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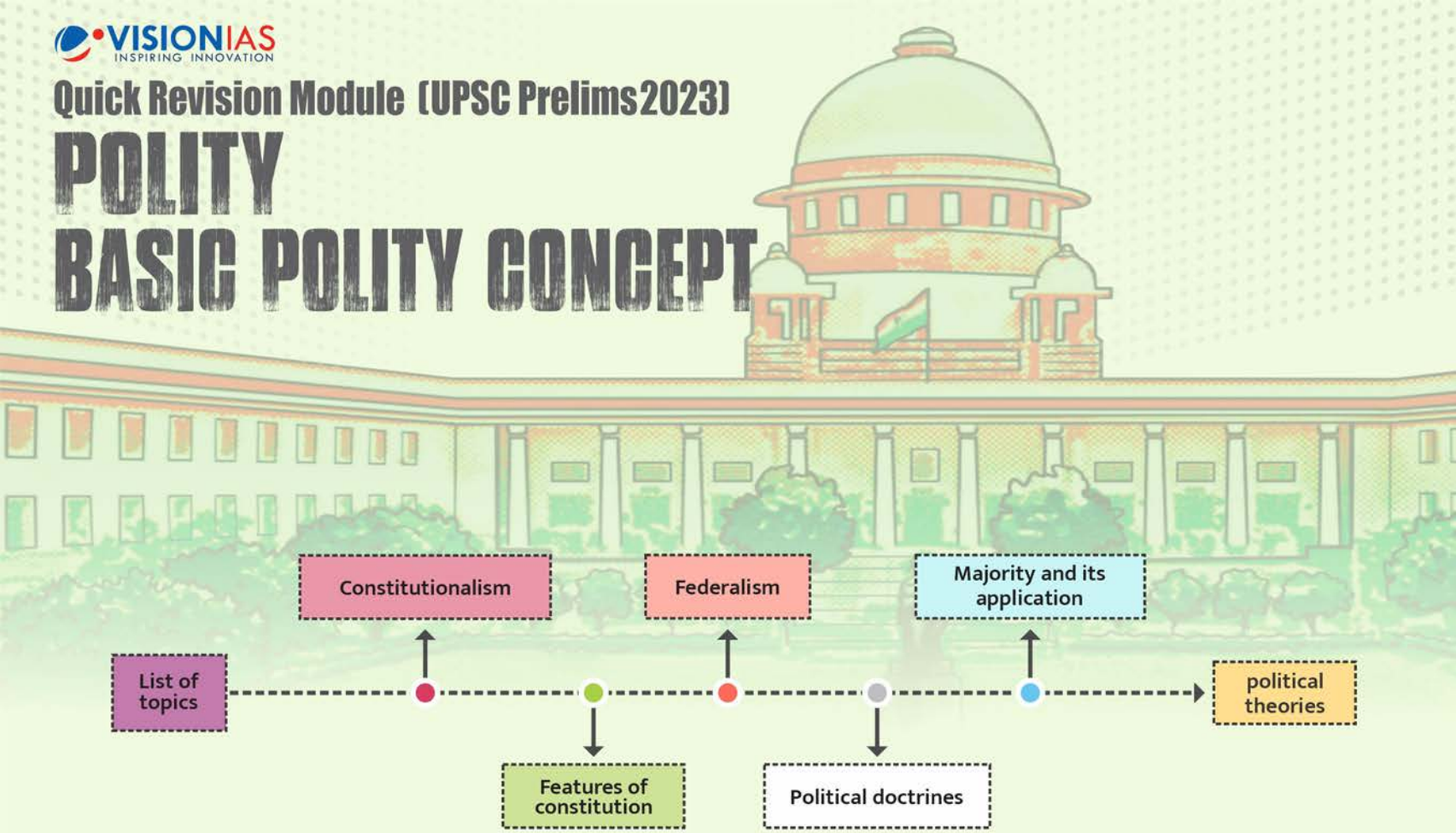
Quick Revision Module (UPSC Prelims 2023)

POLITY
BASIC POLITY CONCEPT



Constitution and Constitutionalism

- **Constitution:** It is a legal document that is the fundamental law of the country having a special sanctity.
- **Constitutionalism:** Constitutionalism is specific limitations on general State powers to prevent the exercise of arbitrary decision-making.
- **Constitutional Morality:** Steadfast adherence to values and principles enshrined in the constitutlon of India
- **Concept of Rule of Law:** (AV Dicey): 1. Absence of arbitrary power 2. Equality before law 3. Individual liberties

Constitutionalism as per SC:

- **Rameshwar Prasad Case:** Constitutionalism abhors absolutism, it is premised on the rule of law in which the subjective satisfaction is substituted by objectivity provided by the Constitution itself.
- **IR Coelho case:** Constitutionalism is a legal principle that requires control over the exercise of governmental power to ensure that the democratic principles shall not be destroyed.

Constitutional Government	Non-Constitutional Government
1. Govt which is elected by public through an election process	1. No elections
2. Head of the state has limited powers	2. Ruler of the country has unlimited powers.
3. Specific tenure for the ruler	3. No ruling limit
Examples: USA, UK, India, Pakistan, etc	Examples: Brunei, Qatar. Swaziland, etc

Written Constitution	Unwritten Constitution
1. Found in legal documents, duty codified	1. Documented but not duly codified.
2. Precise, Definite and Systematic	2. Unsystematic. Indefinite, Imprecise
3. Result of conscious and deliberate efforts.	3. Result of historical developments
Example: USA, France, India	Example: Britain.

Forms of government

The **presidential system** of government is the one in which the executive is not responsible to the legislature for its policies and acts, and is constitutionally independent of the Legislature in respect of its term of office

The **Parliamentary system** of government is the one in which the executive is responsible to the legislature for its policies and acts.

Features

Presidential System (Eg: USA)	Parliamentary system (Eg: India, UK)
Single executive: Real and Nominal just one	Dual executive: Real and Nominal
Non-responsibility	Collective responsibility (Article 74, 75)
Separation of Power	Fusion of power
Political homogeneity not necessary	Political homogeneity
Lower house has fixed term	Dissolution of lower house

In India, constitutionalism ensured by Indian constitution which was adopted by constituent assembly of India on 26 November 1949 and became effective on 26 January 1950. The constitution lays down the framework that demarcates fundamental political code, structure, procedure, power and duties of the government institutions and sets out fundamental rights, directive principles, and duties of the citizens.

Features of Indian constitution

1. Lengthiest written constitution - 25 parts , 12 schedule and more than 400 articles
2. Inspiration from various sources - USA (FR) UK(parliament) etc.
3. Mixture of rigidity and flexibility - amendments by special majority and simple majority
4. Federal system with unitary bias
5. Parliamentary form of government
6. Synthesis of Parliamentary sovereignty and judicial supremacy
7. Integrated and independent judiciary - SC, HC, SUBORDINATES COURT
8. Fundamental rights (A - 12 to 35)
9. Directive principles of state policy (A - 36 to 51)
10. Fundamental duties(A-51A)
11. A secular state (A-25 to 30)
12. Universal adult franchisee
13. Single citizenship
14. Independent bodies (CAG,UPSC, etc.)
15. Emergency provisions(Part 18)
16. Three tier of government

Forms of polity arrangement

There are two types of a government - federal government and unitary government

Unitary system : It is a governing system in which a single central government has total power over all of its other political subdivisions.

