/wn U&S
- iii) Schedule 7 - 3 Lists
- iv) - All articles pertaining to SC & HC in states, UTs etc.  
(Ex: NJAC bill, GST)
- v) - GST council article
- vi) A-368 - Itself also is rigid.

\* FLEXIBLE method:

All other (most) are through flexible method.

- d) A-131 - sole arbitrator of disputes b/wn U&S. } ICL  
A-132; 141 - Final interpreter of constitution

Constitution

- ✓ Establishes powers
- ✓ Empowers to use powers
- ✓ Limits the powers.

(Limited State)

PREAMBLE

Is not a basic structure - can be amended by flexible method  
- Basic structure is based on articles.

Summary part I of Qn: Federal Features of Indian Const.

\* The Indian constitution has all the federal features namely:

✓ Established DUAL Polity

✓ Has CO-ORDINATE polity

✓ Divides POWER between them

⇒ It is not entirely based on CONVENTIONS & UNDERSTANDINGS rather contained in a SINGLE DOCUMENT.

⇒ It establishes LIMITED GOVT at both Union & State (U&S) level.

Thus it is SUPREME.

⇒ As Article-368 provides for FLEXIBLE & RIGID methods of amendment, Indian const. is a unique mixture of flexibility and Rigidity.

⇒ It provides for an ICL (Independent court of law) - SC, as a sole arbitrator of disputes b/w centre & states & as a final interpreter of the Constitution.

Unitary Bias: (Essential aspects - priority)

Check those articles attacking <sup>① ② & ③</sup> essential features of federal setup.

Indian const. is not a TYPICAL Federal constitution.

USA - 50 states { pre-existing sovereign states (which gave up  
typical federal const.      part of their sovereignty to form USA)  
must have :                ② Agreement of states to do so.

INDIA

- (1) No pre-existing sovereign states }  
 (2) So, no agreement of status too. } Not a typical Federal constitution

Unitary bias:

Def Our const. is so designed such that it will not always behave like a Federal const. but start to behave like unitary const. sometimes.

Articles that makes Union powerful:

Article 3

- i) parliament can unilaterally change the Name, area, boundary of state
- ii) that too, by simple majority & not even special majority
- iii) Before the bill is passed in parl. prez should have recommended it - before that, in a time bound, he should send it to concerned state for only OPINION - (state's opinion however is not binding on prez)

DUAL  
POLITY

Points giving more power to union:

DIVISION  
OF  
POWERS

- i) No. of items on Union list - 98 > than in state list.  
 (State list - 59  
 Conc-list - 52)
- ii) More important items (Subjects of national importance) on Union list; Subjects of regional importance only on state & concurrent list.

ii) Residuary powers with Union. [A 248] [Item 97]

Residuary power { Aspects not mentioned / left-over aspects of constitutional governance - the union has power over such aspects. [Bcos putting every aspect is not humanly possible.  
i) Dynamic in nature]

- iv) [Article 254]
- 1) In case of clash b/w U & state law, Union law prevails
  - 2) In certain situations, s law may prevail if s law has received prez. consent in that state.
  - 3) Even when state law is in action in a state, parliament in future can make a new law to negate it.

In concurrent list, union has superior & prior claim

@upsc.riseinfinity

(CIVIL PROCEDURE CODE) : Both Union & state can make law.

Now Union has made law.

But diff. states may require diff. procedures

[Bihar Vs Maharashtra

Example for

iv) 2) - Union itself  
may recommend prez  
to give consent to state law

over union law - co-operative federalism

TN - Sati issue ]

↳ Now 5 judge bench - TN's cultural right?

B.R. AMBEDKAR - UNION not Federation (or confederation)  
bcos states can't secede.

BBC documentary - meeting of provinces ↔ Mountbatten

## Summary of part 2 of qn: unitary bias

(a)

- ① Parliament can unilaterally change Name, Area,
  - ② boundary of any state.
  - ③ Union list has more no. of items and more important items
  - ④ Residuary power lies with the Union.
  - ⑤ On the concurrent list items, union has superior & prior claim.
- 
- \_\_\_\_\_ x \_\_\_\_\_ x \_\_\_\_\_ x \_\_\_\_\_ y \_\_\_\_\_
- ⑤ Parliament can make laws in 5 situations (in state lists)

I. National Interest (N.I)	A 249	A 352
II. National Emergency (N.E)	A 250 w/o 353	
III. State Emergency (S.E)	A 357	- A 356
IV. Requested by 2/ more states (S.R)	A 252	
V. International Agreement (I.A)	A 253	

- ⑥ what is the source of authority of Parl. for this?
- ⑦ life span of law? QUESTIONS FOR COMPARISON.

### I. National interest:

- ① From Resolution of Rajya Sabha (Council of states)

SOURCE *(Jkr Sabha has no role here)*

LANGUAGE *↳ It is necessary & convenient expedient in N.I  
that parl. should make law on state list.*

Sp. MAJORITY  
REQ *↳ Not less than 2/3<sup>rd</sup> members present & voting*

SN  
RESOLUTION  
which item of state list is given to parliament  
for how long resolution be alive (not > 1 year)  
(life may be extended 1 year at time further)

- (b) As long as resolution is subsisting alive, law will survive for sure.  
It will continue to be alive for 6 more months.

## II. National Emergency:

- (a) Source - A 250 m/w 353 directly as soon as N.I is declared by A 352  
(b) Span - will be valid for 6 more months from the day emergency ends.

## III. State Emergency:

Breakdown of constitutional Machinery

Ex: J&K -

Karnataka - may loose majority

Pres can declare S.E. by A 356

- (a) Source - Declaration made by Pres }  
that Parl. can make law }  
over state list - A 356 }  
Story in  
A 357
- (b) Span - Remain indefinitely unless ended / amended by  
COMPETENT LEGISLATURE  
That who has authority - U or S based on situation  
↓                    ↓  
No leg.      when election over.  
in state      (Pres. rule called off)  
(Pres. rule)

#### IV. R.S (Requested by 2/more states)

(a) { It is desirable that the Parl. should make law on their state  
 Passage of resolution in all houses of state legislature

##### LAW MAKING BY CONSENT

{ A 3rd state can use this low thorough resolution (no need  
 to adopt to take permission from Parl.)

##### LAW MAKING BY ADOPTION

(b) indefinitely - unless ended or amended by Parliament  
 when a similar S.R is received from some states

#### V. International Agreement: A 253

Ex: Agriculture in state list - But I.A reg. agri.

(a) From constitution

(b) indefinitely

Why R.S not for 1 state?

1. Parl. will not waste time on which 1 state can do.

2. Commonality of interest in both states - exq. - not in 1 state

1996 - Punjab & Haryana

↳ urban land ceiling

STATE FLAG: Grey area - Nowhere mentioned can or can't

↓  
 Have to wait till it reaches S.C.

NATIONAL INTEREST & there can't be a definite answer / definition  
BASIC STRUCTURE for these as they are also dynamic with time  
X — X and people as they evolve.

Summary on Part ②(b) - 5th unitary bias  
Under 5 extraordinary circumstances, Parliament can make law on state list items:

- i) If R.S. resolves in National Interest.
- ii) If N.E. is imposed under A 352
- iii) If Pres. Rule is imposed under A 356
- iv) If 2/more states request
- v) If India has signed S.A. for the purpose of which law is required on state list item.

Examples:

- |   |               |
|---|---------------|
| i) Police & supply of Goods Act, 1950   | A 249         |
| ii) Till now not happened   | A 250 v/w 353 |
| iii) Every time Budget is passed for any state under Pres. Rule   | A 357         |
| iv) Urban Land Ceiling Regulation Act for Punjab & Haryana ;<br>The water prevention & control of pollution Act | A 252         |
| v) Air pollution & control of pollution Act<br>Environment protection Act                                       | A 253         |

## Administrative Bias

1. Article 44 v/s Article 163

In favour of union through office of Governor.

2. A 256 ; A 257

Ex: Nitish Kumar & his CM.

By their executive decision  
They should have a concurrence

i. Parliament law  
ii. Union's executive authority  
iii. Union's directions

3. A 312 - All India Services

Union concerns over State concerns

## Financial Bias

states needing financial assistance:

→ Grants in Aid - from Union Govt under certain conditions → limits states scope

Indian constitution - NOVELTY

- Federal nature



SUI GENERIS

(of its own kind)

why not A-3 <sup>but</sup> & A-368?

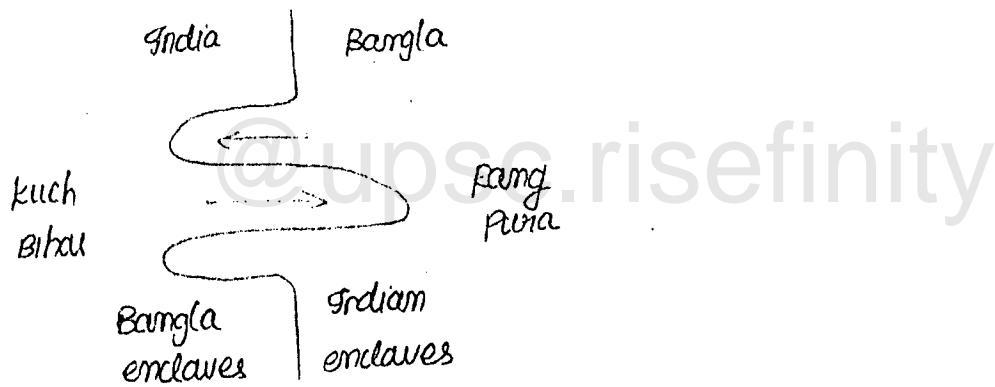
In case of External Border disputes:

- Executive order
- Parliamentary law

Sufficient when:

- ✓ Accord/agreement b/w 2 nations
- ✓ Jard is undemarcated - 1st time dispute.

Case of INDO-BANGLA:



RADCLIFFE: Not enough knowledge of Sub-continent -

- ↳ Indo-Pak border decision - based on police stations
- ↳ BERUBARI POLICE STATION - not mentioned in award  
order (mistake)

Talpaiguri police station (India)

NEHRU-NOON Agreement, 1958

1/2 of Berubari each to India & Pak.

under A-3 tried - but WB disagreed - Pres sent to see,  
even when he could've recommended it straight

## SC Judgement BERUBARI (1960) :

1. Union has authority to transfer states to foreign w/o state permit.
2. New executive order not sufficient but req. Parl. Law (in Berubari case).
3. A-3 not sufficient but req. CAA - 

Schedule 1
A 368

 change area of Berubari (WB).

Accordingly 9<sup>th</sup> CAA - delete 1/2 of Berubari in schedule 1.

But due to war with Pak, it was not given

Then, 1974 - Land Boundary Agreement

- 80% border dispute settled.

In, 2015, - 100<sup>th</sup> CAA - INDO BANGLA agreement

- 20% remained to be settled.

### Reasons:

1. India is sovereign.

2. No accord / <sup>NOT</sup> undermuktad

3. why not A-3 ?

A-3 (c) - "DIMINISH" - take from one state & give it within India.

A-368 - "CEDE" - to give to another country

2 arguments that DIMINISH ≠ CEDE :

① Suppose A-3 gives power to 'cede', then where is power to 'Acquire'?

② 'STATE' - not 'UT' mentioned in A-3, but in A-368

Doubt

Discrimination to states

simple  
maj

special  
maj

Summary On Part ③ - INDO BANGLA agreement

In Berubari case :

- i) SC held that Union has sovereign power & need not seek permission from states.
- ii) Executive order not sufficient bcos no accord existed for Berubari, it was also not undemocratised.
- iii) A-3 is not sufficient bcos 'DIMINISH' does not mean 'CEDE' further - when there is no article conferring the power to acquire, then how can there be an article conferring power to cede. ↴

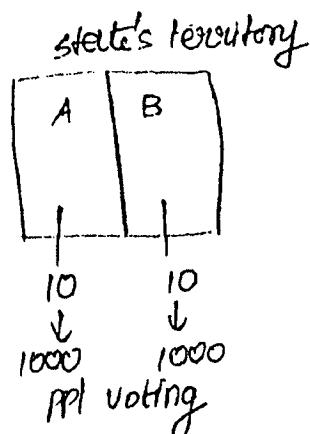
Also for UT, the only method available is through 368-A, so for states also A-368 should be used.

Qn-2 Highlight the recent trend in shift in Federal ideology of India & How has it contributed to demand for smaller states. Are the smaller states justified?

1st SHIFT: Deepening of Democracy

small areas - valid for governance & policy making

Aspirations growing in ppl - Identity with smaller areas - Govt. recognising



2<sup>nd</sup> SHIFT : Governance → Good Governance  
 ↓                      ↓  
 Admin → Developmental Admin  
 - req for small states.

3<sup>rd</sup> SHIFT : Language → Dialect  
 ↓                      ↓  
 Statehood            statehood  
 Linguistic            Dialectic

Ex: BUNDELKHAND area.

4<sup>th</sup> SHIFT : Statelevel promises → Regional/  
 Local promises  
 { In election manifesto, due

1960-1967  
 congress ruled  
 U & S. Only  
post-1967

to regional leaders rising after 1967. Regional  
 parties grew

5<sup>th</sup> SHIFT : Secession of the Rich

Post 1991, economic inequality among areas in a  
 state. The rich areas want to form small states as they think  
 Ex: Haryanadesh (U.P.) of poor areas as burden.

[MAP for ASPIRANT STATES IN INDIA - Google]

If states demands are justified?

For ① small states have done better:

N.P vs Chattisgarh

10% 5% 9%

FYP U.P vs Uttarakhand

5% 9%

Bihar vs Jharkhand

4-5% 11%

② Easy governance -

monitoring

corrective measures

Awareness of policy makers

③ (Patronage based Democracy) Honest behaviour

Doubt

Resource to constituencies based on NLA

- Dishonest voter behaviour

Against

① Fear of statehood → Nationhood

Ex: Gorkhaland (China)

② Larger state - strong admin - less violence

(not a strong argument) - U.P violence

③ Mineral mafia in small states - small admin

(Not a strong argument) - karnataka

Conclusion — HAVE TO BE BALANCED

Federalism is CELEBRATION of DIVERSITY. Having smaller states with cultural & linguistic diversity is good. However we must consider the two main concerns too:

- i) Border concern
- ii) Finance viability

Q3: Why do we have union ministries for governance aspects mentioned on state list?

Ex: Agricultural, Health Ministry-

① Infrastructure development

Ex: Agri Res. Institute - ASSAM

② Monitoring @ All India Level

NIPAH, Monsoon on Indian Agri.

③ (Agriculture Procurement) - Welfare Activities

Q4: When we already have RS, then why is a rigid method of amendment provided? What are the non-federal features of RS?

R.S - Not a typical federal body

In a typical federal body,

- ✓ Only states should be represented.
- ✓ Equal voice for all states.

But, In R.S — population wise representation.

- 12 members nominated.
- UT represented (Pad).

@upsc.risefinity

## SEPARATION OF POWERS

Separation b/w state & centre.

We are the ultimate sovereign (pp) who gave powers to STATE for our welfare. The check that it works is separation of powers.

Ex: POLICE - as - MAGISTRATE - concentration of power is opposite of separation of power.

LEGISLATURE & EXECUTIVE - separation & Extent

Legislature - Parliament at centre

Executive - Temp - CM & PM

\* SEPARATION:

A-79 - Parliament (RS+LS+Pres) - legislative

A-74 - CM+PM (to aid & advice Pres) - Executive

A-107 to 117 - Passage of Bills (before leg. & not exec)

\* Separation is not complete - Links b/wn leg & Exe exists

Proof 1 (BRIT PARL) - ① Deivalibility - Minsttu from legislature (must be MP) (Every min.)

- ② Responsibility - resign if no support (from elected representatives)

Proof 2

A 53
A 79

 - Pres as Executive  
- Pres as "part of Legislative" } (Not watertight)

Proof 3 (ORDINANCES) - Pres promulgates - Parl - not in session  
Parliament law [Exception to EXECUTIVE ORDER]

~~PROOF~~ ROLES - Details of Act

- Field realities

JEGISLATION  
ENACTMENT  
STATUTE }  
LEG

who makes? & U Grants.

JUDGEMENT  
JUDICIAL ORDER }

who delegated? legislature to centre estate.

EXECUTIVE ORDER.

Not executive order but (DELEGATED JEGISLATION)

EX: MINES ACT - Parliament (to explore mines)

MINES RULES - UG made it - Field reality  
(to wear helmets to enter)

In India we have separation b/w JEGISLATURE & EXECUTIVE  
because distinct articles establish & empower them

[A 74, A 79, A 107-A 117, A 53] However, this  
separation is not water-tight because

we have British Parliamentary form wifh  
Responsible Govt      Ministers who are MPs

President has dual role. A 74 & A 79 need wifh A 53

President may promulgate ordinance whose nature is  
of Parliamentary law.

In India, DELEGATED Legislation is permissible

Extent

JUDICIARY & EXECUTE - Separation &

legislature - empowers permanent Executive

→ only temp. exec. in itself.

Fundamental process of judicial working:

APPRECIATION OF EVIDENCE.

Fundamental process of permanent Executive:

Ex: License issuing process - GUIDED DISCRETION.

as per set of Guidelines

MOTOR VEHICLES ACT → Post of licensing

authority → Discretion → Guidelines

establishes power empowers power Limits power

MAGISTRATES (One who gives effect to law)

Judicial - Effect to law in court room - CRIMINAL cases

Head: Sessions Judge      Appreciation of Evidence ↴  
in District

Executive - Effect to law in Field -

Head: District Magistrate      Guided discretion ↴

Power to 1973 - No separation b/w Judicial & Executive

magnacy - BOTH in court & field same person

Criminal procedure code, 1973 - A 50 - Sep. of J & E

Separation is not water-tight - Has links

Proof ① SC & HC Judges appointed by Perez

Read

Proof ② Pardon to Convicts can be by Perez. + — Remission by Govt. by CrPC. A-323(A), (B)

Proof ③ TRIBUNAL - Electricity Theft - Case of specialised nature ↑

→ Judicial mind + unlike Mobile Theft.  
→ Technical mind + signature of S + E - to Adjudicate.

Proof ④ RETURNING OFFICER - scrutinise the facts & decide if the candidate is fit for election.

DM ← Executive  
Acting by ↓  
QUASI JUDICIAL - Judicial method ← Appreciation of Evidence  
capacity

There is separation b/w JUDICIARY & EXECUTIVE,

Since 1973 when the parl. enacted Criminal Procedure Code separating the offices of Judicial Magistrate from Executive Magistrate. This was in line with A-50.

However, this separation is not watertight because:

- i) the Perez appoints judges of Higher Judiciary
- ii) the Perez has the power to grant pardon etc. to convicts in criminal case.
- iii) In India, TRIBUNALS dispense Justice.
- iv) the DM, while acting as RETURNING officer acts in QUASI-JUDICIAL capacity

## LEGISLATURE & JUDICIARY - Separation & Extent

Ex: Election of S. Gandhi was invalidated by Allahabad HC.

① She appealed to SC

② Amended the Constitution 39<sup>th</sup> CAA - A-329(A)

A-329(A). Election of PM shall not be invalidated by any court

Election of PM shall remain valid even <sup>when</sup> court says so.

SC ⇒ But SC told this was wrong, as only a Higher Judiciary can nullify HC & not Executive / Legislative.  
This will lead to ADJUDICATION by LEGISLATURE.

Function of each organ is specialised - trained organ  
for certain functions only must do it.

- Foreign Contribution Regulation Act:

- Representation of People Act, 1951:

Since 1976, All parties getting funds from abroad.

Recently a <sup>(Delhi HC)</sup> court challenged parties as per these 2 acts.

So GAUTAM, in Finance Bill - amended FCRA ✓  
- validating foreign funds.

Extent:

① IMPEACHMENT - Appreciation of evidence by Legislature

↳ QUASI JUDICIAL Activity

not before court      But evidence method.

## ② CONTEMPT - SC/HC/Parl./State FA

- Disrespect of institution.

Ex: CM referral - all in Parl. are tried

B'lguru - Editors sent to jail.

→ The institution has to appreciate evidence - JUDICIAL

QUASI -

A-121      Conduct of a judge shall not be discussed in legislature ↗  
P-122      Similarly, conduct of legisl. not in court unless in a

↓ case

Immunities for contempt of Jud & Leg.

There is separation b/w LEGISLATURE & JUDICIARY as highlighted in case of INDIRA GANDHI VS RANJIT NARAYAN in which SC held that the legislature shouldn't be allowed to adjudicate as in India there is separation b/w legisl & Judiciary, further the specialised nature of work of each organ should be performed by the trained minds of that field.