Federalism : It is a system of polity in which power is divided between Union and its constituent units i.e. states.

Best examples: UK – Unitary form of Government; In US- Federal Form of Government

Features of Unitary system

1. Single government
2. Constitution will be written or unwritten
3. No division of power
4. Constitution may be supreme or not may be supreme
5. Constitution can be rigid or flexible
6. Judiciary maybe independent or maybe not independent
7. Legislature maybe bicameral or a unicameral

Features of Federalism

1. Written constitution
2. Multiple level of government
3. Rigid Constitution
4. An independent judiciary
5. Dual polity
6. Division of powers
7. Supremacy of Constitution
8. Bicameralism

Characteristics of federalism

1. Two or more levels (or tiers) of government-generally federal (central) and provincial (state) govt.
2. Each tier has own JURISDICTION in specific matters of legislation, taxation and administration.
3. The existence and authority of each tier of government is constitutionally guaranteed.
4. The fundamental provisions of the constitution cannot be unilaterally changed by one level of government. Such changes require the consent of both the levels of government.
5. Courts have the power to interpret the constitution and the powers of different levels of government.
6. Sources of revenue for each level of government are clearly specified to ensure its financial autonomy.
7. The federal system has dual objectives: i) To safeguard and promote the unity of the country ii) Accommodate regional diversity

Federalism in India

(Indian federalism is quasi fedral type having both unitary and federal features)

Unitary features

1. Residuary power with central government
2. State boundary alteration without their consent
3. Single citizenship
4. All India services
5. Post of governor of states
6. Integrated audit by CAG
7. Emergency provisions
8. Appointments of High Court judges by President
9. Article 1 - union of state

Federal features

1. Written constitution
2. Supremacy of the Constitution
3. Division of powers (seventh schedule)
4. Independent judiciary
5. Bicameralism (Rajya Sabha)

More features of unitary features reflect tilt towards central government . However SC in SR Bommai case 1994 held that Federalism is basic structure and part of Indian constitution.

Key doctrines in Indian Polity

1. Separation of Power: (SoP)

- The separation of powers is an approach to govern a state. Under it, a state's government is divided into branches, each with separate, independent powers and responsibilities so that the powers of one branch are not in conflict with those of the other branches.
- Theoretically, we may say that the doctrine of SoP is there in India, but it is only between the Executive and the Judiciary.
- The PM is a part of the Union Executive. yet it is the PM and the council of ministers who are the real executive because the President has to act on the aid and advice of the Council of Ministers (CoM).
- Thus, CoM work in the capacity of both the legislative and executive capacities, which goes against the doctrine of SoP.

2. Constitutional Provisions:

- Article 50-> Judiciary and Executive should be separate
- Articles 121, 122-> judicial conduct of SC and HC judges can not be discussed in Parliament and State legislatures
- Article 361-> President and Governors are not answerable to any court for the exercise and performance of their official duties.

3. Judicial Pronouncements:

- Kesavananda Bharati case: SoP is an integral part of the basic structure of the Constitution
- Indira Gandhi vs Raj Narain Case 1975: SC observed that SoP was limited in India.
- The SC rejected the NJAC Act 2014 as it threatened the independence of the Judiciary.

Doctrine of Checks and Balances

- Checks and balances is a principle of government under which separate branches are empowered to prevent actions by other branches and are induced to share power.
- Checks and balances are applied primarily in constitutional governments.
- They are of fundamental importance in tripartite governments, such as that of the United States. which separate powers among legislative, executive, and judicial branches.

In Indian Context:

- **Checks on Judiciary:** The judges of SC and HC are appointed by the executive, but they may be removed only if they are impeached by the Parliament
- **Checks on Executive:** The executive is responsible to the Legislature in its functioning.
- **Checks by Judiciary on Legislature and Executive:** Through the tool of Judicial review and using the doctrine of basic structure.

Doctrine of Basic Structure

- It is a judicial Innovation that was propounded in the Kesavananda Bharati case on the 24th of April 1973.
- Through this Judiciary put a limitation on the amending powers of parliament so that the basic structure of the constitution can't be amended under Art 368.
- Court held that no part of the constitution was beyond parliament's amending power but the basic structure of the constitution can't be amended even with a constitutionally amendment act .
- The power to amend is not a power to destroy the constitution
- The court didn't define the basic structure but only listed a few principles as being its part
- Several such principles have been propounded by the court from time to time. for example, SR Sommai- Secularism 1994, Judicial independence and judicial review in L Chandra Kumar case

Majority - It is a functional instrument used in Parliament to carry out several businesses like amendment to the Constitution appointment & removal of officials and working of Parliament.

Simple majority: Which requires not less than **50% present and voting .**

Uses

* Passage of ordinary bill and financial bill ,
* Passage of adjournment ,
* Election of speaker and deputy speaker ,
* Approval for president rule and financial rule,
*Censure motions,
*Resolutions passed by House of Parliament for discontinuation of a national emergency ,
* Ratification of constitution by state legislature

Absolute majority: This means not less than **50% of total strength of the house (without subtracting vacancies).** Not used alone , it is used with other majority

Effective majority: This means not less than 50% of (total strength of the house - vacancies i.e excluding vacancies).

Uses

* This is needed in the removal of speaker, deputy speaker, vice-chairman etc.

Special majority

1. Not less than 2/3 members present and voting (no minimum requirement).

Uses :

* Art 249: Rajya sabha can pass a resolution authorizing the parliament to legislate on a state subject for more than 1 year.
* Art 312: Rajya can pass a resolution authorizing the parliament to create a new all India service.

2. Not less than 2/3rd members present and voting with absolute majority. (Art 368) example removal of a judge of SC / HC / CAG / CEC, approval for continuing national emergency (in both houses), Art 169: in state assembly seeking to create / abolish vidhan parishad.

3. 2/3 of total strength of the house. Impeachment of president.

4. Constitutional Amendment requiring Consent of 50% of states needed

a. On a matter of distribution of executive or legislative powers between center and states.
b. On a matter involving SC and HC.
c. On a matter involving any list in 7th schedule.
d. Representation of states in parliament.
e. On amendment in procedure of Election of president.
f. Art 368 itself.
g. Goods and Services Tax council.

Political theories

Liberty - It is the absence of constraints and facilitation to the ability of people to choose , believe and act on their potential. It's external construct. It's personal freedom that is granted to people by external authority. Example - liberty of thought expression , belief , faith , expression and worship in Indian constitution.

Liberty are of two type

1. **Negative liberty** - Also know as liberty from law . It's narrow interpretation. It focuses on absence of constraints
2. **Positive liberty** - It's known as liberty by law. It has wider interpretation. It focuses on facilitation to environment developing full potential of an individual.

Freedom - It is the absence of constraints and facilitation to the ability of people to freely express themselves and develop their potential. It is the internal construct where one individual decides his own action. It is the capability of an individual to make decision without external control.

Republic - Absence of privilege class and political sovereignty with people.

Equality - Absence of special privileges to any section of society and provision of adequate opportunity for all individuals without any discrimination.

Sovereign - Freedom of a country to conduct its own affairs both internally and externally.

Democratic Socialism - Faith in public and private sectors coexistence.

Secular - Independence of a state action from religious influence. Indian secularism is a positive secularism where all religion enjoys equal status.

Democratic - Possession of supreme power by people.

Parliament democracy - Arrangement of government where executive is responsible to the legislature for its policies and actions.

Feminist - Feminists are those men and women who believe that many of the inequalities we see in society between men and women are neither natural nor necessary and can be altered so that both women and men can lead free and equal lives.

Social justice - Social justice is a political and philosophical theory which asserts that there are dimensions to the concept of justice beyond those embodied in the principles of civil or criminal law, economic supply and demand, or traditional moral frameworks.

Rights - These are legal, social, or ethical principles of freedom or entitlement; that is, rights are the fundamental normative rules about what is allowed of people or owed to people according to some legal system, social convention, or ethical theory.

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(UPSC PRELIMS 2024) POLITY

Historical background of Indian constitution

The historical underpinnings and evolution of the Indian constitution can be traced to many regulations & acts passed before Indian Independence. These can be summarized under two heads:

THE COMPANY RULE (1773-1858)

Started after British was granted **'Diwani Rights' post its victory in** the **Battle of Buxar** (1764)

THE CROWN RULE (1858-1947)

Started after the **Revolt of 1857**

Important timeline in historical underpinning

- **1600** – Arrival of British as traders (EIC), in India
- **1765** – Grant of Diwani Rights to EIC, by Shah Alam
- **1773** – Regulating Act
- **1781** – Act of Settlement
- **1784** – Pitt's India Act
- **1813** – Charter Act
- **1833** – Charter Act
- **1853** – Charter Act
- **The Revolt of 1857**
- **1858 GoI Act**
- **1861, 1892, 1909** – Indian Council Acts of 1861, 1892 & 1909 respectively
- **1919** – GoI Act of 1919
- **1932** – Communal Award
- **1935** – GoI Act of 1935
- **1947** – Indian Independence Act of 1947

The Company Rule [1773-1858]

The Crown rule [1858-1947]

GoI: Government of India
EIC: East India Company

Constitutional Developments under THE COMPANY RULE

Regulating Act of 1773	Pitts India Act 1784	Charter Act 1813	Charter Act 1833	Charter Act 1853
Governor of Bengal was designated as **GG of Bengal.** Governors of Madras and Bombay were made subordinate to GG of Bengal. Beginning of **Central Administration.** **COD** was required to report on its revenue, civil & military affairs in India. **1774: First Supreme court of India** at Fort Williams (Minimal Powers). **Warren Hasting** (1st GG of Bengal).	**Dual system** of Government (COD for commercial functions, BOC for political functions). Company's territories were called **"British Possession in India".** BOC was empowered thus giving **British government supreme control over company's affairs.**	**Ended EIC's monopoly** over trade with India, **except in Tea and Opium.** Financial Provision for promotion of science & literature. Allocation of an annual **sum of Rs. 1 lakh for the promotion of education among the natives.**	Final step towards **"Centralization".** GG of Bengal was made **GG of India.** **Lord William Bentinck:** 1st GG of India. Other name: **Saint Helena Act.** 'The legislative **powers of governors of** Bombay & Madras Presidencies were removed'. Failed attempt to introduce a system of open competition for Civil Services. Law commission **(under Lord Macaulay)** to codify Indian Laws. **Ended the company's monopoly of trade in tea and trade with China.**	For the first time, the legislative and executive powers of the Governor General's council were separated. Thus, it marked the beginning of **Parliamentary System** in India. Indians were allowed in "Covenanted" Civil Services. It introduced, for the first time, **local representation** in the Indian central legislative council.

**GG = Governor General
**COD = Court of Directors
**BOC = Board of Control

Constitutional Developments under THE COMPANY RULE

Government of India Act 1858	Indian Council Act of 1861	Indian Council Act of 1892	Indian Council Act of 1909	Government of India Act 1919	Government of India Act 1935	Indian Independence Act 1947
Transferred GOI from the Company to the **British Crown.** GG of India was designated as **Viceroy** of India. Lord Canning: 1st Viceroy of India. SOS was established. Abolished BOC and COD, thus ending the dual system	Beginning of **Representative Institutions.** **Initiated decentralization** as legislative powers of Bombay and Madras presidencies were restored. Recognised **portfolio systems** and ordinance power of Viceroy. New LC's established at Bengal, Punjab, and NWFP.	**Increased the number of non official members** in the central & provincial LC. **Increased functions of** LCs, eg-power to discuss Budget	**Morley-Minto reforms** Increased size of central and provincial LCs. **Separate electorate for Muslims.** Enlarged deliberative functions of LC, eg-supplementary questions & resolutions on Budget. **Indians in Executive council e.g.-** Satyendra Prasad Sinha.	**Montaque-Chelmsford reforms.** Introduction of **responsible government.** **Dyarchy** was introduced at **provincial level** (Division into transferred and reserved subjects). **Bicameralism at centre** was introduced. For first time, **direct elections** (Limited franchise). **Extended communal representation:** Sikhs, Indian Christians, Anglo Indians & Europeans. 'Provided for establishment of **Public Service Commission,** and **Statutory Commission.**	Establishment of All India Federation (Comprising of Provinces and Princely states). 3 Lists: federal, Provincial & Concurrent. **Abolished Dyarchy at provincial level** and introduced it at central level. **Bicameralism at Provincial** level. Extended communal representation: Depressed classes Women, Labour. Establishment of RBI & Federal Court.	End of British Rule. Abolished the office of Viceroy & SOS. Empowered Constituent Assemblies to frame and adopt Constitutions. Freedom to princely states to join the dominion of India or Pakistan or to remain Independent.

**SOS= Secretary of State
**LC = Legislative council

MAKING OF CONSTITUTION

Important Timeline Related To Constituent Assembly

1906
The idea of C.A was implicit in the demand for swaraj.

1934
The idea of C.A, was put forward explicitly, by M.N. Roy

1935
For the first time the INC, officially demanded a C.A.

1940
August Offer
The demand of C.A was accepted in principle.

1942
Cripps Proposal accepted demand of C.A but ML rejected this proposal.

1946
Cabinet Mission
Put forth a scheme for the C.A which more or less satisfied the M.L

Nov 1946
C.A was constituted under cabinet Mission Plan.