However, separation is NOT water-tight box

IMPEACHMENT & CONTEMPT proceedings are QUASI JUDICIAL in nature though they take place in legislature.

## RELATIONSHIP BETWEEN L, S & E

- { 1) Negative way → prevent other organs from Totalitarianism.
  - 2) Positive way → Promote to fulfill constitutional obligations
- Theory of checks & balances

Ex: KESHAVANAND BHARTI Case - ~~Basic~~ structure of const.

- (1) Plastic surgery - remove, still basic structure remains  
Bone ablation - remove, basic structure collapses
- illy - CONSTITUTION → JUDICIARY OVER LEGISLATURE

### (2) TALLIKATTU, KAMBALA

Cone. law : Prevention of Cruelty to Animals Act, 1960

Sections - 3, 11, 22

- i) Treatment to Bull - cruelty
- ii) Bull & Tallikattu - not exempted from PCA.  
(Bull - exempted)

2010 - Keralanandhi - tried to get exemption for Bull

↳ state law Vs Centre law

SC : Parliamentary law Prevails - 2014

Sections - 3, 11, 22 - cited.

2016 : A-254 - If state law gets Pres consent, it will prevail over centre law.

- i) Not cruelty.
- ii) Exemption from PCA.

PETA — challenged it — SC refused.

## 5 Judge Constitutional Bench

A-29 → Pending if stallikattu will prevail.

\* (A case moves from one organ to another) — checks & balances  
Not Centre Vs State — It is D. of powers.

③ HIGHWAYS - LIQUOR SHOPS - Banned.

Criticised that Judiciary is doing policy making.

Justice Gavit filed 3 documents during hearing of SC - Attorney Gen  
Justified it → In favour of Ban - so we banned based on our data.

- i) MORTH { Executive } iii) PC { legislative reports }
- ii) NRSC { reports } → 0 tolerance on drunk & drive.

Judiciary → PROMPTED by govt to Ban, so we did.  
legislature

In Re 1 of 1964 — Read —

OP → Allahabad HC → Resolution of house  
leg. sent gave jail ↓  
to jail bail Pres - SC - status quo | A-32  
check for

OVER-REACH ③

Each organ must act in a way on other organs:

PROMPT them from becoming Totalitarian

PROMPT them for fulfilling their const.<sup>l</sup> obligations

This is the theory of checks & balances

## INSTANCES

### ① KES

Judiciary <sup>laid</sup> down the BASIC STRUCTURE doctrine which has limited power of legislature, parl. can't amend basic structure of constitution

### ② TALLIKATTU

A supreme court judgement banning Tallikattu in TN under sections 3, 11 & 22 of the PCA Act was made ineffective by a state legislature to these sections which received presidential assent. Now the matter has again reached SC (CB) on whether TN has a cultural Right over Tallikattu under A-29

### ③ BAN ON LIQUOR SHOPS ALONG NH

The then CJI, Justice KEHAR argued that Judiciary was prompted by the reports supplied by Govt. during

court hearing. All these documents were in favour of Ram.

④ A-21(A) - 2002 amendment ; 1989-Judiciary

↓                           ↓  
FR to primary education      Right to Education.

PROMPTED: Legislative prompted by Judiciary

⑤ Indra Sawhney case, 1992

& Y. Reservation for women

SC During appointment ✓ But Not during promotion X.  
↳ A-16(4)

Parv.  
1995 A-(4A)16 - Reservation in promotion of SC/ST in case  
of Inadequacy of representation

Nagaraj Case

5 judge CB - 16(4n) is correct

why? Only reason to strike down CAA is violation of  
Basic structure.

Data show us if they are inadequately represented — stuck in se

From S → L → G → Now b/w  
S & E ← data

④ A 21(A) - we have fundamental right to primary education by 86<sup>th</sup> CAA. However in 1989 itself SC and A-21 (MOHINI TAIN / Capitation Fee Case) had inferred FR to Education.

#### ⑤ RESERVATION IN MATTERS OF PROMOTION

While SC judgement in NANDAL CASE had declared that Reservation at stage of promotion is unconstitutional yet parliament introduced A-16(4A) to justify such reservation. In NAHARAT CASE, SC upheld the validity of 16(4A) subject to Inadequate Representation. Now, the Govt. must supply Quantifiable data on Inadequate representation.

Balance B/w 3 (Healthy Relationship)

#### ① PNB Case

Petition - Not possible without PM & FM - ~~so~~ counted court monitored investigation - Politicians & Bureaucrats may influence CBI & ED so to prevent it.

Purpose of Investigation - To collect evidence

Purpose of court Investigation - To collect prompt evidence without influence.

Until all evidence is produced to Magistrate - CMI exists.

Judicial Restraint - SC refused to intervene on request on Legislative & Executive.

## ② PENSIONS for MPs

SC refused to intervene - keeping independence & autonomy in mind

① + ② → Judicial Restraint

Judicial Activism

## ③ Swiss Bank - Ram Nathvelani - told SC must direct govt. to ban money stash from abroad.

Govt argued that it is financial policy & Judiciary must not intervene.

"Govt - The Judiciary must learn to remain within Lakshman Rekha."

SC - Had Seetha not crossed, Raavan wouldn't have been killed."

## ④ APP of DGIP

SC - In states all offices are appointed on favouritism -  
do it on recom. of UPSC. [ A 315 - A 323 ]

No mention of this - No backlog of law ↪

2002 - Badal Singh Case - then itself SC wanted UPSC to do.

Only 5/29 states followed it - So revisited in 2018.

## ⑤ VISHNUKA Case

Nurse raped - SC laid down details for protection of women in Work place - Resembled actual Rail Law - this law prevails until replaced by Rail Law.

Why? 3 to 4 cases, SC kept on requesting parliament, then finally it itself did A-21 to guarantee it.

It was a case of Judicial Restraint when SC refused to interfere with the ongoing investigation in the case of PNB scam & did not direct a CBI (Court non-investigation). This because baseless allegations had been circulated against PM & FM and impartiality of investigation agency had not been challenged.

Also case of Restraint when it refused to interfere with Pensions being given to MPs on ground that pensions ensure independence of public authorities even after they've ceased to hold office.

It was an ACTIVIST JUDICIARY which greatly disrupted, in name of Police Reforms, that appointment to post of DGP should be made only on recommend. of UPSC based on merit and in a transparent manner for a min-term of 2 yrs

& acting DSIP not to be appointed. There is no explicit article in const. which may support these directions.

Feminist, an ACTIVIST JUDICIARY had laid down detailed Guidelines resembling parliamentary law for protecting women from sexual harassment in workplace (VISHAKA CASE) These guidelines would be law of land till it was not replaced by a parliamentary law.

## JUDICIAL OVERREACH

SC/ST P.O. Atrocities Act

S-18 - No bail, immediate jail.

From Maharashtra to SC

SC asks how can a arrest like that? Police must seek permission from authority to arrest after finding that allegations are true. (S. GOEL)

Why it is Overreach?

i) SC judgement pronouncing law - language directly in conflict with parliament law.

ii) Permission giving power - POWER - ~~can~~ can be given only by Legislature and not Judiciary

[SC - 15% conviction rate - out of 100% - False cases justified]

- A 21 - No harm to liberty - Natural justice - to be heard]

He didn't say 3-18 is unconstitutional & delete it.  
But he did - left the law stand but contradict it with <sup>another</sup> law.  
Why? Unless a petition is filed, SC can't do Judicial Review - He can't do it in this way.

### LIQUOR BAN on NH - Overreach

- i) Adjudication - interpret law  
↳ section should be basement of law & not REPORTS  
which he did.  
↳ Reports should only for policy making.  
(National anthem in theater)
  - ii) A(21) - dubious argument - tomorrow fast food he will  
say will lead to death  
Not based on proper study  
that drunk & drive leads to acc.
  - iii) Polycentric disputes - Cigarette Ban - Livelihood may be affected  
SC doesn't have resources for this:  
It again said Municipalities are exempted.  
220 m instead of 500 m in Assam.  
⇒ Divorced from ground reality.
- PUNJAB case - y to whole India? - Overreach

## EXECUTIVE OVERREACH

1) Min. of I&B - Smriti Irani

Accreditation of Journalists will be cancelled for Fake News  
By PIB

Editors Guild - opposed this order

- i) They asked definition of fake news. (like disturbed area in AFSPA)  
(Prone to misuse)
- ii) Biggest beneficiary of fake news - Politicians  
- To have parity you should've consulted us.
- iii) Why not regulate social media first?
- 2) Doctors to write only generic medicines  
- we are trained, not you.
- 3) Executives all not filling vacancies, 4 NGOs closed due to vacancies; Information commissioners too not filled.  
↳ No people - No criticism on Govt - Paralysed institutions.
- 4) K. M. JOSEPH - Collegium Vs UG - 'cherry picking'  
↳ reiteration - now. Allow Nathwala, but not Joseph.  
(He invalidated Uttarakhand Prez rule)  
- CJI legislative overreach -----
- ⇒ Impeachment of CJI  
Bias in allocation of cases - 'BENCH FIXING' - By Kapil O'Brien  
'CJI is master of Posters'

⇒ It was a case of JUDICIAL OVERREACH when SC under SCST act laid down the law that:

- i) without preliminary investigation, no arrest. This contradicted S-18 which lays down immediate arrest.
- ii) without sanction from authority, No arrest. DCP & appointing authority were given permission giving power. However, only legislature has power to confer permission giving power.

⇒ Liquor shop ban was overreached because

- i) No section from any parliament law was quoted
- ii) Reliance on A-21 was misplaced
- iii) In polycentric dispute, SC shouldn't interfere.

EXECUTIVE OVERREACH when Accreditation of Journalists was to be cancelled if see involved in fake news.

- i) fake news not defined. So, prone to misuse.
- ii) Biggest platform for fake news - Social media were not being regulated & instead attempts to police media.

## ~~LEGISLATIVE EXECUTIVE~~ OVERREACH

A highly politicised campaign against CJI on the ground that he was a BENCH FIXER when under the law he is the master of the robes.

### Basic Intro over

#### ①. PREAMBLE

Sovereignty :

"Independent Authority" "Exercised for welfare of people"

- ① Need not seek for Acquiring, Hold... Territory  $\Rightarrow$  EXTERNAL
- ② Need not seek for Making Laws - regulating conduct of people  $\Rightarrow$  INTERNAL

Nowadays - DIGITAL SOVEREIGNTY - Independent authority in Cyber Space.

Ex: SUKHOI - hacked.

Sovereign Power

- ✓ Legal power
- ✓ Derived from ppl
- ✓ Must always exercise power for people's welfare

Paramount Power

- ✓ Not a legal power
- ✓ Not derived from people
- ✓ Not always for ppl's welfare

'Parens Patriae' - Parent to people.

A 38 - Just Social order

A 39 - just Economic order

A 39(A) - for Legal assistance

## Security Issues - International security issues -

→ POLITICAL DEVELOPMENTS - Sovereignty related.

→ SOCIAL DEVELOPMENTS in sovereignty debate.

Patalgad Rebellion: 'PATAL' - Rock. - Thakard Village

- they don't believe in constitution — S & Chom Govt.
- Gram Sabha only
- No liking for Independence, Republic Day
- No strangers / Govt / any department should enter village
- Only Adivasi should teach culture, education.

Contradictions in them  
— QUEEN VICTORIA

Land, Water & Forest — They claim to be gifted them these.

- PARLIAMENTARY LAW

PESA Act

What triggers? Recent Tenancy Laws - Amendments

"Transfer of Tribal Land to non-Tribal people" — They are threatened by it.

Govt's Stand

- Narco Extortion
- Illegal opium cultivation

## SOVEREIGNTY

\* SOVEREIGNTY refers to "INDEPENDENT AUTHORITY"

\* It has 2 Aspects:

i) W.r.t. Territory - EXTERNAL

ii) W.r.t. Law Making for people - INTERNAL

⇒ DIGITAL SOVEREIGNTY → refers to Authority over CYBER SPACE where Critical Information of a state is stored. Hacking of these sites amounts to breach of Digital Sovereignty.

⇒ A sovereign must always exercise her authority in the spirit of 'PATRIS PATRIAE' [A 38 | A 39 | A 39(A)] for the WELFARE OF PEOPLE. This distinguishes it from PARAMOUNT AUTHORITY.

⇒ Within the scope of sovereignty Debate is included

I. ✓ The SECURITY Issues

Ex: The most recent threat from PATHALGADI REBELLION.

- Rock pieces containing msg challenging Indian Sovereignty have been placed by tribals near their villages.

- They don't abide by Constitution; Celebrate SD or R Day;

< Recognise any govt; Allow outsiders/govt to conduct

< Business & development; Allow CBSE to undertake function

< (Want ADIVASI BOARD)

— They only recognise GRAM SABHA.

- they derive strength from the claims

↳ QUEEN VICTORIA has gifted rights over lands

↳ PESA, 1996

- Trigger to Rebellion:

Recent amendments to TENANCY LAWS which allow for  
Tribal lands to be transferred to Non-Tribals.

### ✓ SOCIALISTIC AGENDA

"SOCIAL JUSTICE" (in preamble)

- Gateway to aspirations of India

- without it Liberty, Fraternity, Equality don't mean much.

Constitutional Guarantee of min. standard of good life for ALL  
Definition

→ Equitable / Need based distribution of Resources

→ But this is not alone but scope is diversified -

Education, Health, Publications... DPSR + FRs (Seco)

A 21 - Right to life

A 23 - Right of working class

A 24 - Right of children

Western Socialism	Indian Socialism
✓ Socialistic / Co-operative ownership of property. No Indiv. ownership estate can use police to take away land.	✓ A 300 (A) - limit. of Property ① Public purpose take away ② Compensation

✓ Reaction to Feudal setup in Europe  
    ↑ Medieval Concept power in Feudal Lords.

✓ Arose because of Advent of Mahatma Gandhi in Free struggle  
Till before him - Only political freedom  
- Elitist movement  
Gandhi promoted Socio-Economic -  
Elitist → Mass movement

⇒ Since 1991, Economic Liberalisation: Capitalism + Social Agenda

[ Delhi Netro : Ambani group ] → Indian Concept ←

⇒ Private too play a role - their motive is Profit →

Have we moved away from socialist agenda? ←

NO. How? Put. help in creating Employment +  
Beneficial Cycle of Growth Infrastructure development  
Wages increase for labour →  
GDP growth ←

Then Rs. 100 → Rs. 1000 Now  
in pocket                  in pocket ←  
More tax to Govt. - Rich →  
Social welfare activities ←

→ In 1991, we had only 3 options: NREGA

- ✗ Impose Financial Emergency
- ✗ Beg before IMF
- ✓ Open our Economy

⇒ Commonwealth Games in Delhi - effects Infrastructure

Don't view it Boundary,

View as to impact on Indian economy

when we (host games) → (Forex) → (Stabilises Economy) →

(Ensures good life in a sustainable way) ←

} see entire scheme of things

## Corruption:

- Opposed to ~~socialistic~~ Agenda -

① ⇒ Black Money

✗ No Tax

✗ No Infra → No Dev. of welfare schemes

⇒ Cut-off - Can't be used to guarantee good life

② ⇒ Use of Illegal method - MAWALA Transactions

↳ In whose name? In name of UNDERWORLD - Gun power.

↳ They get richer - Terrorism; Narcotics.

↳ Coming back money in evil ways -

Ex: Neebul, chomki, Nallaya - CHRONY CAPITALISM. ↪ Ex.

⇒ In theory Econ. liberal. is not opp. to SA but if it deviates, it is bad

Have we achieved ~~socialistic~~ Agenda?

- NO.

- Bcs. way we defined it: GOOD life? Demands of ppl  
changes with time. ↑ Dynamic.

- We are achieving in one way or other but not completely.

## SOCIALISTIC AGENDA

\* Socialistic Agenda refers to "PROMOTION OF SOCIAL JUSTICE"

Social Justice → Guarantee of minimum standard of good life for **ALL**.

→ Within its scope:

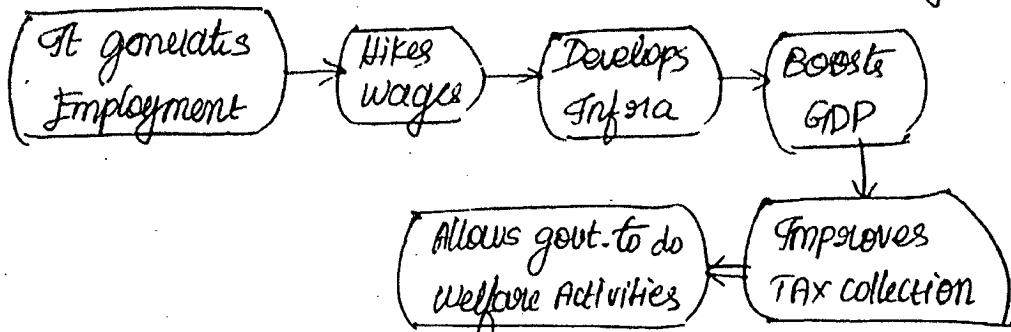
✓ Not only EQUITABLE distribution of MATERIAL resources

✓ But also EVERY CONSTITUTIONAL ASPECT which promotes good life.

⇒ It is different from western socialism → Based on Co-operative Ownership & Individual ownership of property is not allowed. To **A-300(A)** western socialism can't be followed in India.

⇒ Indian socialist's agenda originated with advent of GANDHI into Freedom struggle. He promised Good life for All, thereby converting FIGHTS into a Mass Movement.

✓ ECONOMIC LIBERALISATION does not oppose Socialist Agenda



✗ CORRUPTION is opposed to Socialist Agenda because

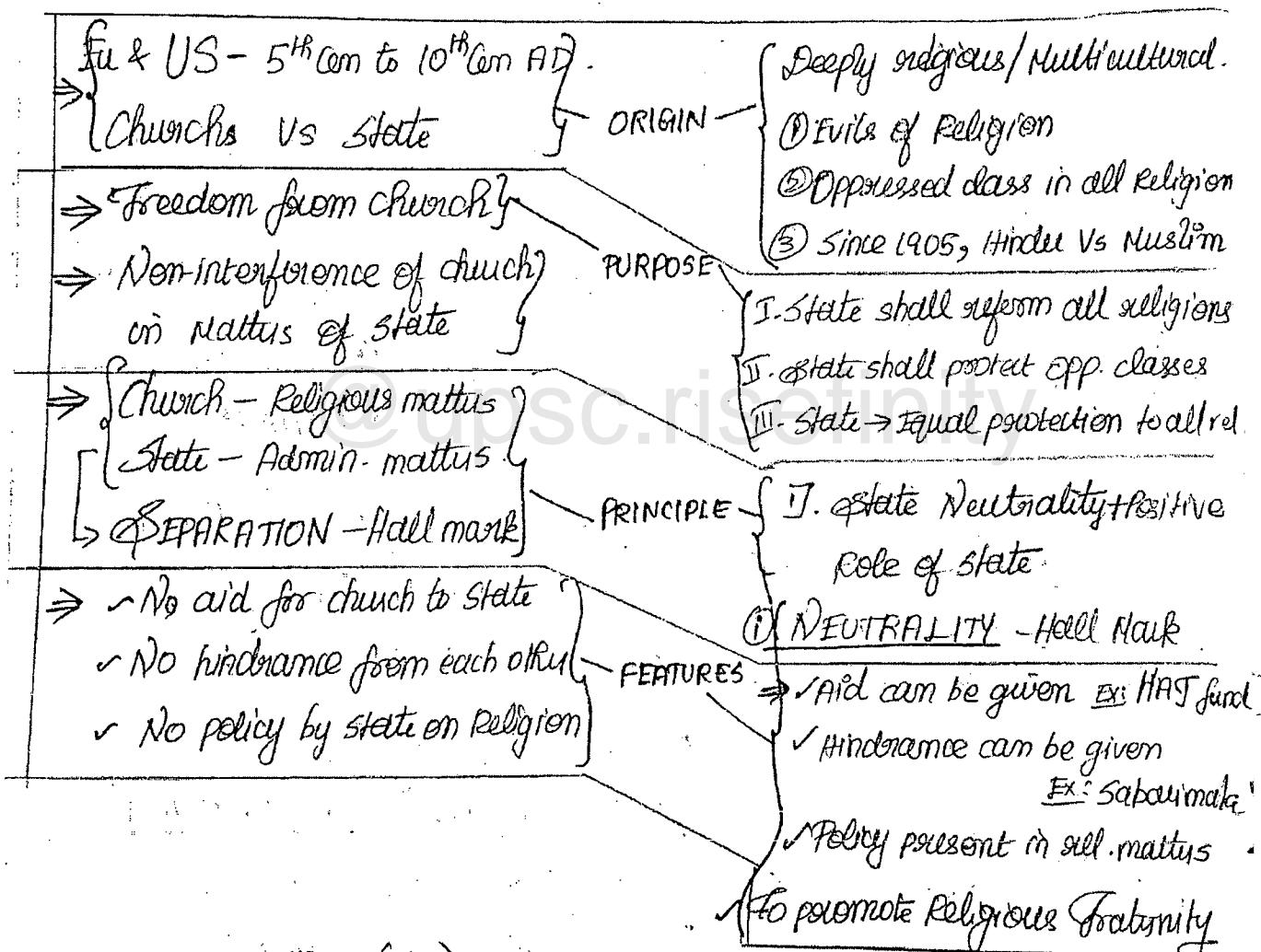
✗ It generates Black Money which can't be used for developmental purposes

✗ It enriches underworld & promotes Terrorism

— We can never claim that finally we have achieved Socialistic agenda because the Definition of Good life keeps on changing. In the STRIVING lies our achievement.—

## SECULARISM

PURPOSE      PRINCIPLE      FEATURES      ORIGIN



BABRI MASJID: (Sc)

If not Negotiated settlement?