9th Dec, 1946
'First meeting of CA was presided **Dr. Sachdanand Sinha** (oldest member, based on French practice), later **Dr. Rajendra Prasad** and **HC Mukherjee** were elected as President and VP respectively)

13th Dec 1946
J.L Nehru moved the historic "objective resolution" which was unanimously adopted on Jan 22, 1947.

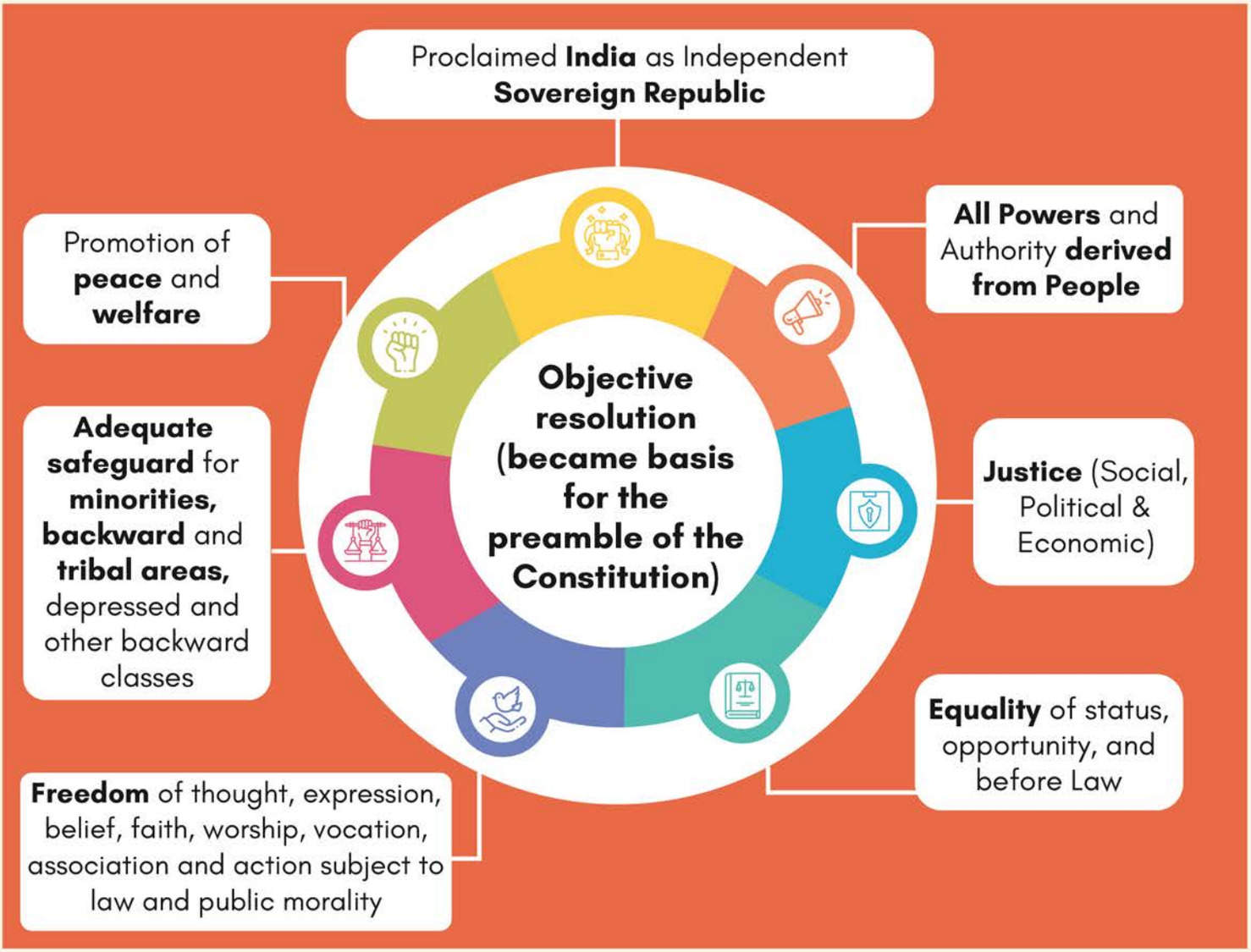
1947
Indian Independence Act of 1947 was passed. The changes brought in C.A:-

- **C.A** was made a **fully sovereign** body.
- It also become a **legislative body** (Chaired by G.V.Mavlankar) & the first parliament of free India.
- Strength was reduced to 299:- as ML members hailing from areas included Pakistan, withdrew.

26th November 1949
The motion on draft constitution was declared as passed. It contained a preamble, 395 Articles & 8 schedules.

26th January 1950
was chosen as the "date of commencement"
Reason:- Purna swaraj day was celebrated on 26th January 1930, after Lahore session.

Note:-
C.A —— Constituent Assembly
M.L —— Muslim League



COMPOSITION OF CONSTITUENT ASSEMBLY

STRENGTH

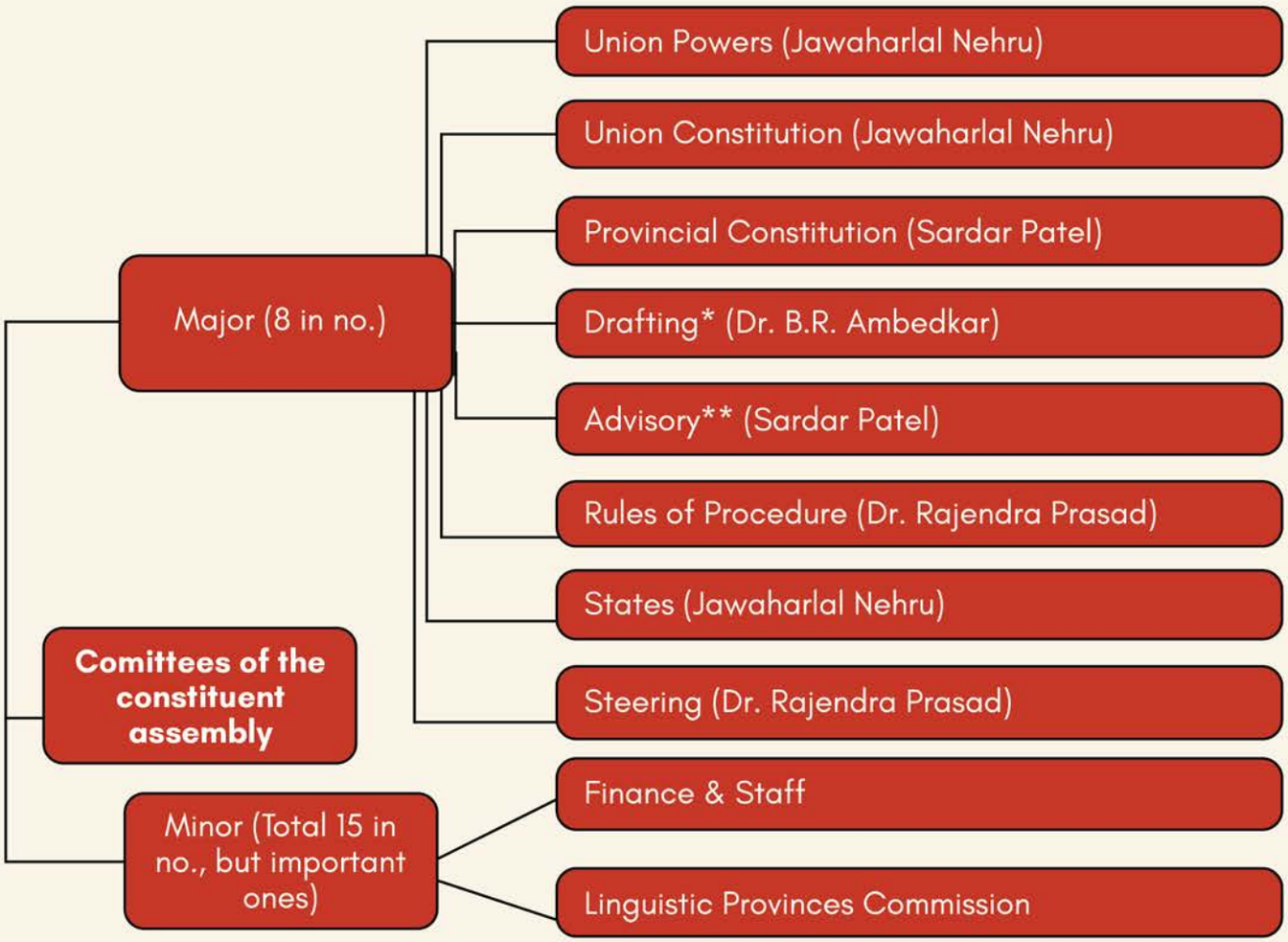
Jotal strength: 389 of these, **296** Seats were alloted to **British India** and **93** Seats to the **Princely States.**

PARTLY NOMINATED & PARTLY ELECTED

Representatives of princely states were nominated by the heads of Princely States, Whereas representatives of **British India were elected indirectly by** the method of proportional representation by means of single transferable vote.

SOME RELATED FACTS

- It comprised of **representatives of all sections** of Indian society (Hindus, Muslims, Sikhs, Parsis & Anglo-Indians).
- **Mahatma Gandhi was not member of it**


Comittees of the constituent assembly
Major (8 in no.)
Union Powers (Jawaharlal Nehru)
Union Constitution (Jawaharlal Nehru)
Provincial Constitution (Sardar Patel)
Drafting* (Dr. B.R. Ambedkar)
Advisory** (Sardar Patel)
Rules of Procedure (Dr. Rajendra Prasad)
States (Jawaharlal Nehru)
Steering (Dr. Rajendra Prasad)
Minor (Total 15 in no., but important ones)
Finance & Staff
Linguistic Provinces Commission

*Drafting Committee (Other Members)
T.T. Krishnamachari (replaced D.P. Khaitan)
N.G. Ayyangar
A.K. Ayyar
Dr. K.M. Munshi
S.M. Saadullah
N.M. Rau (replaced B.L. Mitter)

** Advisory Committee

- Fundamental Rights (J.B. Kriplani)
- Minorities (H.C. Mukherjee)
- North East Frontier tribal areas and Assam excluded & partially excluded areas (G.D. Bardoloi)
- Excluded and partially excluded areas (other than Assam) – (A.V. Thakkar)

Criticism of Constituent Assembly

- ★ Not a representative body as its **members were not elected directly.**
- ★ Not a sovereign body as it was **created by the proposal of British Government.**
- ★ Time consuming
- ★ Dominated by Congress
- ★ Dominated by Lawyers, Politicians
- ★ Dominated by Hindu Community

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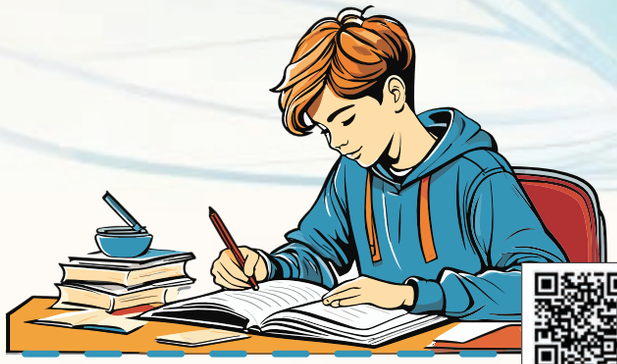

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Revision is crucial in the preparation for the UPSC Prelims due to the vast syllabus and the highly competitive nature of the examination. Effective revision consolidates knowledge, aids in long-term retention, and boosts confidence, allowing aspirants to access information quickly and accurately during the exam.

Advantages of Smart Revision Before the Prelims Exam

- Efficiency in Syllabus Coverage
- Enhanced Retention and Recall
- Identification of Weak Areas
- Integration of Current Affairs
- Effective Time Management
- Building Confidence and Reducing Anxiety

Smart Revision Techniques

1. Active Recall: Practice retrieving information from memory to enhance retention.

2. Spaced Repetition: Revisit topics at regular intervals, to solidify memory.

3. Mock Tests: Regularly simulate exam conditions to identify focus areas and current status.

4. Focused Revision: Prioritize high-yield topics and current affairs.

5. Mind Maps: Use visual aids such as infographics, mind maps, etc. to organize and connect concepts.

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7. Peer Discussions: Engage with peers to discuss and quiz each other on key topics.

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Smart revision is key to mastering the UPSC Prelims. By adopting strategic revision techniques and leveraging VisionIAS Quick Revision Classes, aspirants can enhance their preparation and boost their exam confidence.

PREAMBLE

Source of Authority of Constitution

"We, The People of India, having solemnly resolved to constitute India into a **Sovereign Socialist Secular Democratic Republic** and to secure to all its citizens:"

Nature of Indian State

- Justice, social, economic and political;
- Liberty of thought, expression, belief, faith and worship;
- Equality of status and of opportunity; and to promote among them all
- Fraternity assuring the dignity of the individual and the unity and integrity of the Nation;

Date of adoption of constitution

In our Constituent Assembly this **twenty-sixth day of November, 1949**, do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION

NATURE OF INDIAN STATE

Sovereign

- Independent State (Free in internal/ external affairs)
- No dominion of other nation
- UN or Commonwealth membership has no effect on India's sovereignty

Democratic

- Indirect democracy - representative parliamentary democracy
- Some manifestations - Universal adult franchise, periodic elections etc
- Political + social + economic democracy

Republic

- Two categories of democratic polity - monarchy and republic
- Monarchy – head of state queen (hereditary position) eg- Britain
- Republic – elected (directly or indirectly) head
  - Political sovereignty in people & not in single individual like a king
  - Absence of any privileged class

OBJECTIVES OF INDIAN CONSTITUTION

Justice (3 forms) (taken from Russian revolution)

- **Social** - equal treatment of all citizens without social distinction (caste,religion etc.)
- **Economic** - eliminating inequalities in wealth, income and property
- **Social + economic = distributive justice**
- **Political** - all citizens have equal political rights, equal access to all political offices and equal voice in the government.