Fitting of both parties + Nominee of UG - positive role of pacemaking

RELIGIOUS FRATERNITY

## →→→ Secularism Vs Communalism

Mobilisation of people. Has happened every time this debate happens

Purpose of Debate: (i.e) sensitive topic ←

Now thought voting right will lead to ppl shedding their old identity — But it had become vice versa — Politics now instigates it more.  
Why it didn't justify? 2 Flash points

i) 1985 → SC - Shah Bano Case - Compensation to Mrs. women

Rajiv Gandhi - Amendment - Only for 90 days compensation

Progressive Judgement undone by Regressive Legislation

Muslim appeasement instance

ii) 1992 → Rajiv Gandhi - allowed porgia in Babri - by opening lock - status Quo disturbed - wrong precedents -

Demolition of Babri Masjid due to raised Hindu aspirations

Hindu appeasement instance

⇒ Recently, Cow vigilantism, Hindu-Muslim riots -

What is the Way Forward:

① Strictly dealt by SG & UG instead of blame game.

SC → UG can't refrain from resp. power exercise.

② Nurture the internationally acclaimed skills of grass roots level of muslim community - British & Post-Indep. India destroyed it.

③ Socialistic agenda missing from Religious activities - SC  
↳ Beautiful statement by SC

- Temples, Churches, Mosques - not spending enough/proportionately for welfare - as its money is public money
- SIKH - Langar - SC appreciated it
- WAQF - Religious donation of Muslims
  - BOARD
  - ↳ 2nd largest land owner after Railways
  - ↳ Corrupted
  - ↳ Not contributing proportionally

④ CAMPAIGNS must be based on Real Issues Passionately

- Practically necessary issues - Health, Education, Food
- Not personal laws

⑤ Participation of all religious communities in Govt. programs

USTAD - Scheme

- Need more social penetration + Muslim part.
- More skill dev. not enough but need it to International market connect.

[IPSP]

Cow must be protected  
as Nilgiri cattle like goat  
& not as relig. symbol

## SECULARISM

\* Indian Secularism is based on:

⇒ STATE NEUTRALITY along with POSITIVE ROLE of STATE

✓ Reforming religions

✓ Protecting oppressed class of all religions

✓ State must afford equal protection to all religions

→ Positive role of state extends to promoting

RELIGIOUS FRATERNITY among various religious groups

\* Western Secularism is based on:

⇒ ~~SEPARATION OF CHURCH from state~~

Suggestions for sustaining Secular Spirit:

① Both SG & UG must take STRICT STEPS against:

x Communal violence      x Low Vigilantism

② The once Internationally recognised such TRADITION OF

MUSLIM CRAFTSMEN should be nurtured at Grass roots level.

③ Socialistic agenda should educate the Religious Institutions.

Campaigns should be build on real Issues of Food, water & Not merely Personal laws.

④ Participation of all religious groups in Govt. schemes.

Wrong Precedents:

x Demolition of Babri Masjid.

x Nullifying of Shahi Banu case

must be seen as:

✓ Exception & Deviation

from rule (so that it  
is not followed hereafter)

## DEMOCRATIC REPUBLIC

Police State

- ✗ No freedom of S&E
- ✗ No voice of Opposition

Ex: MYANMAR

Aung San Suu Kyi

Republic

- ✓ Head of State
- ✓ Limited Tenure
- ✓ No Heredity
- ✓ Sovereignty with Ppl.

Pure Democracy

- ① Majority had authority to rule  
 Maj. could take decisions  
 crushing minority rights

MASORITARIAN -

MAJORITY IS SUPREME

Tyranny can exist

- ② Source of authority -  
Group/Population - Not Individual  
 Min rights can be crushed

Democratic Republic

- ① Maj.-decisions must ensure the  
 constitutionally protected minority  
 rights

CONSTITUTIONAL - Respect Min. Rights

CONSTITUTION IS SUPREME

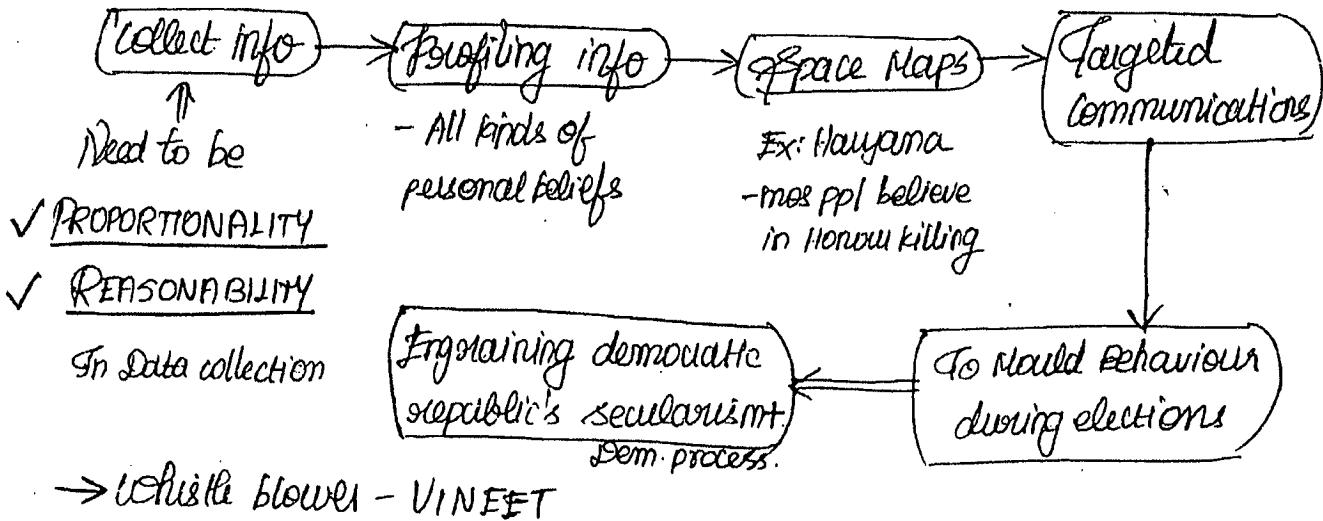
No Tyranny can exist

- ② Source of authority -  
Individuals - not Group  
 Min. rights need to be respected.

## Threats to Democratic Republic:

① Gentrification of Politics

② CAMBRIDGE ANALYTICA - Neo-liberal Colonialism.



✓ PROPORTIONALITY

✓ REASONABILITY

In Data collection

→ Whistle blower - VINEET

↳ In UK parliament - caste projects by political party.

↳ 5 Mn FB users of India - FB's default settings - opt out if not share - wrong - upside down

→ ANAND MAHINDRA

↳ Our Indian - collectively owned FB -

## DEMOCRATIC REPUBLIC

⇒ In Democratic Republic,

✓ while majority has power to make decisions, it can't crush the rights of minorities.

✓ There is POPULAR SOVEREIGNITY → Means - Each

Individual (Not population as a whole) is a source of authority.

⇒ Recent challenge is from CAMBRIDGE ANALYTICA -

Face of Neo-Colonialism:

- × They collected data at various levels
  - × Profiled the data creating Profile Maps
  - × Then used Targeted Communication to mould our behaviour during Voting.

$\Rightarrow$  Controversy was on the way data was collected from FB.

Also it undertook projects based on Caste system & Honor killing from political parties in India.

Solution:

- ✓ we should have our own Version of FB - widely owned and voluntarily regulated.

- Or else our Democratic processes will lose sanctity -

## PART - I

A-1 → India shall be a UNION of States [not Federation]  
- US-Ind debate

A-2 → Union Vs Territory  
↑  
29 states      29+7+acq. terr (if any)

A-3 → Name, Boundary of states

A-4 → Amend Schedule (i) & Schedule (f) instead A 568  
simple majority      static acceptance

(Unitary Bias)? Yes, it's easy to create new states.

## PART-II

### CITIZENSHIP

Citizen → Who enjoys **FULL SET** of Rights.

A-15, 16, 19, 29, 30 — Exclusive to Indian Citizens.

I<sup>st</sup> Category — On 26 Jan, 1950 — Declared — A-5 to A-10

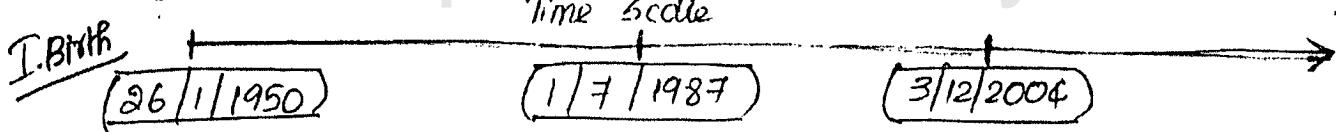
II<sup>nd</sup> Category — Acquired later 26<sup>th</sup> Jan, 1950 — A-11

\* **(CITIZENSHIP ACT, 1955)**

- ✓ 5 Modes of Acquisitions
- ✓ 3 Modes of Termination/Loss

⇒ 5 Modes of Acquisitions:

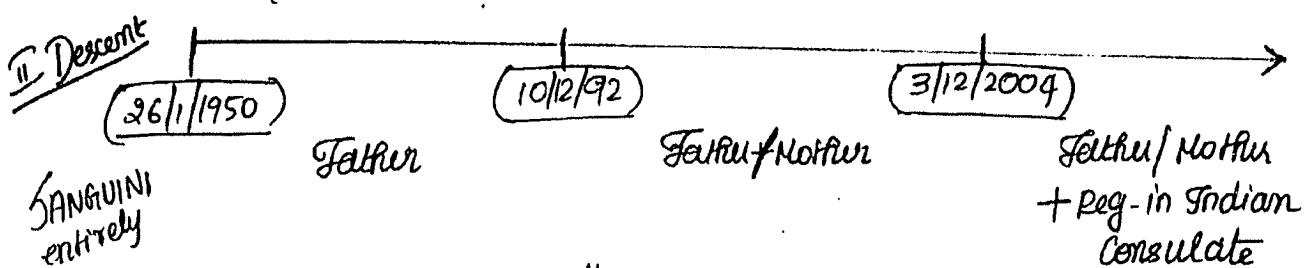
I. By Birth      II. Descent      III. Registration      IV. Naturalisation      V. Incorporation



Respective of parent      Parents any one      Both Parents

JUS SOLI - 'Soil' - Born      JUS SANGUINI - 'BLOOD'

(In US - it is JUS SOLI)



"bastardisation of child" — Even if child is outside wedlock, can't term as illegal child.

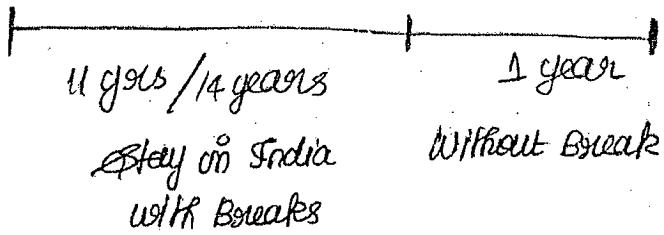
### III. Registration:

PIO →) Himself / either of person born in India as GOI, 1935  
Undivided

ii) If person belonged to Acquired Territory

- ① PIO - Pak & Bangladesh  
7 years stay only from Registration
  - ② PIO - In other countries - Immediate registration
  - ③ PIO - Spouse - 5 years
  - ④ PIO - Minor child - No requirement - 5m
  - ⑤ PIO - Himself / either parent citizen in past - 1 year.
  - ⑥ PIO - OCI [Overseas Citizen of India] - 5 years stay as OCI if  
'Oath of Allegiance' - REGISTRATION.  
1 year stay in India

## IV. Naturalisation: (For Foreigner)



## Oath of Allegiance

## Language Schedule (8)

Good moral character

## II. Incorporation:

UG will decide if one gets from Incorporated territory

### 3 Modes of Termination:

- ① **Renunciation** — Voluntarily renounce
- ② **Termination** — Acquisition of foreign citizenship.
- ③ **Deprivation** — UG can take away forcibly
  - Enemy alien
  - Fraud of Foreign in Reg & Nat.

## RECENT DEVELOPMENTS:

### ① Amendments to CITIZENSHIP ACT, 1955

Illegal migrants

Entry w/o proper papers

Entry w. but overstayed.

PAK, BANGLA, AFGHAN

H, S, J, B, P, C - 6 years only

X A-14 violated - muslims missing

'Ahmadias' in Pak persecuted.

X NRC violated - 24<sup>th</sup> Nov, 1971

Hindus from Bang. after 1971 can be allowed - 6 yrs

X NRC violation - section 14 (A) of Citizenship Act, 1955

↳ K. Dey. Purukashya Judgement - 2014

↳ Legacy Data ① NRC, 1951

② Electoral roll of Assam bfr 25<sup>th</sup> March, 1971

↳ Tenancy documents

40 Lakhs

Depositation centres

Will Bangladesh accept them? Already Rohingya influx.

- 1] Illegal migrants from PAK, AFG, BANGLADESH - who may be H, S, B, T, C, P - will not be considered illegal migrants & allowed citizenship by Naturalisation by staying in India for 6 years.

Controversy:

Violates A-14

Also against NRC updation in Assam

- 2] Central Govt must maintain NRC under Section 14(A) of Citizenship Act, 1955. Updation under SC Judgement of K.D. Purukoshy case based on Legacy Data; [NRC 51% + Electoral rolls 71%] or Permissible documents.

Controversy:

40 lakh ppl may be rendered stateless. Will Bangladesh accept them.

## PIO Vs OCI Card Holders

### ⇒ PIO (People of Indian Origin)

Foreign nationals not from PAK, BANG or Country notified by Central Govt. and:

- ✓ who were earlier Indian passport holder (or)
- ✓ either himself or anyone upto great grandparents was permanent resident & born in undivided India or belonged to acquired territory (or)
- ✓ spouse of Indian citizen / PIO.

### ⇒ OCI (Overseas Citizen of India)

those PIO who:

- ✓ Were earlier citizen of India
- ✓ fit to be citizen on 26<sup>th</sup> Jan, 1950
- ✓ Belong to Acquired Territory
- ✓ Children & grand children of above 3.

Benefits of OCI card:

- Life Long multi purpose, multi entry Visa
- No need to inform local police station in case of over stay.
- Same status as NRI on matters of Education & Economy except Acquisition of plantation & Agricultural land.
- ✗ OCI does not give
  - ▷ Indian passport
  - ▷ Hold const. office
  - ▷ Right to vote
  - ▷ Right to Employment
  - ▷ Contest Elections

In 2015:

PID was merged with OCI card scheme

Steps Taken to Bouing INDIAN DIASPORA (NRI, OCI, PRO)

- NRI given Right to vote through nominee
- ~~7th-9th January~~ - Prabhasi Bharatiya Divas ~~Day week~~  
(15<sup>th</sup> meeting - Varanasi - Role of diaspora in development)
- ↳ Prabhasi Bharatiya Samman Award
- KIP - Know India Program
- Trace Your Root Program
- Study on India program
- Scholarships also announced for them

### PART-III

## FUNDAMENTAL RIGHTS

[A-12 to A-35]

### LEGAL RIGHT

↳ Parents asking water  
MORAL RIGHTS

↳ Beggar asking water.

U.S. BILL OF RIGHTS, 1789 → Origin for Indian FR.

Legal Right: Enforceable by law. - Bentham's Classification

'Bible of Jurisprudence'

CONSTITUTIONAL

STATUTORY

FR

Others

Fundamental Rights \* Essential rights without which wholesome personality of an individual can't be developed.

\* Essential for state to demand duty from individuals.

→ Constitution only recognises it; It is inherent to us when we are living in a civilised society.

→ They can't be violated by the state; SC will issue WRITS for restoration of FRs.

A-32 → Makes FR 'Fundamental'

→ Part of the basic structure, can't be deleted.

→ Right to Constitutional remedies

→ Can directly go to SC in case of violation of FR.

→ 'Heart & Soul' + 'Teeth' of Part-III

Salient Features of FR:

⇒ Not only enforceable but also guaranteed.

⇒ A-14 Instead of 'citizen' - 'person' is used;

A-21 So they are HUMAN RIGHTS - Internationally protected - It

A-25 NATURAL RIGHTS - Don't evolve with time | evolves with time.  
Oldest rights by God

⇒ FR available against state; in some cases it can be restored even against individuals:

Civil rights (untouchability)

Freedom of movement

A-23,24 Right against exploitation

A-21 Freedom of life & liberty

Nature of FR:

Negatively worded mostly - what can't be done by state.

A-19  $\Rightarrow$  Positively worded.

A-21(A)  $\Rightarrow$  " " (Borrowed from DPSP - its +ve language too).

Are FR absolute?

If reasonable restrictions can be imposed?

A-17 - Untouch

A - Hazardous Industries child employment

Bkt, Most FRs are not absolute:

On grounds of:-

- contempt of court.
- sovereignty & integrity of nation.
- security of state

3 Qns. of FR

- i) Why FUNDAMENTAL
- ii) Can be SUSPENDED / NOT
- iii) Are they ABSOLUTE

why not Absolute?

For the sake of  
+ve discrimination for  
underprivileged.

~~Ex~~ Policy pause supported  
by SC - hence it is not good  
to keep absolute.

[A-48 - Cow of slaughter]

A-19(1)(g) - Freedom of Trade - can butcher any animal inc cow?  
- SC said it is not an absolute FR due to A-48 of DPSP

A-19(1)(a) - Freedom of expression - Flag hoisting.

51(A) - FR is restricted by Fun. Duties here.

A-19(1)(f) read with 31 - Deleted / repealed by CAA.

FRs are Basic Rights enjoyed by individuals.

Their origin may be traced to US BILL OF RIGHTS 1789; eff. from 1791.

FRs are called Fundamental bcos:

i) These are ESSENTIAL RIGHTS required for any individual for a wholesome development of a personality to reach her max. growth potential.

Without these state will not be able to demand duties from citizens. They are thus essential for a healthy relationship between state & individuals.

ii) These inhere in us by the virtue of our living in a CIVILISED society. It is good for all that each should have it.

No one has an absolute right to waive our FR (Mass. Ruth)

iii) These can't be allowed to be violated by state. In case of violation, the right to move to SC for their restoration has been guaranteed. This is the RIGHT TO CONSTITUTIONAL REMEDY esp. important in our Socialistic, Democratic Republic.

A-32 is called 'Heart & soul' + 'Teeth' of Part III - Has *locu motto*'

Salient Features of

i) Not only enforceable rather guaranteed.

While A-15, 16, 19, 29, 30 have been made available only to citizens, some articles have used the word 'Person' & so are also available even to non-citizens. These are of the nature of HUMAN RIGHTS.

Generally they are enforceable only against state. However, some are available even against private individuals.

Right to Free Mov

Civil rights arising out of

Abolition of unt

Right against ~~Exp~~

Right against Restoration of liberty by individual.