Liberty, Equality and Fraternity

- **Taken from French revolution**
- **Union of trinity – one cannot be divorced from the other two**

Liberty

- Absence of restraints on the activities of individuals
- Providing opportunities for the development of individual personalities
- **Liberty of thought, expression, belief, faith and worship**
- **Not absolute but qualified liberty** with limitations mentioned in the Constitution itself

Equality

- Absence of **special privileges** to any section
- Provision of adequate opportunities for all individuals without any discrimination
- **Equality of status and opportunity**

Three dimensions of equality

1. **Civic** (Art 14 to 18 of Fundamental Rights)
2. **Political** (Art 325 & 326)
3. **Economic** (Art 39 of DPSP)

- **325** - no person is to be declared ineligible for inclusion in electoral rolls on grounds of religion, race, caste or sex
- **326** - elections to the Lok Sabha and the state assemblies to be on the basis of adult suffrage

Fraternity

- Sense of brotherhood
- Manifestations – single citizenship, fundamental duty to promote harmony & brotherhood
- **Ensure dignity of individual & unity & integrity of nation**

Is Preamble a part of Constitution?

YES (but it is not a source or limitation of power to legislature and it is non-justiciable)

Related Cases

- Berubari Union case, 1960 –not a part
- Kesavananda Bharti case, 1973 –is a part
- LIC of India case, 1995 –part of the constitution

IS PREAMBLE AMENDABLE?

Kesavananda Bharati case, 1973
Preamble can be amended under Article 368, subject to the condition that no amendment is done to the 'basic features'.

Amended only once so far
42nd Constitutional Amendment, 1976

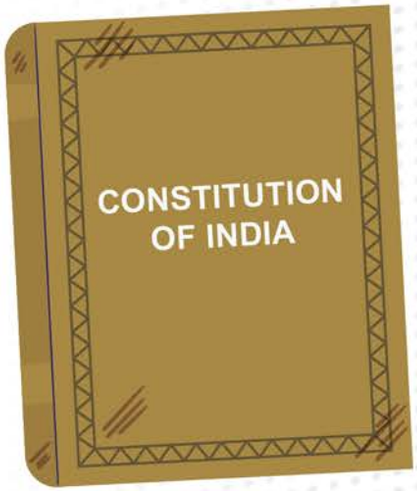
42nd AMENDMENT ADDITIONS

Socialist

Democratic Socialism (public & private sector coexist – mixed economy)

- Not **communistic socialism** (abolition of private property and nationalization of all means of production & distribution)
- Blend of Marxism & Gandhism with heavy tilt towards Gandhian Socialism
- DPSP (also socialistic connotation)

Secular



- Positive concept of secularism
- All religion has same status & support from state
- **Article 25 to 28** (fundamental right for freedom to religion)

Integrity

- Integrity was added to reflect broader interpretation of fraternity which promotes spirit integral structure of nation which consist of diverse Caste, Class, Region, Religion, Language, Sex, Ideologies etc.

SIGNIFICANCE OF THE PREAMBLE

PREAMBLE

- Preface/essence/soul of the constitution
- Embodies the basic philosophy and fundamental values
- Contains the grand and noble vision of the Constituent Assembly
- Resemble the Declaration of United States of American independence
- Based on the 'Objectives Resolution, drafted and moved by Pandit Nehru in Dec 1946, and adopted by the Constituent

SOME RELATED FACTS

1

Till the passage of the Indian Independence Act, 1947, India was a dependency (colony) of the British Empire.

From August 15, 1947 to January 26, 1950, India's political status was that of a **dominion** in the British Commonwealth of Nations.

India ceased to be a British dominion on **January 26, 1950**, by declaring herself a sovereign republic.

However, Pakistan continued to be a British Dominion until 1956.

2 Two Types of Democracy–Direct and Indirect.

DIRECT DEMOCRACY

people exercise their supreme power directly (Switzerland). Four devices of direct democracy are

REFERENDUM
Whereby a proposed legislation is referred to the electorate for settlement by their direct votes

RECALL
Where voters can remove a representative or an officer before the expiry of his term, when he fails to discharge his duties properly

INITIATIVE
Where people can propose a bill to the legislature for enactment

PLEBISCITE
Obtaining the opinion of people on any issue of public importance.

INDIRECT DEMOCRACY

Representatives elected by the people exercise the supreme power. Thus, also known as Representative Democracy. It is of two kinds— Parliamentary and Presidential

QUICK REVISION MODULE (UPSC PRELIMS 2022) POLITY

UNION AND ITS TERRITORY

(Part 1 of the Constitution, Articles 1 to 4)

ARTICLE 1

- India, that is Bharat, shall be a **Union of States**.
- The States and the territories there of shall be as specified in the **First Schedule**.
- The territory of India shall comprise:-
  - The territories of the State.
  - Union territories.
  - Territories that may be acquired by the GOI at any time.

WHY 'UNION OF STATES' RATHER THAN A 'FEDERATION OF STATES'

The Indian federation is **not the result of an agreement** among the States like the American federation.

The States have **no right** to secede from the federation.

Note 1. **'Territory of India'** > **'Union of India'**

(Wider expression)

'Territory of India' → Not only States but Union territories and territories that may be acquired by GOI.

'Union of India' → Only States.

2. The states are the members of the federal system and share a distribution of the federal system and share a distribution of power with the centre. The UTs & acquired territories-**directly administered** by the central Govt.

ARTICLE 2

Empowers the parliament to

Admit into the Union of India

or

Establish

New states on such terms and condition as it thinks fit.

Note: Article 2 relates to the admission or establishment of new states that are **not part of the Union of India.**

ARTICLE 3

AUTHORISES THE PARLIAMENT TO

- Form a new State by
  - Separation of territory from any state or,
  - by uniting two or more states or parts of states or,
  - by uniting any territory to a part of any state.
- Increase/diminish the area of any state.
- Alter the boundaries/names of any state.

TWO CONDITIONS LAID DOWN IN ARTICLE 3

1. **Prior recommendation of the president** before such bill is presented in the parliament.

2. **Before recommendation**, the President has to refer such bill to the concerned state legislature for expressing their view within a specified period.

Note:

1. **The President (or Parliament)** is **not bound** by the views of the **state legislature** and may either accept or reject them, even if views are received in time.

2. **An amendment** to the Bill-**No fresh reference** needs to be made to the state legislature.

3. In case of **UTs**- **No reference** need to be made to the concerned legislature.Parliament itself takes necessary action.

Inference - India is an indestructible union of destructible states.

ARTICLE 4

Laws made under (Article 2 & Article 3).

↓

NOT considered as <u>amendment</u> of the constitution **under <u>Article 368.</u>**

↓

Therefore, such laws can be passed by a **simple majority** and by the **ordinary legislative process.**

IMPORTANT SC JUDGEMENTS

- **Berubari Union case**
  For ceding Indian territory to a foreign state → Constitutional Amendment required **under Article 368.**
- In another judgement in 1969, SC held:

Settlement of a boundary dispute between India and another country.	→	DOES NOT require a constitutional amendment. ↓ Can be done by executive action.