Generally, their nature is of -ve injunction against state (state shall not---). However some give +ve right to offence

A-19

A-21(A) casts positive obligation upon state to provide  
free & compulsory education

while on A-17 & 24 - No reasonable restrictions may be imposed yet on most of the FRs reasonable restrictions may be imposed & so they are not absolute. The grounds for restrictions mentioned

Sovereignty & Integrity of In  
society of state

Public order

protecting interest of STs etc..

Father DPSR may be used for restricting the scope of FRs.

A-19(1)(a) - Freedom of Exp. may be restricted by S-Duties:

Ex: Right to hoist flag & flag not to be disrespected

[Naveen Jindal's case]

## ARTICLE-12

'STATE'

X In International sense - recognised by other sovereigns

X In Federal sense - state (inside Union).

Here ✓ In Administrative sense - Any organ exercising Indep. sovereign authority under state (India)

Leg. & Govt @ Union level; State level; Local bodies; other authorities within India.

### OTHER AUTHORITIES

Ex: FCI - Food Corporation of India → welfare bodies too can't take our FRs.

UGC, NCERT - Regulatory bodies - Agencies of state.

Judiciary not involved here - Any judgement of any court can't take away FRs bcos their main role is to protect FRs [Case of ANTULE vs NAVAK]

Two faces  
i) The Bench ——— within definition of state  
ii) Administrative side — not part of definition of state (Master of Refers)

BCCI - Private bodies - part of def. of state

Even some private companies in Telecom; Electricity can be included in def. of state

→ the definition keeps on expanding depending on the functions performed by the various bodies. [SC judgement based]

The word 'STATE'

INTERNATIONALLY Such sovereign authority whose authority & laws are recognized by the other sovereigns in the committee of nations.

FEDERAL SENSE Includes state of TN, state of Kerala  
(e) Units of Dual polity.

A-12 has used this word in ADMINISTRATIVE SENSE to mean any organ of state which is exercising the independent authority of state.

(i-e) Legislature & Govt @ Union, state, local bodies & other authorities within Territory of India & under the control of GOI.  
The OTHER BODIES include Welfare & Regulatory Bodies  
The BENCH side of Judiciary is included within the definition of state however the ADMINISTRATIVE side of Judiciary is included within the def. of state.

### JUDICIAL REVIEW

Analogy of Jewel - Gold/not - Jeweller — Stone of Test  
Law - Can Govern or Not — SC — Constitution

'CONSTITUTIONALISM' 'CONSTITUTION' 'CONSTITUTIONALITY'

JAW IS SOURCE OF:

Liability or Privilege

Right or duty

Every state action can be SR.

Ex: DM's action under every parent document.

Will of People Vs Will of Representatives of Ppl

A-13 <sup>Limited to Part-3</sup> SR power against FR, but written const. is main

source of power of SR to others? WRITTEN CONSTITUTION

32

226

39 - ?

---

@upsc.riseinfinity

the power of Judicial Review is the power of Higher judiciary to declare any law as void if it is inconsistent with the constitution. thus the law will no longer be the source of any right or duty, it can't be enforced in any court.

the constitutionality of the act may be upheld or struck down. the scope of this power extends to every kind of state action including executive action. the rationale behind this power is that while Constitution is will of People, Parliamentary law is intention of Rep. of People. In case they clash, former must prevail.

The source of this power is the fact that we have WRITTEN constitution. Every such supreme constitution must implicitly give this higher power to Judiciary to maintain its Rep

During the process of FR:

A-13 i 32 i 226 & concept of Limited Govt. are used.

The advantages of this power

Maintain supremacy of Constitution along with:

Basic Structure Rule of law Federalism Div. of powers

Protect Independence of Judiciary from encroachment by  
Legislative & Executive (NJAC struck down)

Ensuring authority of court over other organs for the above  
purpose.

Providing legitimacy & judicial sanction to such state actions  
which are consistent with the constitution. So, SC in Keshu  
case held that it is part of Basic Structure.

### LIMITATIONS OF POWER (Self Imposed by Judiciary)

unless the act has commenced & become operational, the  
court will not initiate review.

Courts will not 'Suo moto' initiate FR

If 2 viewpoints are possible, one validating & other  
invalidating then the court will validate state action  
while striking down constitutionality, courts will not

suggest corrective measures bcs from it will be suggesting on policy formulation.

If constitutionality has to be struck down, then detailed reasons have to be given by SC.

Note In TRIPLE TALAQ & UCC case, judiciary initiated 'Scud Motto' process. Otherwise it must present itself as an impartial witness.

## ARTICLE 13

A-13 (1) 7 Common language - any law in contradiction - struck down.  
(2) → pre constitutional laws to Part III  
(3) → post constitutional laws

- ✗ Constitution
  - ✓ Statutory (incl. ordinance)
  - ✓ Rules & Regulations
  - ✓ Bylaws (By inferior judiciary)
  - ✓ Usage & customs recognised by court
  - ✗ Judgements of Courts
- Here } } 6 SOURCES OF LAW IN GENERAL

'To the extent of such inconsistencies' --

## CAN FR BE AMENDED?

Story of tag of war

1950 → Parl. wanted laws for underprivileged. Ex: Land Reforms  
Zamindars - A-14, 15, 19(1)(f), 31 - in SC - struck down ↑  
'State of Madras' - wanted reservation for SC & STs  
Again - A-14, 15 - in SC - struck down ↑

1951 → Parl. decided to amend Constitution

A-15(4) → protect rights of SC & ST

A-31(A) → law for acquisition of zamindar's land is possible.

A-31(B) → safe place for Land Reforms Act

Schedule 9 - Immune from LR.

Economic & Educational interests of SC & STs

{ 1952 → Shankari Prasad Case - FR can be amended

Smooth b/w SC & Parl (Const. Assembly members)

Till 1965 → No tag of war

17th CAA → Mysore & Punjab Law

SARJAN SINGH Case - 17th CAA is right

→ Common things in this period of series of Judgements:

① Ordinary Leg. Power ⇒ 245; 246

Constitut. (law making) leg. power ⇒ 368

CLP is similar to Constitution Assembly's powers

(i.e.) CAA can't be SR. (i.e.) A-13(3) ≠ CAA

(i-e) FRs are amendable — (1) ✓

1967 → ~~out of purview of law.~~

$$\textcircled{1} \quad \text{CLP} = \text{OL} = \frac{245}{246}$$

Vote bank politicians in parl.

$$\text{CLP} = \text{CAA} = 368$$

& not CA members.

$$\textcircled{2} \quad \text{CLP} = \text{CA}$$

'GOLAKNATH CASE' (II Bench)

\textcircled{1} ✓ \textcircled{2} X → no word 'Power'  
in 368, only 'Procedure'

$$\textcircled{3} \rightarrow \text{CAA} \neq \text{JR}$$

$$\textcircled{4} \rightarrow \text{I} \text{B}(3) \neq \text{CAA}$$

\textcircled{3} \text{CAA} = \text{JR} \quad \textcircled{4} \text{I} \text{B}(3) = \text{CAA}

\textcircled{5} FR = Amendable

\textcircled{5} FR = not amendable - 'Transcendentall' — (2) X

1971 → I. Gandhi suspends with 24<sup>th</sup> CAA

↳ 'Power' word was added to 368.

A-13(4) — Nothing in A-13(3) (JR) can be used  
to struck down A-368.

A-368(3) — Same language as 13(4)

1973 → 'KESHU CASE' (III Bench) — (2)  $\frac{1}{2} \checkmark \frac{1}{2} \times$   $\underbrace{14, 19, 20, 21, 32}$

SC's resp to decide b/w 'Govt' & 'I. Gandhi' Basic structure

↳ SC said 'Golaknath' Judgement wrong

↳ 24<sup>th</sup> CAA is correct

↳ CLP ≠ CA ⇒ 'Basic structure Doctrine'

Didn't define Basic structure, but gave instances only:

↳ Secular, Secular, Federal etc...

Ex: Proof that Preamble is not part of Basic structure or source

1976 → 42<sup>nd</sup> CAA by I. Gandhi  
↳ (368(4)) — No GR on CAA  
↳ (5) — No limitations on Govt. (Limited Governance)  
↳ Both contradicting BASIC STRUCTURE

1980 → NINERVA CASE

↳ KB case is correct; 42<sup>nd</sup> CAA wrong  
↳ 368(4) ↳ wrong → ✓ GR  
      (5) ↳ Limited Governance

2007 → I.R. COELHO CASE (9 Bench)

↳ If any law in Sch-9, SC won't GR; Unless  
it doesn't violate basic structure

[Extended basic structure from OLP(CAA) to OLP]

---

A-13(1) ↳ common language - Any law inconsistent with oac  
(2) ↳ in contravention with Part III shall be declared to be void  
to the extent of such inconsistency to whatever extent judiciary  
can give meaning it will give meaning to the words of legislature  
A-13(3) - Defines Law for purpose of GR.

whether FR can be amended?

STAGE 1:

From SHANKARI PRASAD TO SASSAN SINGH Case: SC held that  
Parliament has 2 types of Legislative Powers (LP)

Ordinary LP (OLP)

Creative LP (CLP)

Its CLP is as great as that of the Constituent Assembly (CA),  
which means that CAA can't be subject to SR (i.e) law  
as defined under 13(3) does not include CAA. Thus,  
FRs are AMENDABLE

STAGE 2:

1967 GOLAKNATH 11 JUDGES

Parliament does not have 'Power' to amend under A-368  
(i.e) The marginal note (heading) of 368 didn't use the word  
'Power'. So CAA may be subject to SR. law for purpose  
of SR includes CAA. Thus, FRs are TRANSCENDENTAL

STAGE 3

1971 24<sup>TH</sup> CAA

Added the word 'Power' to the marginal note of A-368.

Also added 13(4) & 368(3) to the effect that:

Nothing in A-13 shall be used to affect any law made under 368.

#### STAGE 4 :

1975 : KB CASE 13 JB

Oversruled GOLAKNATH & upheld 24<sup>th</sup> CAA.

However, the CLP of parliament is not as great as that of CA;  
Parliament can't be allowed to destroy the BASIC STRUCTURE  
(BS)

which CA has given to Constitution.

Although SC didn't define BS, it gave instances of BS in  
KB case & in subsequent case:

Sovereignty & Integrity of India  
Socialistic Secular Democratic Republic  
British Parliamentary form  
Federalism  
welfare state  
Rule of law

A-14, 19, 20, 21, 32

Separation of powers with checks & balances  
Power of JR & limited government

#### STAGE 5 :

1976 NEW CONSTITUTION

introduced 368 (4)  
(5)

368 (4) - No CA will be called into question in any court of law.

368 (5) - Parliament's amending power will be unlimited

SINGLE 6

1980: MINERVUN MILLS

Upheld KB case

✓ SR

✓ Limited Governance

368(4) & (5) unconstitutional basis they are destroying BS

SINGLE 7

2007: IR COELHO v JB

Unanimously held that laws kept under SCHEDULE 9 will not be generally reviewed. But, if they violate BS they will be.  
So Immunity is not absolute anymore.

It extended BS to OLP.

Can Money Bills be subject to SR

A-110(1) - Money Bill

(3) - Decision by speaker

P. CHIDAMBARAM

History of A-110(3)

Rutish PA 1911 - SR is possible

## CONCEPT OF EQUALITY

Part-14 SC-only omnipresent article 'God' article.

No other articles can be understood w/o this article.

Its by very nature, the language of A-14 is legalistic.

State shall not deny to any person

Equality before the law

Equal protection of law.

i) was British context - Not even aristocracy can have any special treatment - Negative connotation

ii) was American context - those placed equally circumstance wise can be treated equally & those not equally placed circumstance wise can have special protection - +ve connotation

After 1947  $\Rightarrow$  they evolved in unique context of Indian polity

Realities of Indian polity

1) Indian society is stratified & not equally placed

a) Individual stratification

b) Group stratification.

2) Huge diversity  $\rightarrow$  discrimination (-ve)

Caste, religion, ...

3) Preamble - 1st JUSTICE, then EQUALITY.

$\hookrightarrow$  SOCIALIST agenda of Equality

## 4 sub-concepts

- ① Rule of law by Dicey in 1885
  - ② Equality amongst Equals
  - ③ Rule against -ve discrimination
  - ④ Affirmative state action → only this can give (+ve discrimination for underprivileged) Group-Group Equality
- } provides only Individual-Individual Equality

## II Rule of Law

DICEY - 3 statements - principles of law ROL

- ✓ a) It is law that governs & not any individual } - only & applicable for India
- ✓ b) No man is above law
- ✓ c) whatever parliament says is final - In India Judicial review.

### CASE (A)

1815 - Magna Carta - John I

King shall govern as per known rules of governance.

From 1815-1885, for 600 yrs, this concept got evolved till DICEY.

### Actual statement of DICEY

No man shall be punished or made to suffer in body or in goods except for violation of law - est. in ordinary court by ordinary

All persons, irrespective of their rank or position, shall be equally amenable to court of law & F

⇒ These both gave LEGAL / JURIDIC EQUALITY

↳ Anyone can sue and anyone can be sued.

⇒ Rex Lex ⇒ Lex Rex. / king was law ⇒ law ~~was~~ <sup>is</sup> king

⇒ ROL important for maintaining Democratic Republic.

### Rule of law Vs Rule by law

⇒ HITLER before sending Jews to concentration camps would make a law permitting it - mask for subjective satisfaction of dictator.

↳ It is not a 'Law of civilized society'



The law which holds democratic values of Justice, equality, liberty, fraternity.

He, however, used law in intention of international credibility.

⇒ Doctrine of Lapse of British in India was rule by law.

Hence their rule is illegal.

— Any paramount power won't follow Rule of Law —

Recent examples of Rule by Law: dictator/paramount powers.  
No democratic values

✓ Khap panchayats, Kangaroo courts

✗ [Not ordinances, Triple Talaq, 377]

377 - SC has just increased the democratic content of this section. It was always democratic.

If representatives of PPI are making law via Deliberation, Discussion - Then it is not rule by law.

Test for Rule by Law:

- ✓ Law is not of rep. of ppl. but of monarchs
- ✓ No power of judicial review

✓

A-14 has used phrases:

Equality before law (EBL)

Equal protection of law (EPL)

EBL - British concept - Negative connotation - No privilege to be given to special class of people.

EPL - American concept - +ve connotation - Only equals should be treated equally (i.e) state must take +ve actions for uplifting the less privileged.

The concept of Equality includes

Rule of law

Equality amongst equals

Rule against discrimination

Affirmative state action

## III RULE OF LAW (ROL)

⇒ DICEY in 1885 proposed ROL.

2 out of 3 principles apply to India

① No person may be punished/made to suffer in body/goods except for violation of law est. on ordinary court by ordinary procedure.

② All persons, irrespective of their position or rank, shall be equally subjected to ordinary law & equally amenable to jurisdiction of ordinary courts.

⇒ ROL holds that  
▷ Everyone can sue & can be sued which means rule is Judicial/Legal Equality

▷ It has replaced Rex Lex with Lex Rex (i.e) Law is the King

In India ROL is derived from A-14.

▷ It is crucial for maintaining our Democratic republic hence it is part of Basic structure (immutable part of constitution)

✓ A 32 + 226 [are in place for protecting the ROL  
+ judicial review]

## Rule of Law Vs Rule by Law

Rule by Law refers to subjective satisfaction of dictator/ paramount power being followed as law.

It is merely procedural completely lacking in Democratic content.

It is only about letter of law & not on spirit.

It is used to gain International credibility by dictator.

It does not confer authentic power of judicial review.

Ex: Khaps panchayats, Kangaroo courts are instances of RBL.

—X—

Exceptions to ROL in India:

A-361  $\Rightarrow$  Presidents, Governors exempted.

No ques on discharge of duties

No criminal proceedings

No civil case cont'l

Parliamentary Privilege Act, 19

$\Rightarrow$  while acting as PCCW; VP, CJIs are also exempted.

$\Rightarrow$  On floor of house, MPs are exempted

$\Rightarrow$  Anyone authorised to participate in proceedings of house also exempted

- Ministers yet to become MP, Attorney General

$\Rightarrow$  Anyone authorised to publish the proceedings of house.

Vienna Convention  $\Rightarrow$  Diplomats, Host state exempted.

How is R.O.L for Good Governance? (G.G)

R.O.L is identified feature of G.G.



ACCOUNTABILITY - can't have this w/o R.O.L.

How?

lex supremus. Where Law is supreme,

- In every state action, Legal principle should dominate & legal spirit should dominate?
- If not, can take to court for JUDICIAL REVIEW.



### EXCEPTIONS TO R.O.L

R.O.L is not an absolute concept but has Exceptions.

- ① A-361 : Pres & Governor can't be called to ordinary court for a) answering qn. pertaining to his discharge of duties

[Ex-2 Any person who is authorised to enter shoes of Pres. to discharge his duties also enjoys same immunity]  
b) No criminal case may be initiated during term  
c) Civil case only after 2 months notice

- ② Members of house while they are acting on floor of house for any vote given or speech made etc.

[A-105, 19f. Persons authorised to participate in such proceedings also enjoy this immunity + Authorised reporters]

③ Vienna convention - 1961

Diplomats, Heads of States

ROL & Good Governance (GG)

- ⇒ ROL is an identified feature of GG.
- ⇒ Truth, Accountability as a feature of good governance can't be practised w/o ROL.
- ↳ This is bcos ROL is Lex Supremus (i.e) legal principle & spirit should dominate state action.
- ↳ If state action is not acc.to. prescribed legal principle, then state action may be JUDICIALLY REVIEWED & thus accountability may be prioritised.

Issue of special courts:

Special courts can be for particular offences  
but not for particular person.

✓ OK for corruption cases of MPs.

Equality amongst Equals

ANY POLICY

1st thing: identify purpose of law/policy

2nd ⇒: whom that policy will apply - class specific

Then call them equals & apply it on them equally.  
On whom it doesn't apply, they are cunequals.

Ex: Capital punishment for Murderers.

# Classification is

Definition: International murder. (PC - 302)

must for

Equality

Bcos our society is not equal. ←

## 2 EQUALITY AMONGST EQUALS

\* It means:

- ✓ Equals should not be treated as Unequals
- ✓ Unequals should not be treated as Equals.

⇒ Thus, every policy must distinguish between  
EQUALS & UNEQUALS.

⇒ There is NO ABSOLUTE EQUALITY bcs society is not composed of Equals.

— Classification of Equals & unequals is Inherent to Equality —

## 3 RULE AGAINST -VE DISCRIMINATION

\* It means:

- ✓ State shall not discriminate only on the ground of religion, race, caste, sex, place of birth or any of them, with the purpose these grounds may differ.

## 4 AFFIRMATIVE STATE ACTION

⇒ As we are aiming at not merely equality but rather socialist equality, so we require Affirmative state action.

⇒ The real source for power of Reservation & special provision is article 14 itself.

A-14

A-15-18

contains everything  
in 15-18 & Much more

(14,19,21)

Ex: special provisions  
for differently abled  
- No specific article for  
this - only A-14

"Golden Triangle"

A-361(A) - False reporting  
not punished in civil or  
criminal case in court of law  
- But House itself can start  
proceedings in case of  
unauthorised reporting -

## SALIENT FEATURES OF ARTICLE-15

A-15(1) → state shall not discriminate only on basis of caste...  
w.r.t. circumstance, any of these can apply

Only ⇒ Female nurses: Not only based on gender but patients.

Male commandos:

Non-hindus not allowed:

— Can't be SOLE ground but only as ADDITIONAL ground +  
combination among them is also not allowed alone —

A-15(2) → state shall not discriminate only on basis of caste...  
w.r.t. use of public utilities - well, road....

Applies not only to state but to citizens too (private institutions  
also - Ex: malls)

A-15(1) - state is secular-neutral

A-15(2) - secularism - among people too.

A-17 + 15(2) → Untouchability

A-15(3) → Nothing in this can stop from making policies SPECIAL PROVISIONS  
(15)  
in favour of women & children

A-15(4) → " " " SC & STs, SEBC

A-15(5) → " " " " " W.G.T.

Admissions in Edu + public + private institutions  
for minorities

A-(1)(2) → ✓ A-32 - FR ✓

A-(3)(4)(5) → X A-32 - XFR - Just enabling procedures

'Nothing in this' - Rule for -ve discrimination can't stop  
from giving +ve discrimination

A-15(4) - came bcos zamindari / land reforms affected by 15(1)

A-15(5) - came bcos Mandal commission - brought creamy layer  
in OBCs - 1st not but later adopted by IIT.

15(3) → 73<sup>rd</sup> & 74<sup>th</sup> CAA - Sex can be the only ground.

Beti Bachao... etc.. schemes on H.O. W&C - PIB.

Bail conditions lenient for women.

Adultery - males only punished.

15(4) → 1<sup>st</sup> CAA

More general than 15(5)

Economic interests included too.

Only state owned institutions & not private.

### Reservation

### Special provision

A particular seat only  
for particular person.

- One type of special provision

Bowdler view point

SC gave way for Reservation

## SAJIENT FEATURES

The word 'only' means that there may be ADDITIONAL grounds but not only ground.

Ex: Female nurses

Male commandos

Non-hindus not allowed entry into hindu temples

'Any of them' means they in COMBINATION can also not be allowed.

A 15(2) is addressed to both state & individuals w.r.t.  
access to public places, water bodies, etc.,

A 15(2) + A(17) Abolishes untouchability in India.

A 15(1) + 15(2) laying down rule against -ve discrimination  
they recognise FRs.

A 15(3)+(4)+(5) they are mainly enabling clauses giving  
discretion to states for making SPECIAL PROVISIONS

A-15(5)  $\Rightarrow$  [193<sup>rd</sup> CAF]

—X—

regarding TTS & Mandal commission

uses word LAW - not used in (3), (4)

$\Rightarrow$  2006 - Central Edu. Inst. Reservations

ASHOK KUMAR THAKUR CASE

Yes to reservation but GIC seats must not be reduced for it.

A-15(3) → allows SPECIAL PROVISIONS in favour of WOMEN

It includes 73<sup>rd</sup> & 74<sup>th</sup> CAA, state level jobs

reserved for women, welfare schemes of M.O. W.C Welfare  
Crime of Adultery & lenient Bail conditions

A-15(4) → It is in line with A-46

For both, economic & edu. interests of SCS, STS & SEBCs,  
special provisions may be made.

↳ Relaxations in age, fee, no. of attempts, tuition fees etc.

It only includes govt. owned institutions

A-15(5) → introduced by 93<sup>rd</sup> CAA

By LAW, state can make special provision in  
favour of SCS, STS, SEBCs w.r.t. admission to  
educational institutions including private -  
aided/unaided but excluding minorities.

The law made was : CENTRAL EDUCATIONAL  
INSTITUTIONS (RESERVATION IN adMISSION) ACT, 2006  
which allowed reservation in IITs & IIMs.

ASITOK KUMAR THAKUR CASE - SC upheld it holding  
that seats of reserved category should be created  
& those of GC should not be touched.

## SALIENT FEATURES OF ARTICLE - 16

It is equality in field of PUBLIC EMPLOYMENT.

A-16(1) - There shall be Equality of opportunity in matters of public employment

A-16(2) - state shall not discriminate only.... (same as 15)  
+ Residence & Dissent.

(1) & (2) → Rule against -ve discrimination + FPs.

(3),(4),(5) → Allow for +ve discrimination.

what is different in A-16 from A-15?

A-16(3) Residence as criteria for discrimination has always been true from long time. So it is ensured here but only by law.

A-35(b) - Will protect law (same as 16(2)) which was true before constitution - MULK rule - for protection of locals.

But, latu Mulk rule was done with.

A-16(4) Hindu priests only for Hindu temples.

A-16(3) → allows for reservation on ground of RESIDENCE for protecting employment opp. of locals.

The MULK RULES of Hyderabad, a pre-constitutional law, in this regard was protected by A-35(b). Latu repealed by parliament. It then enacted PUBLIC EMPLOYMENT (Requirement to residence) Act, 1957 valid upto 1974.

| 14 + blueprint  
| of 15.  
| - - - - -

## Reservation Policy Of Government

A-16(4) allows state to make RESERVATIONS in PUBLIC employment in favour of SC of citizens at the stage of appointment, if on the opinion of the state they are not adequately represented.

1979 - Moraji Desai

Mandal commission

1989 - V. P. Singh

Effect of mandal comm.

Tamai - stay by SC

- Narsimha Rao.

10% to eco. back. among FCS too.

### INDRA SAWHNEY JUDGEMENT

i) purpose behind reserving seats in publ. emp. for SCs & STs & BCs.  
For giving them share in state power & voice in administration.  
It is not for poverty alleviation/economic upliftment.

→ Hence eco. can't be sole ground. → is Edu. backwardness.

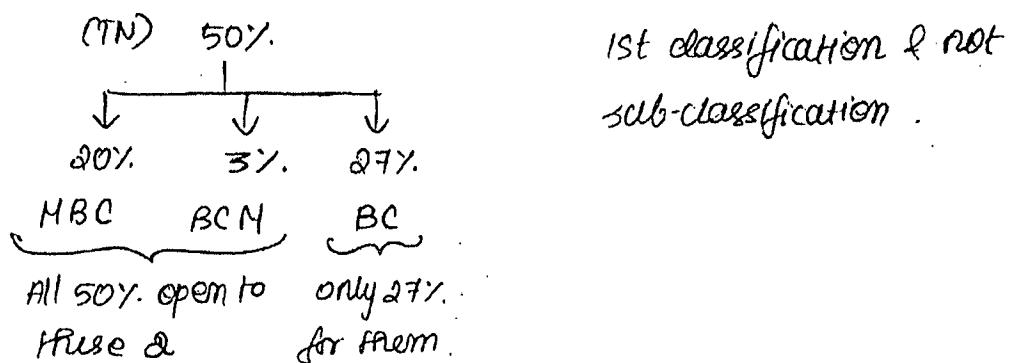
SCHEDULE — List of classes socially & edu. backward.

& not caste, but it so happened it was a caste/tribe in India.

ii) STATE: quantifiable data; reasonable basis  
Reservation does not req. LAW but exec. order enough.

sub-classifications on OBCs alone is allowed - deprivation is not untouchability but some other factors.  
No such is ~~other~~ allowed in case of SCs & STs.

→ HORIZONTAL RESERVATION ; VERTICAL RESERVATION



✓ economy not in picture? Economic downfall can happen in 10 days too but social downfall requires 5-6 generation of continuous social & eco. deprivation.

The purpose behind reservation is to give:

Share in state power

Voice in admin

Not econ up

Hence, economic criteria cannot be the ground.

SOCIAL & EDUCATIONAL backwardness is the sole ground.

Any CLASS be it a caste, tribe, or even among non-Hindus, if they are soc. & edu. backward, they qualify for reservation.

In opinion of state, not adequately rep. means

Based on QUANTIFIABLE data on REASONABLE BASIS, the state must decide.

EXECUTIVE ORDER is sufficient for reservation

Amongst OBCs SUB-CLASSIFICATION is allowed (i-e)

HORIZONTAL RESERVATION allowed for OBCs Ex: TN.

### 5 Limitations Imposed on Reservation policy

① Not in promotion.

② Not beyond 50% ceiling

③ creamy layer amongst OBCs to be excluded

Central & state govt. to identify this layer subject to judicial review only by SC.

④ Although reservation is anti-mere, yet it is desirable that reservations not to be followed in defence

Fractions of specially & super-spe

In fields of Maths, Science

In R&D

Also in high ranks like Professors & Scientists

⑤ Efficiency in admin. should be maintained while providing reservation (i-e) there should not be EXCESSIVE relaxation of cut-off marks.

Many of these limitations were diluted by subsequent legislations.

4(a) introduced by 77<sup>th</sup>, 85<sup>th</sup> CAA allowing ~~open~~ reservation in promotion of SCS & SPS.

4(b) by 81<sup>st</sup> CAA allowing unfilled vacancy to be CARRIED FORWARD to present year as separate class of vacancy.

#### NAGARAJ CASE

Upheld 4(a) & 4(b) subject to quantifiable data on:

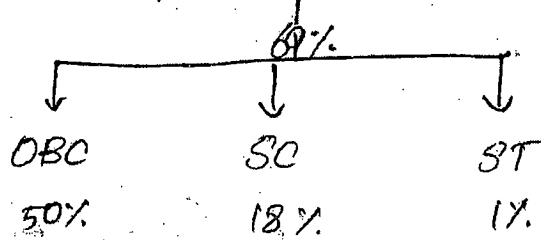
Social & edu. backwardness

Inadequate representation

Efficiency in admin

Now, SC has held that Nagaraj case goes against India Sawhney case & can't demand data on backwardness. However for promotion reservation, data on office & is required.

## TN RESERVATION POLICY.



this is against Mandal but as it existed much before Mandal, TN brought amendment & put it in 9<sup>th</sup> schedule  
Delhi Judgement:

Those kept under 9<sup>th</sup> schedule before 24/4/1973,  
no judicial review on it even if it violates federal structure  
but TN put it in only 1994. — so wait for its S.R.

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### ARTICLE-17

inserted comma must

**"Untouchability"** in all its forms is forbidden.

#### Enforcement

i) Significance of " "

Untouchability in both temporary & permanent forms

dip in river      well water, temple  
~~water~~ is abolished / forbidden.

~~in the world~~

- ii) Only article to define Disability causing from -ve discrimination as an offence
- iii) Who can make law for this? A-35 — Parliament & not state  
It is suspending entire federal structure to make law LA.  
against untouch. —

→ Uniform law for entire country ←

### Untouchability offences Act → U(O) Act, 1955 :

Not very effective. Why? Focussed more on -ve aspects & not +ve aspects. So amended in 1970s.

### Civil Rights protection act → CR(P) Act,

Defined civil rights w.r.t. A-17

Running theme → Denial of Access – this identified it.

It also identified other attacks on them as offences

Ministries { M.O. Home affairs  
M.O. Tribal affairs  
M.O. Social Justice & Empowerment

Commissions { NCSC ; NCST

But, it was heinous that this, more harsh atrocities were committed on them. Hence another law

### Prevention of SC/ST Atrocities Act

2014 - NCRB Report      New types of offences / report finding  
                                        No speedy trial.

2004-2014 ⇒ No. of cases against SC/STs doubled

How? Not crimes but reporting has doubled.

Till now they could just endure & not report.

Now, they started looking at five aspects  $\Rightarrow$  CIVIL RIGHTS.

$\hookrightarrow$  Right to Land; Vote.

2015  $\rightarrow$  Again amended SC/ST Act.

- Land grabbing
- Voting right
- Social ostracisation
- Special courts for speedy trial  $\rightarrow$  as a solution.

{ New types of offences

Any non SC/ST official if found negligent can be acted upon.

2018  $\rightarrow$  SC - need preliminary enquiry before AR

POBI - amendment Bill - Even if court says,  
no need for preliminary enquiry.

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Manual Scavenging (MS)

1955

2013

$\hookrightarrow$  'Rehabilitation' word added in law

2011 Report - 7,50,000 households dependent on MS for livelihood.  
80% or up

$\hookrightarrow$  Financial, educational aids.

"Protective" - word contested

$\hookrightarrow$  what exactly is protective? Must be given explicitly  
oxygen cylinders, torches, etc..

A-17

"Untouchability" is abolished.

The practice of untouchability in all its forms is forbidden.

Enforcement of any disability arising out of untouchability shall be an offence in accordance with the law.

It means both Temporary & Permanent forms have been abolished.

PERMAMENT  $\Rightarrow$  Non entry into temples, water bodies.

TEMPORARY  $\Rightarrow$  Dip in Ganga after foreign tour / touching dead body  
Women considered impure during menstruation.

Origin & Evolution of Law:

I In 1955, U(O) Act

Though it identified certain offences & placed deterrence against untouchability yet, it was not a very effective piece of legislation because it was primarily focussing on a -ve aspect.

In 1976, U(O) Act amended

Civil Rights Protection Act

But the word untouchability was considered disrespectful.

Civil rights  $\rightarrow$  those rights which accrue to a person by virtue of abolition of an

Various offences were identified namely,

✓ Not allowing access to food, Health, Int'l market, transport infrastructure.

✓ Trifouling, Insulting, molesting — as offences

\* M.O. Home affairs

\* M.O. Tribal affairs

\* M.O. Social justice & Empowerment

were charged with monitoring abolishment of untouchability

\* NCSC      \* NCST

were also put in place for the same.

However, as the five acts of atrocities were yet not covered as offence. Hence, parliament felt the need for enacting a new law.

SC/ST (POA) Act

Acts like discoloring, tonsuring, dumping obnoxious substance in their house, forcefeeding with obnoxious subst. were identified as offences.

2014 NCRB Report

Noticed 100% increase in reporting of attack cases. Before, earlier they tolerated, now with political, media & legal support, they started complaining.

While earlier, they would provide menial services,  
Now, they started resisting & focussing on  
◦ Land Rights      ◦ Voting Rights.

2015, SC/ST (POA) Act amended

⇒ To include following offences:

- Forcing to vote / not allowing to vote
- Land grabbing
- Social ostracising
- Gauking with footwear.

⇒ Also, special courts with special public prosecutors for speedy trial was to be established.

⇒ A non-SC/ST official found negligent in such cases could be proceeded against as having abetted the crime.

Link to Justice Goel's Judgement

\*  
\*

SC judgement:

Compensation to all such deaths, etc..

Dalit word

1935' GOI Act - 1st used as Depressed classes.

(from past, communal award - Unt)

Ambbedkar — Dalit

Gandhi — Harijan

NCSC — SC

M. of. S&B — Advisory not to use dalit.

DDA govt — No use of dalit.

-ve influence

symbolic of struggle

A-18 Titles

Titles

Prefix to name. For  
social status - artificial  
distinction. A-18 - disallows.

A-15, 16 ; 17, 18

17 → Untouchability offence; law  
only Declaratory reg. Titles

18 → shot on Titles.

Mil. decorations & awards

Higher Achievement status

A-18 allows this.

i) Brit. didn't have any binding  
ii) No prefix to name. against  
-ve discrimination.

iii) No -ve discrimination - only merit

Balaji Raghwan Judgement

— A 51 (A) - state duty bound to rec. talent.

## ~~+~~ MANUAL SCAVENGING

1993 Act

It was replaced by

2013 : Prohibition of Employment as Manual scavengers & their Rehabilitation Act

MS should be stopped because:

It is not only against health & hygiene but also DIGNITY.  
Local bodies should destroy open pits & dry latrines &  
not allow their construction.

They must identify those households that are still  
dependent upon MS as their livelihood.

Rehabilitation

Alternate skilling them  
polov. Financial Awd.

Educating their children.

The act has been criticised for using word Protective gear  
instead of oxygen cylinders, torches & digital monitoring  
of health of such ppl while inside sewer system.

## Word "DALIT"

GOI Act, 1955

1st used as Depressed class.

From here picked up & popularised by Dr. AMBEDKAR.

However, Gandhi was against its use. He rather coined term 'HARIJAN'.

\* Bombay HC Judgement (Recent)

\* NCSC

all against use of word 'Dalit'.

why? Not mentioned in Constitution. They prefer SC.

\* M. O. I & B

issued advisory to media against its use.

\* NDA govt

issued directive to departments of OGI & SGI against its use for official purposes.

Against

Disrespectful

Divides the Society

In favour

It symbolizes the unique struggle of the people towards the realisation of their rights.



Abolishes Title.

Title all terms when prefixed to any name conveys a higher social status creates artificial stratification in the society.

Title Vs Awards

① Titles - Higher social status

Awards - Higher achievement

② Titles - Unconstitutional

Awards, military decorations - constitutional

③ Awards - never were & never can be prefixed to name

Titles - were always meant to be prefixed.

④ Awards - state must follow rule against -ve discrimination,

Titles - Not so far these.

SC's view on Awards:

BALATI RAGHUVAN CASE

i) Merely bcos we have A-14, does not mean that higher merit cannot be recognised.

ii) This more so bcos, A-51 (a)(j), requires that every citizen shall strive towards excellence in their field of endeavour

Justifiably, their state must recognise such excellence.

iii) If any person uses it as power, he/she should perfect it acc. to procedure.

A citizen can't accept title even from foreign country  
however, he can accept awards like

o Nishan-e-Pakistan o Order of British Empire etc..

A non-citizen working in India or any office of trust/profit  
can accept titles from foreign country with consent of POI.

Both a citizen as well as a non-citizen as above can  
accept gifts, emoluments & offices from a foreign nation  
with consent of POI.

(Dr. given by Institutions are allowed)

\*

Article - 19

- Equality ends, liberty begins -

Liberty

~~State~~

basis of one being part of a civilised society. By virtue.

Freedom

~~State~~

Being free of restrictions. Has to be enforced by state -

Freedom of Speech & Expression - A-19 (1) a

Mother of all freedoms

→ Gives rise to other 5 freedoms in A-19.

→ No police state.

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→ It is a +ve right:

\* 2 Consequences of +ve right [19.25]

① Must necessarily be restricted & never absolute

② Must be progressive, based on fcs.

(Link - organic constitution - changing society - +ve rights respond to change)

## A-19(1)(a)

Link to A-21, Inalienable to A-21

i) whenever reading A-21, read with A-19(1)(a)

→ No dignity or right to life w/o R.to. S & Exp.

ii) Both A-19(1)(a) & A-21 progressive.

source of multiple FRs.

Both allow SC to have finger on pulse.

1st反映ants of changing society.

"Gadle to Grave" state must take care - not possible

w/o A(1)(a) & 21 - key to welfare state:-

→ link is growing by time

R: R.to. privacy.

⇒ It is a composite Right & not single.

How? ③ R.to. Speech & Expression → any mode

② Freedom to form your own opinion → Informed opinion.

① Right to Information & knowledge

④ R.to. S & Exp of other's opinion too - media

⑤ R.to - political dissent (R of opposition) ← Inferred right.

→ It can be restricted only by legislature & not executive

8 limited grounds for leg. too.

## 8 Grounds for legislative

- 1) Sovereignty & Integrity
  - 2) Security of state
  - 3) Public order
  - 4) Friendly relation with foreign state
  - 5) Morality & d
  - 6) Contempt of court
  - 7) Defamation
  - 8) Tn. to offence

} state  
} court

RTI Act

- To enforce 19(1) R- to Information.
  - ↳ Duty for offices, time period . . .
  - Mechanism to ensure FR of RTI

## Sake dealers

A-19(2)

R.t. Informed opinion / decisions

Recently: \* QC → criminal records for info of public.

\* 2013 → PUCL case

↳ Right to -ve vote by 19(1)(a) & 21

NOTA - informed rejection.

## \* Tata Case

→ Advertisement is commercial speech

purely commercial  
not in 19(c)(a)

Information abt  
product  
19(c)(a)

Anything included in (a)(1)(a) - can be restricted only on 8 grounds -

→ curfew - for general public's interest } can't block S&T  
→ Fair Use - can ask licensee. } on any other ground  
other than 8 grounds

⇒ INFO part → Only restrictions on 8 grounds.

COMMERCIAL Part → On even 9<sup>th</sup>, 10<sup>th</sup>, 11<sup>th</sup> grounds too, can be restricted.

→ PROTECTED SPEECH

1st Amend → To dispense info } 2 way protection  
2nd Amend → To know it.

DEMOCRATIC POLITY → Informed opinion (vote) is the basis for Democracy.

Is silence allowed as part of A-19:

Yes { Jehovah - Jewish tribal case  
      ↳ They won't sing national anthem but stood respectfully.

No { while investigating a criminal case.

Media/Press

Press { Qualitative } Idea  
          Quantitative } No restrictions on both.  
          ↳ Pages  
          ↳ No pre-censorship like for motion pictures.

The six freedoms are collectively called Democratic Rights bcs they ensure that the country does not deteriorate into a POLICE STATE.

These 6 are in form of +VE RIGHTS & hence should be REASONABLY RESTRICTED & PROGRESSIVE in nature.

A 19(1)(a) - Speech & Expression

(i) Described as an Indispensable adjunct to A-21.

This bcse there can't be DIGNITY in life w/o S & E, which includes ✓ Discussion - Debate ;  
✓ Criticism - Dissent ;  
✓ Advocacy

(ii) 19(1)(a) & 21 together are SOURCE OF MANY FRS, all guaranteed under A-32. They are the key to our WELFARE STATE vision.

There is a growing link btwn 19(1)(a) & 21.

19(1)(a) is a COMPOSITE right containing  
Part Personal freedom - R. to.