VARIOUS COMMISSION SET UP FOR RE-ORGANISATION OF STATES

Date of formation	Commission name	Report
June, 1948	Linguistic Provinces commission ↓ Chairman – S.K. Dhar	**Re-organisation of state** Linguistic factor ✗ Administrative convenience ✓
December,1948	Linguistic Provinces committee ↓ Member – JVP (Jawahar Lal Nehru, Vallabhbhai Patel and Pattabhi Sitaramayya)	Rejected language as the basis for re-organisation of states.
December, 1953	Fazi Ali commission ↓ Chairman – Fazi Ali Member – K M Panikkar , H N Kunzru	Accepted language as the basis for re-organisation of state. **But, rejected the theory of one language one state**. GOI accepted the recommendations with certain modification.

Note: Andhra Pradesh – First linguistic state was created in 1953 by separating the Telugu speaking areas from the Madras state.

VISIONIAS
INSPIRING INNOVATION

Quick Revision Module (UPSC Prelims 2024) Polity

CITIZENSHIP

India has 2 types of people

CITIZENS

- Full members of the Indian State.
- Enjoy all civil and political rights.

Rights and privileges on the citizens of India (not given to aliens)

- Right against discrimination (Article 15).
- Right to equality of opportunity in the matter of public employment (Article 16).
- Right to freedom of speech and expression, assembly, association, movement residence and profession (Article 19)
- Cultural and educational rights (Articles 29 and 30)
- Right to vote in elections to the Lok Sabha and state legislative assembly
- Right to contest for the membership of the Parliament and the state legislature.
- Eligibility to hold certain public offices, that is, President, Vice- President, Judge of Supreme Court & High courts, Governor, Attorney General & Advocate General

ALIENS

- Citizens of some other state.
- Do not enjoy all the civil and political rights.

Friendly aliens

- Subjects of those countries that have cordial relations with India.

Enemy Aliens

- Subjects of that country that is at war with India.
- Enjoy lesser rights than the friendly aliens (e.g. - no protection against arrest & detention.

Certain facts

- Some duties of citizen:- respecting the national flag and national anthem, defending the country.
- In India both a citizen by birth as well as a naturalised citizen are eligible for the office of President while in USA, only a citizen by birth is eligible.
- India provides for a single citizenship only. There is no separate state citizenship. Some other federal states like USA and Switzerland, adopted the system of double citizenship.

CONSTITUTIONAL PROVISIONS

(Part II – Article 5-11)

Article-5

- Citizenship at the commencement of the constitution.

Article-6

- Rights of citizenship of certain person who have migrated to India from pakistan.

Article-7

- Rights of Citizenship of certain Migrants to Pakistan who later returned to India.

Article-8

- Rights of Citizenship of certain person of Indian origin residing outside India.

Article-9

Persons voluntarily acquiring citizenship of a foreign state not to be citizens

- No person shall be a citizen of India by virtue of Article 5, or be deemed to be a citizen of India by virtue of Article 6 or Article 8, if he has voluntarily acquired the citizenship of any foreign State.

Article-10

Continuance of the rights of citizenship

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

Article-11

Parliament to regulate the right of citizenship by law

- The Constitution does not deal with the problem of acquisition or loss of citizenship. It empowers the Parliament to enact a law to provide for such matters.
- Parliament has the right to make any provision with respect to the acquisition and termination of citizenship and all other matters relating to citizenship
- Accordingly, the Parliament of India enacted the **Citizenship Act, 1955,** which has been amended many times subsequently (most recently in 2019).

VISIONIAS
INSPIRING INNOVATION

ACQUISITION OF CITIZENSHIP

(under Citizenship Act 1955)

By Birth - A person born in India

Between 26th January 1950 and 1st July 1987

- Is citizen irrespective of the nationality of his parents.

Between 1st July, 1987 and 3rd December 2004

- Is citizen if either of his parents is a citizen of India at the time of his birth.

On or after 3rd December 2004

- Is citizen if both the parents are citizens of India or one of the parents is a citizen of India and the other is not an illegal migrant at the time of his birth.

- **A person shall not be a citizen of India at the time of his birth, if**

  - Either his father or mother is a foreign diplomat and he/she is not a citizen of India.
  - Either his father or mother is an enemy alien and the birth occurs in a place then under occupation by the enemy.

By Descent

A person born outside India will be considered as Citizen of India by descent, if

Between 26th January 1950 and 10th December 1992

- If his father was a citizen of India by birth at the time of his birth.

Between 10th December 1992 and 3rd December 2004

- If either of his parents was a citizen of India by birth at the time of his birth.

On or after 3rd December 2004

- Only if his birth is **registered at an Indian Consulate within one year from the date of birth** or with the permission of the Central Government, after the expiry of the said period.
- Further, the parents have to declare in writing that the minor does not hold passport of another country.

By Registration

Following persons can acquire citizenship by registration

- **Persons of Indian origin** (If he, or either of his parents, was born in undivided India or in such other territory which became part of India after 15th day of August 1947)

  a) Who are ordinarily resident in India for SEVEN YEARS before making application or

  b) Who are ordinarily resident in any country or place outside undivided India.
- Persons who are married to a citizen of India and who are ordinarily resident in India for SEVEN YEARS before making application under this section.
- Minor children whose both parents are Indian citizens under this section.
- **Persons of full age and capacity**

  a) Whose parents are registered as citizens of India;

  b) Who, or either of his parents, was earlier citizen of independent India, and has been residing in India for one year immediately before making an application for registration.

  c) Who has been registered as an overseas citizen of India for five years, and who has been residing in India for one year before making an application for registration.

NOTE

*** An applicant shall be deemed to be ordinarily resident in India if –**

(i) He has resided in India throughout the period of twelve months immediately before making an application for registration;

(ii) He has resided in India during the eight years immediately preceding the said period of twelve months for a period of not less than six years.

*** All the above categories of persons must take an oath of allegiance before they are registered as citizens of India**

By Naturalization

- Citizenship of India by naturalization can be acquired by a foreigner **(not illegal migrant)** who is ordinarily resident in India for TWELVE YEARS (throughout the period of twelve months immediately preceding the date of application and for ELEVEN YEARS in the aggregate in the FOURTEEN YEARS preceding the twelve months) and other qualifications:

  a) Not be subject or citizen of any country where citizens of India are prevented from becoming subjects or citizens by naturalization.

  b) Renounce the citizenship of other country in the event of his application for Indian citizenship being accepted.

  c) Good character.

  d) Adequate knowledge of a language specified in the Eighth Schedule to the Constitution.

  e) Intension to reside in India, or to enter into or continue in, service under a Government in India or under an international organization of which India is a member.