-

-

- Express views of others

Political freedom Right to political dissent

19(1)(a) may be reasonably restricted only by law made on 8 grounds of A-19 [2]

RTI means we can access info both from

AVAILABLE - Formal / Ext (Newsp; BBC; RTI application)

SOURCES (U.E. SEE)

RTI & RT. Knowledge are F.R. under 19(1)(a) instead with w/ the RTI act is providing the mechanism for accessing such info. In such regard, various authorities are established & made duty bound on a time bound manner for supplying info

Informed opinion is crucial not only for DEM. POLITY but also for DEMOCRATIC MARKET. Thus,

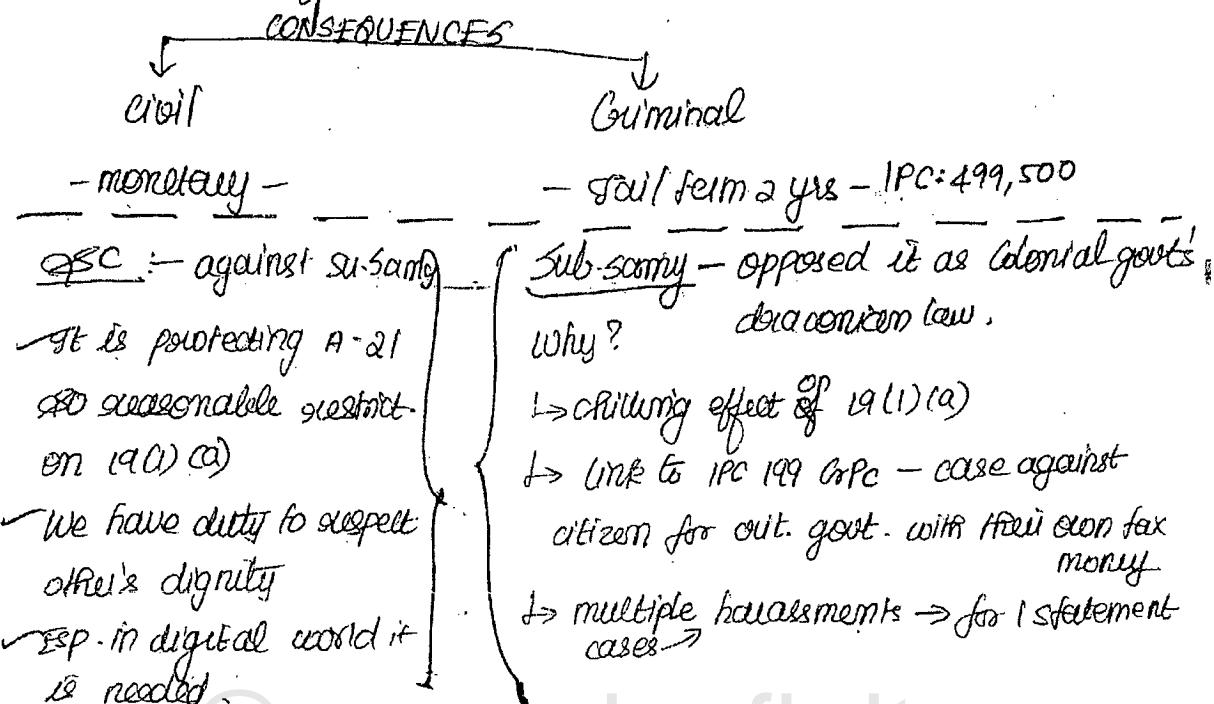
1) Every candidate cont. election - must disclose - Edn, assets & liabilities, criminal records to general public  
Association for Democratic Reforms case, 2002

- ii) Under 19(1)(a) read with 21, every citizen has right to Informed rejection of all candidates.  
[E-ve vote via NOTA button] - POCL CASE, 2013
- iii) In the market, info part of ad is PROTECTED SPEECH.  
It is the FR of not only Traders & manufacturers but also of consumer w/o which free will not be free & informed choice in our democratic market.

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# Defamation

## Destruction of reputation



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Freedom to express one's views freely means - w/o  
fear/favour from govt;

& by any mode means - from gestures to electronic media  
including dance, sports, etc.

Freedom to express views of others is the source of  
freedom of Press in India (i.e) Freedom to print w/o  
license & subject to consequences of law. It has  
Qualitative & Quantitative aspects.

The right to political dissent has created  
multi-party opposition based ACCOUNTABLE DEMOCRACY,  
Zero hour, Privilege motions in parliamentary proceedings  
all its illustrations.

### DEFAMATION

The const'l validity of IPC 499, 500-1860 was upheld  
in Su. Samy case 2016 on following grounds:

When Reputation is aspect of dignified life, under A-21.

These above sections are protecting this aspect of A-21.

In societal aspect A-21 is reasonably restricting 19(1)(a)

It is good for all that reputation of each is protected,  
so these sections are not chilling 19(1)(a)

Under 51(A) each citizen is duty bound to respect the dignity & reputation of others. Hence above sections are supporting this duty & hence can't be said as anomalous to 19(A)(a).

Note so in digital world, with wide sweep & lightning speed where reputation of life time can be destroyed in a second / click of a button.

ITA (Info Technology Act), 2000

ITA amended, 2009.

IT Act was for regulating flow of information in digital medium differently from point of electronic medium basis of different nature of this medium.

2009 amendment:

created new offences with words like insult, injure, damage. (section 66A). Such info with above effect could be blocked.

Enhanced punishment for offences. Ex: Defamation - 3 yrs.  
SC in Shreya Singhal case, 2015.

i) 66A is unconstitutional basis

a) use of above words is beyond scope of A 19 [2]

b) these words are not defined,

Being vague, they may be misused.

The choice of range of words show excessiveness & not reasonableness.

However, enhancing pun. is justified as this medium has damaging potential due to sweep & speed due to cheap & unregulated - prone to misuse.

### Sedition

S. 124A IPC

Sedition → 'The act of causing disaffection or disloyalty against the lawfully established government in India'

For: Notes  
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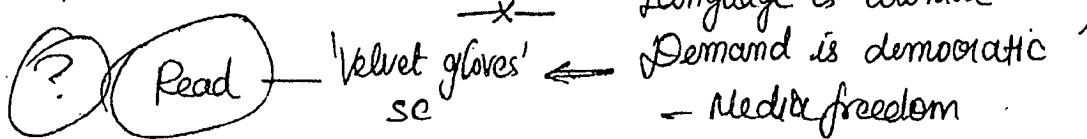
Terrorism, Maoism, Naxalism, Insurgency

KEDARNATH SINGH CASE, SC [Shyama Singhal case again]

Test: As long as S. of S&E leads to discussion, dissent, etc... OK;  
If it leads to incitement to offence - may amount to sedition  
if it adversely affects 4 things (A 19(2))

#### Suggestion:

Not necessary to repeal. But amend IPC & add SC's test as explanation.



### Those who are opposed to this section claim

- British time law, choice of words is colonial and designed to crush opposition. So, unfit for democracy.
- Also, prone to misuse & has a chilling effect on [I(G)]

### Those in favour argue :

- Terrorism
- Maoism & Naxal activities
- Insurgency

In support to retain section.

### SC View

As laid down in KEDARNATH SINGH CASE, 1962 &

SHREYA SINGH CASE, 2015 : The test : As long as Freedom of SPE amounts to dissent, debate, criticism, discussion & even advocacy of view point opp to govt, it is not sedition. But, if it leads to incitement to offence, it may be sedition if it adversely affects:

- Sovereignty & Integrity
- A 19(2) ◦ Security of State
- Public order
- Friendly relation with Foreign state

## SUGGESTION:

Section should not be repealed. Rather above test must be added as an explanation to the section so as to prevent its misuse.



## SALENT FEATURES of 19(1)(b)(c)

q/t<sup>th</sup> CAA

1. A 43 B

2. Part - IX B

3. A 19(1)(c)

Added word  
'co-operative'

'strike' → IDA, 1947 s.2 (Statutory) Sec 22 ↴

↳ due notice - not 'wild cat' strike

↳ not paralyse essential services under ESNA, 1968

↳ No force to participate or Free willion.

DOCTORS: 'Delayed strike'

Grounds:

Strike

Bandh

constitutional

CPM vs Bharat Kumar - FR for Bandh

under A 19(1)(a)+(c)

statutory

SC Not: illegal & unconstitutional

3 SC judgements tell

i] Bandh - not by 1 organisation but general - nation comes to standstill - Ess. services affected.

No strike for lawyers

ii] Force / threat to non-participants

Latest SC T, 2017

iii] Other citizen's FR affected - A(19) + (21)

Pol. party to pay for  
dust du

'There can't be a FR which affects  
another FR' - SC

## Grounds of Reasonable restrictions

19(1)(a) - 8 grounds

19(1)(b) - 2 grounds  $\leftarrow \begin{matrix} SI \\ PO \end{matrix}$

19(1)(c) - 3 grounds  $\leftarrow \begin{matrix} SI \\ PO \end{matrix}$  morality

→ Additionally: A 33 - Armed forces }  
Forces in P.O. }  
Intelligence ag }  
Telecomm. }  
No pol. ass;  
No curfew;  
No strike.

## SALIENT FEATURES OF 19(1)(b) & (c)

19(1)(b): Freedom of assembly is to assemble peacefully w/o arms

Assembly may be stationary or Mobile [Meeting / Procession]

19(1)(b) is a necessary corollary to 19(1)(a)

the assembly as long as it is non-violent & peaceful is constitutional. [Also piquetting - same]

19(1)(c): Freedom to form Association, Union & cooperative societies\* [97<sup>th</sup> CAA, 2011].

The scope of this freedom incl. the freedom to form, willfully join or discontinue from membership of organisation but it does not include the right to be admitted.

Any type of assoc.-social, pol, eco, etc.. may be formed as long as the purpose is lawful.

## STRIKE & BANDH

### Strike:

Right to Strike is a statutory right & not FR.

Call given by members of ONE organisation to stop work is called Strike.

Sec. 2 IDA, 1947 defines strike &

Sec. 22 IDA, 1947 gives features of a legal & valid strike.

(i) It should be after proper notice to employer. Wild cat strikes are not allowed i.e.) w/o due notice. Many times employees w/o informing union leaders go on wild cat strike.

ii) ESSENTIAL SERVICES like Transport, Hospitals, etc.. defined as such as under ESMA, 1968 should not get adversely affected.

iii) Participation in strike should be voluntary w/o any element of force or threat.

Doctors can go on a RELAY STRIKE

## BANDH:

Not only illegal but also unconstitutional.

SC in CPM vs Bhadatkumar Case held that:

- i) Bandh is general strike, not limited to one organisation.  
It paralyses entire nation & also essential services.
- ii) There is always an element of force & threat involved against non-participants.

Citizens are unable to exercise their FR under A'19 & 21 during bandh. 'There can't be a FR to violate the FR on others' SC

## REASONABLE RESTRICTIONS:

(9)(1)(b)

By legislation on a) S & I

b) Public Order (P.O)

(9)(1)(c)

On above ground similarly & also on Morality

a) S & I      b) Public Order      c) Morality

A 33 -o Members of armed forces

- o forces involved in maintenance of public order.
- o organisations inv. in Intelligence & Counter-Intell
- o Telecomm departments of above

cannot form Political associations  
Unions  
go on strike

This is to ensure proper discharge of duties  
To maintain discipline in those orgns  
which are critical to our security

### A 19 (1) (d) & (e)

(d) → Movement

(e) → settlement

A 19 (1) (d): within India

A (2) outside India

Return to India

Corollary to 19 (1) (d)

Obj: Fraternity promotion

Controversy: ILP - citizens

Assam, Nagaland, Mizoram - ILP

→ Ass & Nag also demanding,  
due to Bangladeshi's (ill. migrants)

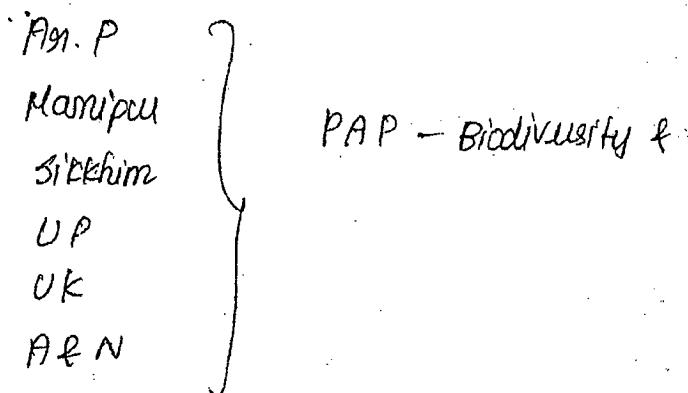
→ 6th sch - Ass & Nag not fully  
mentioned - Not fully tribal,  
hence ILP can't be for full state.  
But only certain districts

→ Manipur - Meiteis ✓ Nagas ✗  
Kukis ✗

PAP - Foreigners (PIO, OCI, NRI)

RAP

Manipur - No ILP but PAP



## SALENT FEATURES

Freedom of movement → citizens decide where, when, why and how to go w/o constraints from government

Within this article is included the:

Freedom w.r.t. Territory of India.

The movement w.r.t. going out & returning is within the scope of Art.

## ILP System (Inner Line Permit)

Special permits are given to Indian CITIZENS for visiting TRIBAL areas of:

Arunachal Pradesh.

Nagaland

Mizoram

Assam & Meghalaya are also demanding the implementation of this system.

This, to control the illegal migration from Bangladesh. These migrants claim to belong to another state of India. ILPS will prevent this argument with migrants.

However, entire ASSAM & MEGHALAYA are not in the 6th schedule. So ILPS can't be implemented in entire state.

MANIPUR - Demand for ILPS has taken ethnic colour.

e.g) Meiteis Vs Nagas & Kukis.

#### PAP (Protected Area Permits)

It is given to Foreigners  
OCI card holders  
PIO card holders  
NRIs

For visiting protected areas in

Arunachal Pradesh

Manipur

Sikkim

Uttarakhand

A & N, etc..

Freedom of Residence → Temporary stay

Freedom of Settlement → Permanent stay

T & R; tribal areas of HP; A & N islands

This right (Settlement) may be restricted.

19(i)(d) & (e) together promote FRATERNITY & UNITY & INTEGRITY of nation.

(a)(i)(e) is necessary corollary to (a)(i)(d)

They may be reasonable restricted by law made on interest of general public or interest of scheduled tribes.

19(i)(g)

⇒ Freedom of Trade; profession; Occupation; Business,

A VOCATION

⇒ General

General public

Parl & LA ✓

Specific

One of these

(i.e) Profession - Eligibility

Ex: MBBS for Dr.

Business - state monopoly

Ex: Mining, Space exploration

$\Rightarrow$  Related to A 301

19(1)(g) - FR to 'citizens'

A (301) - F. of. Trade - 'Individuals' (Person or ~~State of TN.~~).

↳ within India + between states ✓

Among states ✓

↳ Ques. Res. — Taxation for other state goods 304(a)

— Law for public interest to 304(b)

prevent trade with other state

Prez. recom. req. even before

## Introduction: What is a Zonal trade pattern?

may get affected if not.

may get affected if not.

⇒ 301 complementing 19(1)(g)

How? Assurance of free flow.

$\Rightarrow$  304(a) complements 19(1)(g)

How? Fair used for infra, regulatory bodies

Estimate the speed of mvt. of G & S

Case: DANCE BARS in Maharashtra

A-48 → Neutral

A-47 → Signor.

19(1)(a) - Damning F. of S & E

19(1)(g) - Profession

No prohibition (Blanket Ban) but only near Rest (partial Ban)

## Case: OS - Parson industries

## Pursuit Of Happiness - FR There

India - proposed

### Case: Prostitution

A:25 - Trafficking in human beings

(i.e) Freedom of choosing one's AVOCATION includes the freedom to START, CONTINUE, STOP any business

General restriction may be imposed by law in interest of general public

specific restriction may be imposed on

PROFESSION By prescribing Eligibility

BUSINESS By creating State Monopoly

Ex: On Liquor; mining; oil exploration etc.

while RESTRICTION is allowed, PROHIBITION is not allowed

Ex: Duncce Balls

A (301) → Gives any Individual the freedom of trade within India

A 304(a)&B → Allow for REASONABLE RESTRICTIONS.

thus state may impose tax on goods from another state;  
also laws in public interest reasonably restricting these rights

301 → allows Inter-state trade  
complements 19(1)(g)

304(a) → complements 19(1)(g)

Tax money is used for Infrastructure devt. which helps in fast flow of oil & gas.

A-20

= Conviction =

Protection from conviction in certain cases.

Story 1: Hatch Fixing (NF)

Azamudeen & Tadeja (Ajay)

No penal law for NF

Y not bring law & make effect from back date?

20(1) — No EX-POST FACTO LAW — legislature

Story 2: Andha Grahan movie

A. Bachan - Courtroom - murder

20(2) — Double Jeopardy — Judiciary

Story 3: How to catch a Tiger

Beat a cat make it to accept as Tiger

20(3) — SELF-INCRIMINATION — Executive

A-22

Arrest and  
Detention

## RETROSPECTIVE - Only Civil law

A 16(4)(a) → Reservation SC/ST - promotion

77<sup>th</sup>  
CAA

85<sup>th</sup>  
CAA

Y & amendments?

[1995]

1995 → infringement of service law

Seniority not related to promotion

Inconsistency - Junior can't order Senior  
↓  
as per service law.

2001 → Addressed - Consequent seniority  
to promoted SC/ST person.

Effect from 1995.

## PROSPECTIVE - Only Criminal & Civil

### MIRBHAYA RAPE CASE:

2012: BfR → no death for rape but only for murder

2013: now → Hang for double rape also.

### ASIT MILLS CASE:

Hanged for double rape

### KATHUA CASE

Minor rape - no death

Law came after case. — Minor rape - death.

⇒ Law will punish not the ACT but GUILTY MIND

↙ Y not retrospective for Criminal law? ↑

⇒ If definition not clear.

## A 20

Protects us from CONVICTION in certain cases

### I. EX POST FACTO LAW

Criminal law can't be given effect from back date

C.E.O) can't be retrospective.

Civil law may be retrospective.

Ex: 85<sup>th</sup> CAA, 2001 made effect from 1995.

Ex: Recent amendments to rape laws could be given effect PROSPECTIVELY only.

→ Death for Double rape, 2013

→ Death for Minor rape, 2018

PETROSPCIVITY not allowed because

It may lead to victimisation

Criminal law requires Guilty mind which can't be created on back date.

Here, 'Law' → Definition of Crime  
Criminal procedure

Quantum & Nature of punishment

No person may be prosecuted and punished for same offence more than once.

However, One civil consequence allowed  
One Criminal consequence

Ex: Defamation

Public servant caught for Bounce  
Cheque bouncing cases

There can't be 2 different criminal  
courts pronouncing 2 diff. consequences.

No accused person shall be forced to  
accept a ou'me, that is,

An accused can't be made a  
witness against himself. Because:

There is presumption of innocence in  
favour of accused.

However, statement given in form of  
confession under judicial magistrate  
under sec. 164 CrPC can become sole basis  
of conviction.

Police can force Fingal print & Blood sample in Criminal  
cases.

### TADA, POHA

self-incrimination  
allowed at level  
above SP.

- Not Fair Play -

(i) No force to statement  
(ii) Force to blood sample  
✓ Criminal  
✗ Civil

✗ Polygraph  
✗ Brain Map  
✗ Neuro-analysis  
Truth serum  
Barbiturate

→ Not sole basis but  
only corroboratory  
• can be done willingly  
• can be done with  
court order, even  
against person's will

Bill: Polygraph  
Breath Map  
Narco-analysis

Can't be forced by police nor can be sole basis for conviction. But, police may apply before court of law for such tests.

Ex: SELVI Vs KARNATAKA, 2010

A 21

① To state & individual applicable.

Ex: Passive smoking, Pvt. arrest, Self defence

② Applicable to non-citizen also

③ 'Life' - most progressive

DIGNIFIED LIFE

3 types of R. implied from 21:

I. Also part of DPSP

II. Promoting welfare state & Socialist state

III. Rights of arrested & convicted persons

④ 'Personal' Liberty

1954 → A.K. Gopalan - Prev. detention - claim: violates 21;

Personal liberty is as good as liberty of thought ex, rel, corr, faith

- ① 'State' word ✗
- ② 'citizen' word ✗
- ③ 'Life' word ✓
- ④ 'Personal Liberty' ✓
- ⑤ 'Pr. Est. by law' ✓

SC: Personal liberty - only physical aspect & not equal to liberty of thought...

1978 → Maneka Gandhi case

Passport denied

→ No chance for trial.

→ NO F. of S&E since not allow to travel abroad

SC: Fair law:

Principles of Natural Justice

+ Procedure by law

DUE PROCESS OF LAW

SC: Personal liberty - Equal to Liberty (

✓

① The word state is missing.

It is addressed not only to states but also to INDIVIDUALS.

Neither state nor individual can deprive another person of his life & liberty except acc. to PROCEDURE BY LAW.

Ex: Anti-Smoking campaign in public places has support of all

② Absence of word citizen

Available to non-citizens also, including Non-friendly non-citizens.

③ the word Life is the single most powerful word of A-DL which has been subjected to the most PROGRESSIVE or AMPLIFIED Interpretation. Thus, it has become the source of numerous IMPLIED FR

life means 'DIGNIFIED LIFE' [Maneka Gandhi Case]

Hence includes,

RTE

Legal Aid...

Food & water

Pollution free env.

R. against hand cuffing

Solitary Confinement etc..

#### 1954, A.K. GOPALAN CASE:

SC → Personal Liberty is not same as liberty.

(i.e.) PL means only physical aspects that person will not be tortured or amputated & not liberty of thought & exp.

#### 1978, MANEKA GANDHI CASE:

SC overruled above → Personal Liberty same as liberty  
the word 'Personal' does not take away anything from the word liberty.

Procedure Est. by law

In case of deprivation of life  
and liberty, court will examine:

① whether a law existed  
authorising deprivation of liberty

UK

US

Due process of law +  
Power est. by law  
① Existing law?  
② By competing legislature?  
③ Had it followed  
constitutional method of  
enactment?

Due process of law  
④ If law itself is  
GOOD or NOT  
fair, reasonable,  
non-oppressive, non-discrim.  
- GUIDED DISCRETION -

- ② If law was made by competent legislature.
- ③ If legislature, while making law has followed the prescribed Procedure for legislation.
- ④ Goodness of law

### Due Process of Law

④ → fair, reasonable, non-arbitrary, non-oppressive & provides GUIDED DISCRETION

PEL : UK

Protection only against Executive action. It inherently trusts wisdom of legislature & public opinion.  
No protection against legislative action

DPL : US

Protection against Executive & legislative action.

In MG case: SC read Principles of NATURAL JUSTICE into A-ZI as unwritten rules of civilized society & thus emerged the requirement of DPL on Fratia

## PRINCIPLES OF NATURAL JUSTICE (PNT)

3 principles - All based on FAIRNESS & REASONABleness

① Audi alterum partem

Right to be heard.

② No Bias

Rule against Bias

③ No man can be a judge in his own case

Interested party can't be in decision making & must RECUSE

✓ This necessary?

Justice must not only be done but also must seem to be done

Spirit: \* FAIR PLAY in action.

\* Humanisation of Decision making process (by any authority)

Source of PNT in India (1):

→ No specific article.

→ But SC in 1976, Maneka Gandhi case - A 21

1986, Brijendra Nath Ganguly case - A 14

Trend:

✓ Not part of Basic Structure but as good as it.

✓ It is part of common conscience of civil society & doesn't require special enactment. It is INHERENT.

✓ Hence, SC reads it everywhere.

## Violation of PNS:

### Ex 1: Contempt of Court

Judge → Orders against his matter. Judge must recuse oneself  
Violation of 3rd PNS

### Ex 2: Salary of MPs

They themselves ↑ their salaries. Need sep. committee

≈ AUS, UK, NZ, BHUTAN, SAFF.

Violation of 3rd PNS.

## (PNT)

① The right to be heard (Audi alteram partem) rule:

No man shall be punished / adversely affected w/o being heard.

② No Bias

Every authority should act w/o personal bias

③ No man shall be a judge in his own case

If the authority is interested in the outcome of his decision. He should RECUSE himself from the matter.

These principles are upholding the spirit of FAIR PLAY IN ACTION. Because Justice should not only be done rather seem to be done.

Purpose of PNT:

To humanise Decision making process by  
Judicial & Executive Admin.  
from Familiar authorities

It is in line with concept of Rule of law.

SC References:

SC inferred the principle from A-21

- *Maneka Gandhi case, 1976*

SC inferred principle from A-14

Link with Basic Structure:

Although PNT is not a part of Basic structure, it  
is a part of COMMON CONSCIENCE of Civilised society.

It is INHERENT in constitutional scheme & does not  
require enactment, incorporation or documentation.

Controversies:

⇒ Its absence in -

i) Contempt Proceedings

ii) Procedure for enhancing salaries of MPs.

⇒ so parliamentary committee on law & Justice has proposed  
Trial in contempt should not be done by same judge  
who has issued notice.

⇒ Independent Committee should be est for fixing salary  
as exists in UK, AUS, NZ, SAf, even BHUTAN.

## PRIACY

UK → Every man's home is his own castle.

USA → 4<sup>th</sup> AMENDMENT

IND → No specific article; even when signatory to  
UN's Covenant on Civil & Social rights

### To centre stage:

i) Aadhaar Act, 2016 - personal data

1976, NGI case: Right to life includes privacy (6 SCB)

1954, MP Sharma vs Sat Chandra: No right to privacy. (8 SCB)

Puttaswamy Case, 2017 → (9 SCB)

Source of FR to life & liberty:

Not just in A-21 but inherent to Part-III. It broad based it.

Source of R. to privacy:

Not just A-21 but many articles, It broad based this too.

FR to privacy is guaranteed on A-32

Upheld 1976, NGI case & void the 1954, MP vs SC case.

It made R.to privacy Operational & Functional in Society:

i) R.to privacy is core of Human Dignity

Ex: Sec.377, Dignified death.

ii) Not merely a core but allowing a liberal Democracy.

R.to exclude outsiders from personal spheres to enjoy our choices & freedom - Home, community, edu. classes.

It protects :

i) Eternal values of basis of R.to privacy

ii) Our intimate zone on space - not only on put but also in public zone. ↴

- my body & my life
- Family
- Sexual orientation
- Pro-creation

It protects our composite culture.

iii) My R.to Redesign my intimate zone as I want.

Nature of R.to privacy:

-ve infumiture on state + } DUAL NATURE

+ve responsibility on state

Can R.to P be Reasonable restricted? YES. with 3 tests

Need a law, not just exaction

Law should have legitimate purpose.

It should be proportionate to purpose attached.

2. Imm. effects:

① Aadhar Judgement

② Sec. 377 IPC.

## Aadhar Judgement, 2018 → (5 SCB)

○ Is it necessary? No. Only if avail subsidies it is needed.

○ Is state being surveillance state? NO.

Becos of way of operation of Aadhar project

i) Minimal data - Fis & Finger print.

Only for identity & not enough for profiling

ii) Validation is PURPOSE BLIND. [Comb. Analytic]

state does not know why you use Aadhar at diff places.

Just authentication w/o aware of choices.

iii) Validation of Aadhar is not ONLINE.

It is stored in Info. SILOS - stored vertically &  
no horizontal communication & hence no mega data.

- can't reget ads or election behaviour.

○ Is Aadhar mandatory for children? NO.

Not for school admission

Yes for availing benefits, with perm. of parent/guardian  
they have choice of opting out once 18.

No child can be denied of any benefit only on basis  
of no Aadhar.

○ Is it violating privacy? NO. Just reasonable restriction

(3) i) Law - Aadhar act, 2016

(2) Leg. purpose - to provide service.

iii) Is it proportionate - Goal, Employment balanced with Privacy  
FR

- o Ok as Money Bill? Yes. [It has supported by speaker & has not overruled Speaker]

Trying to identify individual for deliveries hence, money will come from CFI as per A-110(3).

### SC diluted certain provisions of Aadhar act

i) Right to be heard before disclosing indiv. identity (for other than <sup>not secu</sup>) after court order.

ii) Breach of confidentiality for National security (only)

Joint sec → <sup>someone</sup> Above him + sitting HC Judge

iii) Could be archived for:

5 yrs → 6 months.

iv) In case of violation:

Only UIDAI could file → Any citizen can file case

### Namtej Johar (sec 377)

→ A-21 violation → sexual orientation

Defined - Natural

→ 19(1)(a) violation → F.O. expression

→ unnatural sex.

→ Diluted only for consensual sex.

No clarity on

Marital rape.

### Note:

SC → 'Inferred rights are as good as Written Rights'

Y pawn cards? To contain tax frauds.

# RIGHT TO PRIVACY

Right to be left alone (i.e) not to be intruded upon in one's private space or intimate zone.

PUTTASWAMY JUDGEMENT, 2017 → [9 TB]

- i) FR to Life & Personal Liberty is inherent in Part III &
- ii) R. to privacy is inferred not merely from A-21 but also other articles of part III.

- ii) Thus R. to privacy is guaranteed by A-32

SC upheld K.G. case, 1976

SC overruled N.P. Sharma Case, 1954.

R. to privacy acts as CORE of human dignity.

It allows LIBERAL DEMOCRACY to operate in India by conferring rights & entitlements in favour of individuals.

R. to Privacy protects:

The eternal values which are basis of life & liberty.

Our Intimate Zone

Body

Life

Family

Marriage

Sexual orientation

Procreation

The Designing of our Intimate zone including our  
Exclusion even in PUBLIC SPACE. It protects our COMPOSITE CULTURE.

It may be Reasonably restricted

By Law

with legitimate Purpose

Based on Test of Proportionality

PUTTASWAMY (5 J.B) or AADHAR JUDGEMENT, 2018

Aadhar is not mandatory unless someone wants to avail subsidies, benefits from govt.

Aadhar act, 2016 does not create a SURVEILLANCE STATE.

Because It collect minimal data which permits only  
Identification & NOT PROFILING

Authentication is cut off from Internet.

Info. is stored in vertical silos w/o satrical links

Not mandatory for school admissions. But if child wants to avail services, then w/ permission of parents, must enroll w/ option to opt out after 18 yrs of age.

The act is reasonably Restricting R-to-power because it is passing 3 tests:

This is Law

legitimate purpose is to provide Benefit

For that, it is balance Privacy with Food etc.

Passage as Money Bill is Justified because identification  
is for distributing subsidy which would be payed from CFT.

Disclosure of identity from court order only after being heard

Breach of confidentiality for national security, req.

permission from officer higher than SS + sitting HC Judge

NAVNEET TOHAR / sec 377 case, 2018

⇒ SC partly overruled sec 377 IPC as it

✓ violates A-21 [Privacy & dignity] + [Discr. on sex orientation]

✓ violates A-19(1)(a) [Expression]

⇒ Sec 377 is still retained for

o Non-consensual sex

o Bestiality

## R. to. DIE

IPC S. 306 → Abetment to suicide - 10 yrs.

IPC S. 309 → Suicide attempt - 1 yr.

- Issues
- Right to die
  - Right to dignified death.

1994, Ratinam Case → 2 SCB.

306 & 309 violates A-21 (incl. R. to live & die)

Overruled 306 & 309 as unconstitutional

1996, Giani Kaur → 5 SCB

R. to. die will be misused.

will violate basic human ethics.

A-21 not incl. R. to. Die

Overruled Ratinam case & reinstated 306 & 309

, Aruna Shambhang case → 2 SCB

306 & 309 is inhuman & suggested to parl. to repeal.

state should sympathise with suicide attempting ppl.

Mental health Care Act

If someone is depressed & want to suicide - no punishment  
upholding Aruna Shambhang Case.

# Right to Dignified Death

## EUTHANASIA

Good killing

2 Aruna Shambhong Case → TB

→ Nurse - induced - vegetative state.

No family - hospital cares

o Appeal: To remove life support system.

o Against: Hospital wanted to care for her.

## KATU:

① Active Euthanasia.

} can survive on own

② Physician assisted Euthanasia.

} can't survive on own

③ Passive Euthanasia

- life support system removal

→ Allowed Passive Euthanasia on 2 conditions

i) Permanent vegetative state

ii) Must be brain dead

SC: 'Where death has come but merely delayed'

→ Only on permit of HC on recommendation of Committee of 5 Doctors:

- Neurologist

- General physician

- Psychiatrist

## NGO - Common Cause of Axun Showrie

**A-21** → Every individual has R. to. LIVING WILL or to authorise someone ← ADVANCE DIRECTIVE to pull out plug in future.

2014, Common Cause Case → 5 SCB

- ✓ R. to. LIVING WILL to plug away
- ✓ 2 Arguments
  - No dignity left on life due to unaware even of breathe.
  - Best to relieve family from moral dilemma
  - Rich may monopolise life support system

Guidelines @upsc.risefinity

Only by a person w/ legal ability

Informed consent  
Free will

Adult  
sound mind

Very clear wording  
clear condition & by whom  
must be revocable  
can't be done in pt. but & attestation countersigned  
by CTM (1 hand + 1 soft copy)

Samthara/Sallekhna - Jain practice

Fast unto death - Niwama - Spiritual practice.

Against: ~ to sati

Violates A-21

Torture to body - A-21

Prolonged suicide

Favour: Not suicide - due deliberation & not emotional

Suicide can't be revoked - Samthara can be

A-25 → Freedom of conscience, when not banned by law

A-29 → Unique culture & tradition of each community

NIKHIL SONI CASE, Raj HC

Violates A-21, tortured body → Banned Samthara.

But SC stayed this.

Now in pending -- Update with NP

## RIGHT TO DIE

Constitutionality of Sec. 309 & Sec. 306 IPC

1996, GIAN FAUR CASE → 5TB

Overruled 1994, RATINAM judgement.

If R.to.die is inferred under R.to.life, then it goes against the basic human ethos, which is to protect life.

Also, it is prone to misuse.

It reinstated 306 & 309 sec, IPC struck down by Ratnam J.

2011, ARUNA SHANBHANG CASE → 8 TB

Recommended to parliament repealing of 306 & 309, that they are against the Basic human need, that a depressed person needs sympathy of state & not punishment.

Mental Health Care Act

Diluted Sec. 309, IPC.

A depressed person can't be charged under this section if he attempts to commit suicide.

# Right to Dignified Death

## EUTHANASIA

2011, Arunna

Active Euthanasia

Not allowed

Physician assisted Euthanasia

Passive Euthanasia      Allowed in regulated manner

The person should be in:

a permanent vegetative state (or)

Brain dead

where death has come but being delayed

Only on orders of HC on basis of recommendation  
of Team of Doctors    o Neurosurgeon  
                           o General physician  
                           o Psychiatrist

Common Cause Judgement → SCB

SC overruled Shambhavi Judgement & held:

R. to. die is inherent to R. to. life under A.21

so everyone has the right to draw a living will

or Advance Directive that if in future, if he reaches PVS  
then a certain person is authorised to unplug LSS.

thus because when,

a person is not even aware of his breathing, then he is entitled to dignified death.

Also will relieve poor families from Moral dilemma

However, following protection to be observed

D Will to be drawn by a person with legal capacity based on Informed consent

Free will

i) Language be clear with situation & Authorisation clearly spelt out.

ii) Attested by 2 witnesses, countersigned by CSM

### SANTHARA / SALLEKHNA

Jain spiritual practice of Fasting unto death.

Against: Equate it to sati

Prolonged attempt to suicide

Favour: Distinguish from suicide & cite

A: 25

A: 29

2015, Nikhil Sons Case - Raj HC → Held it unconstitutional; viola. A-21

SC → Stayed HC order. Judgement awaited

A-21(A)

SFR to primary Education

R. to Education → Inferred

Mohini Jain & Umni Krishnam Case

A-45 (DPSP)

Primary edu → 6-14 yrs.

86<sup>th</sup> CAA, 2002

Amended A-45. Removed 6-14 & put in A-21(A)  
making it compulsory for state to give edu as per law.

Primary education } A-21(A)

Pre-primary education }

Early child care } A-45

Added FD: A-51(A) → Parents & guardians - duty to give edu.

2010, Right of children to free

RTE effect to from 2010.

42<sup>nd</sup> CAA → Edu state → Concurrent List.

Salient features:

→ Age appropriate class

Until one completes primary edu. he is covered (even after 14 yrs of age)

→ Who to give?

- Govt-schools

- Govt-aided pvt-schools (to that extent of aid)

- Pvt-schools - 25% for eco. weaker sect - reimbursement by state (A-21(A) → Duty is upon state)

→ Free education def.

No direct or indirect financial burden on child.  
fee      clothes

→ R. to completion of Education

i) No detention → recently diluted. (3, 5, 8 only)

ii) R. not to give board exam.

iii)

→ Infrastructure monitoring every 3 yrs

- Deregistered if fails

- No school w/o Recognition allowed under RTE

→ Type of curriculum:

Built around child friendly environment

- i) No physical punishment
- ii) No mental harassment
- iii) As few as possible, instructions in mother tongue
- iv) No screening @ admission
- v) No capitation fee @ admission
- vi) No put tuition fee.
- vii) No school w/o recognition

→ Eligibility of teachers

Earlier      For B.Ed      Now extended

window for 2015 → Till 2019 by SC

→ Every 50 students, & trained teachers @ level  
of each school & not district

→ Concurrent resp. of SC & UG - Finance

→ Who else are responsible?

School Management Committee

Par/Guard + Local NCA

School dev-fund

Monitoring of fund

Health, hygiene, Sepa, toilet → Local community

## → Monitoring bodies:

- Centre - NCPCR
- State - SCPCR or REPR

## Recent developments & challenges

### CHALLENGES

#### NUMBER

190 mn = students to be

1 mn — Teachers

8 mn — Dropouts

Edu. to migrant labour's children }  
Edu to. special children } Inclusive Edu.

Pre-primary level — not enough investment

### RECENT DEVELOPMENT

→ BEd → till 2019 Teachel window.

→ CCE\* — earlier — child friendly evaluation  
against Report Card system — Pass/Fail

complaint by state as lack of focus

so Now, CCE partly alone away.

→ Grading system (extra marks) — discontinued

\* CCE — Continuous & Comprehensive Evaluation

(or) NDP — No Detention Policy

## TSR SUBRAMANIAN COMMITTEE REPORT (UPA)

- i) 2-4% of APP on Edu  $\rightarrow$  16% of ADP.
- ii) + All India Edu. Service under Nodal MHRD.
- iii) Norms must also be for Govt. schools
- iv) Pre-primary edu also by Govt.
- v) Teachers - entry level - UG BEd.  
Every 10 yrs - revaluation - T-license
- vi) NDP to be removed
- vii) Board exam on demand.

It is to become dead. Now NDA doing a democratic process -

## KASTURI RANGAN (former ISRO chief) CONC. REPORT

### Awaited - Update NP

#### 2 (X) suggestions :

- i) use multilingualism to unite India
- ii) knowledge economy on digital edu.

N.I (ang 1),  
S.I (ang 2),

9% - village

30% - urban

Digital literacy

## RTE definition ('Based on 'Mischief Rule')

- Primary edu. on full time basis (Faubier, charwaha Vidyalaya)
- Edu. of Equitable quality
- By a school in neighbourhood
- By a school w/ resumes & permissions
- As far as possible, institutions in mother tongue.

### Note:

- No social criteria like in reservation  
Now, economic criteria is used as it is a FR - to be to all.
- Neighbourhood w.r.t. Terrain of area.
- A-26 : Madrasa

## 86<sup>th</sup> CAA

→ Introduced A-21(A) → state shall provide Free & Compulsory edu. to all children from 6 to 14 yrs of age, in the manner as prescribed by law.

→ A-45 was amended

→ A duty under clause(k) was added.

RTE, 2009

R. of children to free & Compulsory education was enacted in 2009, effective from 2010.

## SALIENT FEATURES OF RTE, 2009

- (i) R. to Age Appropriate class & to Free education even beyond 14 yrs if primary edu. has not been completed.
- (ii) FE Education to be provided by:
  - ✓ Govt. schools
  - ✓ Pvt. schools receiving govt. aid - should reserve for EWS proportionate to aid received
  - ✓ Unaided Pvt. schools - 25% in favour of EWS, to be reimbursed by state
- (iii) R. to Completion means NO DETENTION POLICY (NDP)  
- now diluted

- o No board exam b4
  - o R.t.o. completion certificate
- (iv) Infrastructure to be monitored every 3 yrs if lacking, then deregistration.
- No school to run w/o recognition
- (v) Curriculum in line w/ constitutional values for wholesome dev. of personality in a child friendly environment.

#### CHILD FRIENDLY

- No physical punishment
  - No mental harassment
  - No Screening test
  - No Capitation fee
  - No PTE. Tuition fee
- Instruction in mother tongue, AFAP
- (vi) Teachers to acquire prescribed eligibility by 2019 (earlier 2015 - parliament amendment) or will loose job
- (vii) 2 Trained Teachers for every 60 students to be maintained at level of each school & not merely districts.
- (viii) Concurrent resp. of UG & SG to bear financial burden  
UG → will estimate the burden required & provide part of it to state.

(ix) SCHOOL MANAGEMENT COMMITTEE

Parents/Guardians + Teachers + Elect. rep. of local bodies

It should prepare School Devt. Plan

Monitor expenditure of allocated funds.

(x) COMMUNITY is responsible for providing

Health

Hygiene

Drinking water

Toilet facilities

(xi) Authority:

NCPCR  
SCPCR / REPA —

Empowered to investigate allegations of violations & recommend further safeguards.

RECENT DEVELOPMENTS:

⇒ CCE is done away with &

Report card system reinstated.

Detention only in 3, 5, 8<sup>th</sup> std due to quality ↓.

## ⇒ TSR SUBRAMANIAN COMMITTEE REPORT

- i) Increase expenditure from 2-4% of GDP → 6%.
- ii) All India Education Service under Nodal MHRD.
- iii) Entry level qualification → UG degree  
To be evaluated every 10 yrs for Teaching license for next 10 yrs.
- iv) NDP to be removed from class II
- v) Board exam on demand
- vi) Govt. schools must also follow norms & procedures and provide for Pre-primary edu.

NDA govt's effort on collecting suggestion on formulating NEP. The suggestions have been handed over to Shri. KASTURI RANGAN

- Ex: a) Multilingualism      b) Digital literacy      } to be promoted.

The Report is awaited.

## ART-22

Exception

① Punitive detention (1)(2) (3)

② Preventive detention (4)-(7)

Relationship

A-21 - w/o law, can't take liberty - Due process of law  
A-22 - what should be the provisions of law  
or else unconstitutional / void. Even if law is there,  
A-14 + A-19 + P. of. Natural Justice  
→ Minimal & Not exhaustive safeguards w/o these.

⇒ For citizens & non-citizens.

① R. to be informed abt Ground of arrest ⇒ PRIMARY

→ not only to arrested person but also to near & dear ones

SC - to make it effective ✓

National Police Commission:

60% of all arrests - no basis - reason for corruption.

So, SC gave guidelines

D. K. BASU GUIDELINES, 1981

Mischief rule

J. a) FD card of police personnel at time of arrest

b) separate register of investigating officer in every police station.

ii] Documentation → Every step of investigating officer, to be submitted to magistrate.

⑦ ARREST MEMO : Ground, date, time of arrest .  
attested by 2 witnesses  
counter-signed by arrested person ..

② GENERAL DIARY :

- a) Details: Name, address, ph.no - of friend/relative informed.
  - b) Name of investigating officer under whose custody he is kept in police station.

### ③ DOCTOR HELP :

An arrested person can call him:

Certified report to see if new injuries after arrest.

## I. POST-MANEKA GANDHI CASE

F.R. to lawyer for arrested person. He must be given  
opportunity to engage a lawyer by court. | Yes -  
not duty bound. | No -

III. 24 hrs - Judicial Magistrate under CrPC.

(travel time discounted) SC; Article doesn't mention  
speedy trial.

IV. No further detention beyond 24 hrs w/o authorisation of magistrate.

## Public prosecutor Vs Defence prosecutor

## Tail vs Ball

1st - Police custody for investigation → Judicial custody (Tihar)

Nepal  
↓  
Transit custody → Bihar → Police station  
in travel as soon as they enter India.

A-22

Protection from Arrest & Detention in certain cases

① Punitive      ② Preventive

→ These rights are available to the citizens & non-citizens.

→ (1) & (2) - provide safeguards against punitive detention;

(3) - lay down the exception.

(4)-(7) - On preventive detention

→ A-22 provides MINIMAL Procedural Safeguards which should be imbibed in any law on arrest & detention.

### PUNITIVE DETENTION SAFEGUARDS

i) 4 Safeguards are available:

a) R. to be INFORMED of GROUND of arrest as soon as may be.

b) To consult & be represented by a LAWYER of one's choice.

c) To be produced before the nearest MAGISTRATE < 24 hrs of arrest.

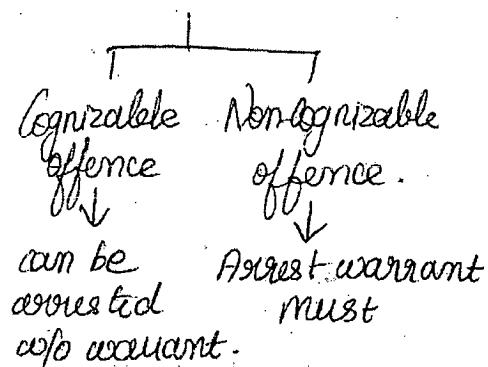
d) No further detention > 24 hrs unless AUTHORISED by the Magistrate.

- ii) To be effective, the ground should be conveyed to a wellwisher of the arrested person.
- iii) As the power of arrest has been routinely misused by the police, the following JUDICIAL GUIDELINES have been issued.

### D.K. BASU GUIDELINES

- a] The police personnel undertaking arrest must visibly display his ID card over his body.
- b] Every police station must maintain a separate register of the investigating officer with their names & details.
- c] An ARREST MEMO mentioning the:
- ✓ Ground ✓ Date ✓ Time - of arrest should be prepared at the time of arrest;
  - ✓ Attested by 2 witnesses;
  - ✓ Countersigned by arrested person.
- d] GENERAL DIARY @ police station must mention the name of relative & also the investigating officer on whose custody the person is kept.
- e] An INSPECTION REPORT mentioning major or minor injuries of over body of person may be prepared at time of arrest. Every 48 hrs, one such new report may be prepared.
- f] All these documents should be submitted for examination to magistrate on next date of hearing.
- g] During interrogation, arrested person may off & on meet his lawyer.

- i] Every PCR within 12 hrs of each arrest must display the information abt it on public domain.
- ii] As every arrested person has a F-R to a lawyer, so the court is duty bound to provide him with an OPPORTUNITY to engage a lawyer. But the court is not under an absolute duty to provide a lawyer.
- iii] Presentation < 24 hrs should be before a JUDICIAL magistrate. The travel time is to be discounted from 24 hrs. This right ensures SPEEDY TRIAL.
- iv] Further detention beyond 24 hrs may be authorised by the magistrate. If no bail is granted, then either POLICE custody or JUDICIAL custody will be granted depending upon the need of the investigation.  
The enemy aliens & those under preventive detention are not allowed these safeguards.



## PREVENTIVE DETENTION

Detention on the mere apprehension that someone might commit a socio-economic offence like rioting, smuggling, black marketing, etc.

The important laws are:

UAPA Unlawful Activities Prevention Act

NSA National Security Act

COFEPOSA Conservation of Foreign Exchange & Prevention of Smuggling Activity

PIT NDPSA Prevention of Illicit traffic on Narcotic Drugs & Psychotropic Substances Act

PB MSECA Prevention of Black Marketing & Maintenance of Supply of Essential Commodities Act

These laws are justified as:

✓ Union List - Item 9      ✓ Concurrent List - Item 3

✓ SC has also justified these that these laws prevent the abuse of freedom by ANTI-SOCIAL & SUBVERSIVE ELEMENTS which may imperil the national interest of an INFANT Republic

## PREVENTIVE DETENTION SAFEGUARDS: (4) & (5)

- a) No detention > 3 months w/o consulting advisory board.
- b) To be communicated of ground as soon as may be.
- c) To be represented before appropriate authorities.
- d) Members of advisory board should either be:  
settling / retired judge of HC / a person fit to be judge of HC.
- e) If advisory board permits detention > 3 months, then the Detaining authority will decide the period but never more than the maximum prescribed under the law.

→ 22(7)(a)

- It allows detention > 3 mnts w/o consulting an advisory board. But it requires a parliamentary law specifying
- ✓ The class of cases &
  - ✓ Circumstances in which it may be undertaken.

→ Communication should be about particulars of the ground which may help him to lay out his defences.  
However, on ground of public interest, some info. may be withheld by the detaining authority.

→ The govt. to be represented is b4r the:

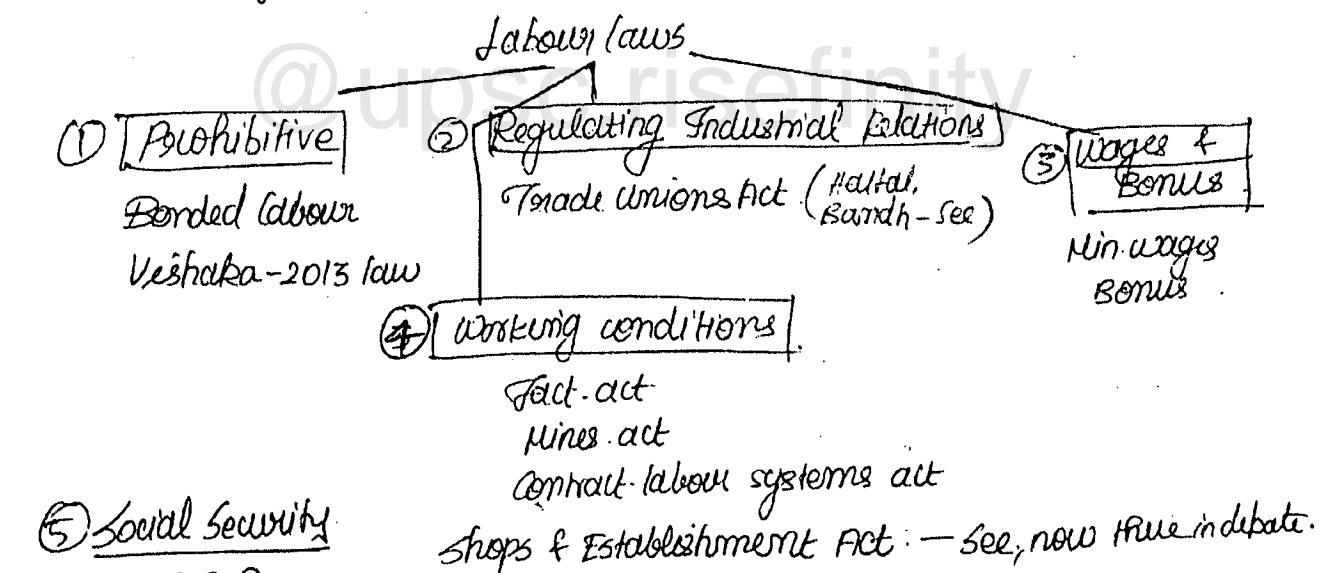
- ✓ Appropriate govt. & then b4r the
- ✓ Advisory board.

Detentioning authority must inform him of both these rights.

A-23 & 24

A-23

- i) Trafficking in humans.
  - ii) Begar — (Forced labour w/o payment)
  - iii) Forced Labour
- Violation is punishable offence (~ A-17 — A-35)  
whenever offence is mentioned
- To non-citizens also;
- Also against individual & not only state.



⑥ Welfare of Women  
DPSP

Codification — Wage Code Bill. } Relate to economics.  
To simplify law — for EDB. } Ad. law reforms.

## Beggar

Not even inogenous imprisonment - w/o payment

## Forced Labour

- ✓ Economic force Not even with payment.
- ✓ Legal force Not < min. payment
- ✓ force of indebtedness Legal force ✗ also not allowed; may be compensation asked.  
Bonded labour ✗

## Exception:

State can compel during o war

o Even during demonetisation

But no discrimination based only on caste, rel, sex....

Const.<sup>n</sup> allows only 2 bodies to avail all resources.

① Election Commission \*

② SC of India \*

## Preventive detention

1st check → from court → Custody → Magistrate.  
Legal possession.

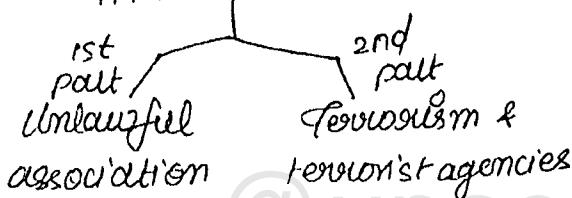
### Babu masjid:

It applies only on well known anti-social elements,  
History shows ~ position to commit a crime.

X Suspicion (only after crime)

✓ mere apprehension that he might commit a crime.

#### ① UAPA



TADA X Now only UAPA — Read the content part  
POTA X

#### ② NSA

Prejudicial to national security.

P. Order

Relation with neigh. countries.

Essential supplies maintenance.

#### History

→ 1950s - Prev. Det. Act.

A. K. Gopalan case.

→ Emergency - MISA.

Misuse of GUNDIA act  
- Read. SC.

#### ③ COFEPSA

#### ④ PTDNSPA

#### ⑤ PBHSECA

union list - item 9

Security of the state

Foreign affairs

Defence

Conc. list - item 3

Security of a state

P. Order

Essential supplies

SC

A. K. Gopalan case

... to prevent abuse

of freedom by

anti-social & subversive

elements

sd dashes Islamic Republic  
Not US, UK

## Safeguards (4) & (5)

- ① < 3 months - No advisory board) Fit to be Judge of Court  
Only Yes/No.  
> 3 months - Must " "  
Period will be decided  
> 3 months w/o advisory board by determining authority  
A-22 (7)(a) - Exception, not rule. as prescribed by law.  
Most dreaded.  
Till date, not been done. Y? very difficult general cases  
- Only by a specific parliamentary law circumstances  
So - can't be permanent
- ② specific ground must be informed.  
Some facts may be withheld for P.O.
- ③ R. to be withheld by appropriate authority

Appropriate govt.  
(state/union govt.)

Advisory board

Bhima Koregaon

Not merely scs of diff of opinion. Other facts.

1977 - 44<sup>th</sup> CAA [Tandte party]

3 changes under preventive detention -

✓ 6 months

✓ 22 (7)(a) repealed & deleted. Y? commencement clause  
only where notified in off-gazette

✓ sitting judge - chairperson of advisory board.

Sitting/retired judge - members of advisory board.

## A-23 & 24

- ✓ A-23 & 24 are collectively called Rights against Exploitation.
- ✓ They are prohibitive in nature.

→ A-23 prohibits:

Traffic on human beings

Begar

Other similar forms of forced labour

→ Further it prescribes an offence: contravention of A-23 shall be an offence punishable in accordance with law.

Important laws enacted are:

ITPA - Immigrant Traffic Prevention Act

\* Prohibitory Labour Laws namely:

Bonded Labour system Abolition Act

Sexual Harassment in workplace act

\* Labour laws on Industrial Relations

Industrial Disputes Act

Trade Union Act.

\* Labour laws on Wages & Bonus

Minimum Wages Act

Payment of Wages Act

Payment of Bonus Act.

## \* On Working Condition & hrs of work

Factories Act

Mines Act

Contract labour System Act

Shops & Establishment Act.

→ The rights under A-23 are available to citizens &

✓ Non-citizens

✓ Against state & also individual's actions.

→ BEGAR is prohibited.

Forced Labour w/o payment

> Forced labour as a part of vigorous imprisonment  
is allowed but only with payment.

Begar is not allowed even on jail.

> Outside jail - forced labour even with payment is not allowed

→ Force of any type is not allowed:

o Economic force - (Engaging labour below min. wage)

o Legal force - (Inforcing contract of service) ✓ To limit words

o Force of Indebtness - (Bonded labour abolished)

However, the state may compel a person to render service for a public purpose but while compelling state shouldn't discriminate only on ground of Rel, Race, Caste, Class or any of them.

Democracy

[Opposite of police state]

A-24

Child = < 18 yrs - general.

A-24 = < 14 yrs. - A-21(A), A-21-A  
A. 39(e)

A-24 & A. 39(e) - clear parallels.

CPCR Act, 2006

1986 - Child Labour Act  
(amend. in 2016)

M. C. MEHTA CASE, 1997 - Landmark judgement

(Sivalasvi incident)

✓ 1st time judiciary gave guidelines  
for child labour - blueprint for laws.  
✓ scrupulously followed intent & spirit.  
compliance reports regular.

- i) Fund for Rehab.
- ii) 20,000 per child labour by employer.
- iii) District magistrate to collect fund & deposit
- iv) Adult member of family - alternative employment.
- v) Labour cell separately for this by labour department.
- vi) Survey of notorious industries

2006, UG1 Notification

No hospitality industries & domestic help.

1986, CLA

Not in any business (hazardous / non-haz) - < 14 yrs

exception: ✓ family business ✓ child artist.

Adolescent Labour (14-18 yrs) - only in non-haz

UGI notifies hazard & non-hazard factories.

6 mths - of gms & fine - Cognizable offence.

— Parent — Employer

finerly for 1st shortly.  
2nd - 10,000.

Regular inspection & welfare fund.

2017 - amend - rules

Recent draft policy on child protection - shelter home cases.

A-24

No child  $< 14$  yrs should be employed on any factory, mines or other hazardous employment. This is in line with A-(39)(e)

Important Enactments :

\* CPCR Act, 2009

For speedy trial of cases, Special Court may be est.

\* Child Labour Prohibition & Regulation Act, 1986

These are specializing on children.

Other laws

> Factories Act

> Mines Act

> Apprenticeship Act

> MINEROGRAHY Acts etc.

Landmark judgment of SC against Child Labour:

M. C. MEHTA CASE

Guidelines:

- i) Est. Child Labour Rehabilitation Fund
- ii) ₹ 10,000/- per child labour employed must be deposited must be deposited into the fund.
- iii) DM empowered to collect & get the amount deposited. An adult member from such family should be given alternative employment in the unit.
- iv) Separate cell to be estd. in Labour department to monitor the implementation & file compliance report.
- v) Survey should be undertaken on state of child labour esp. in industries infamous for employing them.

⇒ The 2006 Notification

Prohibits emp/ of children as :

✗ Domestic help

✗ In hospitality trade.

⇒ 2016 amendment to 1986 act

- i) No child < 14 to be emp. in any business except:  
✓ Family business      ✓ Artist.
- ii) Adolescent Labour (14-18 yrs) - only in non-haz. industries.
- iii) Violation of above shall be cognizable offence,

punishable with 6m - 2 yrs & fine upto 50,000.

iv) → OG empowered to notify hazardous industries.

v) → DM empowered for proper execution.

vi) Regular inspection of sites employing child labour.

vii) Est. a Child Labour Welfare Fund.

### 2017 amendment to Rules

⇒ Family: ✓ Real & legally adopted bro & sisters of  
child

✓ Real bro & sis. of parents

⇒ Not to be employed in retail / manufacturing  
chain

⇒ Not during school & sleeping hrs

⇒ child artists: not to be employed w/o permission of DM;  
against own will; not on street display;

20% income to be on fixed deposit & made available @ 18.

A-25 & A-26

Spirit: Secularism done.

Letter: Freedom of Conscience.

Inner freedom - mould

Outer freedom - expression

Unanimously [Practice - follow rituals  
in CA Profess - pub. spell out facets

Debated [Propagate - spread.  
in CA

No FR to convert other person.

> Force > Fraud > Threat > Inducement

Ex: Ghau Wapsi

Ex: Agri Case:

DM: Free will - nothing to interfere

4 things to look out

STAINIS LAWS CASE, 1977

Ex: Azam Nama - Typical rel. practice.

state can't regulate it.

Loud speaker - Secular practice

state can regulate it.

Essentiality vs  
Associated Case

A-26 → R. to. Religious denominations. (Shia vs Sunni  
Parsi vs Catholic)

4 rights for each denomination

rel. inst. for  
rel & char.

Manage  
rel. affairs

Property  
(mov & imm)

Property  
management  
as per law.



A-21: Land of livelihood - Farmer  
Minority institutions.

A-25

It gives foll. freedoms:

① Inner freedom - to mould one's conscience acc. to one's belief.

② Outward freedom - to Practice Profess Propagate one's religion.

Practice → To follow rituals associated with one's religion.

Profess → To publically spell out tenets of one's religion.

Propagate → To spell out for benefit of others.

However it doesn't give us FR. to convert another to one's own religion. Any conversion has to be by a Free will w/o any element of:

- Force ◦ Fraud ◦ Threat ◦ Inducement.

(Per-stainus Laws vs s. of MP)

The above freedoms may be reasonably restricted

- i) Public order, Health & Morality
- ii) Promotion of Part-III  
iii) Regulating or restricting such economic, political & other secular activities which have got associated with rel. activities.
- iv) Throwing open doors of Hindu temples of public nature for the general public of Hindu community.
- v) Social & religious reform.

A-26

Subject to P.O, health & Morality, religious denominations have right to:

Ist- & maintain religious institutions for rel. & charitable purposes.

Manage one's own religious affairs.

Acquire & hold one's property - both movable & immovable.

Administer such property acc. to law.

The article gives FR to Property to religious denominations.

Similar rights are available to Minority institution - A-30



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