NOTE

*** The Government of India, may waive all or any of the above conditions for naturalization, if in its opinion, the person has rendered distinguished services to the cause of science, philosophy, art, literature, world peace or human progress generally.**

*** All such persons who acquire citizenship by naturalization, shall take an oath of allegiance to the Constitution of India.**

By Incorporation of territory

- If any foreign territory becomes a part of India, the Government of India, may by orders notified in the Official Gazette, specify the persons who shall be citizens of India by reasons of their connection with that territory, and those persons shall be citizens of India as from the date to be specified in the order.

- E.g. when Puducherry became a part of India, people of Pondicherry became the citizens of India under the Citizenship (Pondicherry) Order, 1962, issued under the Citizenship Act, 1955.

LOSS OF CITIZENSHIP

Renunciation of Citizenship

- If any citizen of full age and capacity, who is also a citizen or national of another country, makes a declaration renouncing his Indian citizenship.
- Provided that if any such declaration is made during any war in which India may be engaged, registration thereof shall be withheld until the Government of India otherwise directs.
- Where a person ceases to be a citizen of India, every minor child of that person shall there upon cease to be a citizen of India, provided that any such child may, within one year after attaining eighteen years of age, make a declaration that he wishes to resume Indian citizenship.

Termination of Citizenship

- Any citizen of India who voluntarily acquires, or has at any time between the 26th January 1950 and the commencement of this Act voluntarily acquired, the citizenship of another country, cease to be a citizen of India.
- However, it does not apply during any war in which India may be engaged.
- The acquisition of another country's passport is also deemed under the Citizenship Rules, 1956 to be voluntary acquisition of another country's nationality.

Deprivation of Citizenship by government

- If citizenship obtained by means of fraud, false representation or concealment of any material fact; or
- If citizen has shown himself by act or speech to be disloyal or disaffected towards the Constitution of India; or
- If citizen has, during the war in which India may be engaged, unlawfully traded or communicated with an enemy or been engaged in any business to assist any enemy; or
- If citizen has, within five years after registration or naturalization, been sentenced in any country to imprisonment for a term of not less than two years; or
- If citizen has been ordinarily resident out of India for a continuous period of seven years. (not applicable to students outside India or people in service of government of India or an International organization of which India is a member).

Overseas Citizen of India (OCI) Cardholder

Who is eligible?

- **The following categories of persons (except Pakistan and Bangladesh or such other country as Central Government may notify) are eligible to apply under**

  a) Who is a citizen of another country, but was a citizen of india at the time of, or at any time after, the commencement of the constitution; or

  b) Who is a citizen of another country, but was eligible to become a citizen of India at the time of the commencement of the constitution; or

  c) Who is a citizen of another country, but belonged to a territory that became part of India after the 15th day of August, 1947; or

  d) Who is a child or a grand-child or a great grandchild of such a citizen; or

- **A person, who is minor child of a person mentioned in clause (a); or**
- **A person, who is a minor child, and whose both parents are citizens of India or one of the parents is a citizen of India; or**
- **Spouse of foreign origin of a citizen of India or spouse of foreign origin of an Overseas Citizen of india Cardholder and whose marriage has been registered and subsisted for a continuous period of not less than two years immediately preceding the presentation of the application.**

Rights not available to OCI

- **The OCI is not entitled to vote, be a member of Legislative Assembly or Legislative Council or Parliament, cannot hold constitutional posts such as President, Vice President, Judge of Supreme Court or High Court etc. and he/she cannot normally hold employment in the Government.**

Benefits for OCI card holder

- **Multiple entry, multi-purpose lifelong visa to visit India;**
- **Exemption from reporting to Police authorities for any length of stay in India; and**
- **Parity with NRIs**

  a) In financial, economic and educational fields except in the acquisition of agricultural or plantation properties.

  b) In the matter of inter-country adoption of Indian children.

  c) In respect of entry fees to be charged for visiting the national monuments, historical sites and museums in India.

  d) In Pursuing the following professions in India - Doctors, dentists, nurses and pharmacists; advocates; architects; and chartered accountants;

  e) To appear for the All India Pre-medical Test or such other tests to make them eligible for admission.

- **Parity with resident Indian nationals**

  a) In the matter of tariffs in air fares in domestic sectors in India.

  b) In entry fees to visit national parks and wildlife sanctuaries in India.

Earlier Person of Indian Origin (PIO) and OCI card holders were separate categories but they were merged for simplification and uniformity.

Citizenship

Amendment Act, 2019

Key provisions

- **Illegal Migrants** who fulfil four conditions, will not be treated as illegal migrants
  - They are **hindus, sikhs, Buddhists, Jains, Parsis, or Christians**
  - They are from **Afghanistan, Bangladesh or Pakistan**
  - They **entered** india on or before December 31, 2014
  - They are **not in certain tribal areas of Assam, Meghalaya, Mizoram, or Tripura** included in the **Sixth Schedule** to the Constitution, or areas Under the **"Inner Line" Permit** i.e **Arunachal Pradesh, Mizoram, and Nagaland.**
  - These tribal areas include **karbi anglong (in Assam),Garo Hills (in Meghalaya), Chakma District (in Mizoram),**and **Tripura Tribal Areas District.**
- All **Legal Proceedings against above** category of migrants in respect of their illegal migration or citizenship will be closed.
- The **period of naturalization** to obtain citizenship has been reduced from **11 Years to 5 Years** for above Category of migrants.
- The central government may **cancel registration** of OCIs, If the OCI has Violated Citizenship Act or any other law so notified by the central government. Also the cardholder has to be given an opportunity to be heard. The act provides that the central Government may cancel registration of OCIs on **five grounds including**
  - Registration through fraud.
  - Showing disaffection to the constitution,
  - Engaging with the enemy during war.

* Necessity in the interest of sovereignty of india, security of state or public interest
* If within five years of registration the OCI has been sentenced to imprisonment for two year or more.

National Register of Citizens(NRC)

- It is a list of Indian citizens to decide bona fide Indian citizens and those who fail to enlist in the register will be deemed illegal migrants.
- National Register of Citizens, 1951 was prepared after the conduct of the Census of 1951 in respect of each village, showing the houses or holdings in a serial order and indicating against each house or holding the number and names of persons staying therein. These registers covered each and every person enumerated during the Census of 1951.
- **NRC Vs Census:** The census is conducted every decade, at national level and gives the state a window into the size and nature of Indian population. But the NRC is a unique exercise where the onus to prove citizenship lies with the citizens. They have to, through a documentary evidence, show how they have come to be citizens of India.
- Recently, the NRC for the first time was updated only in Assam in August 2019.

National Population Register

- The National Population Register (NPR) is a list of "usual residents of the country". A "usual resident of the country" is one who has been residing in a local area for at least the last six months or intends to stay in a particular location for the next six months. So, NPR may have foreigners as well.

VISION IAS
INSPIRING INNOVATION

QUICK REVISION MODULE
(UPSC PRELIMS 2024)

POLITY

FUNDAMENTAL RIGHTS PART-1

AHMEDABAD | BENGALURU | BHOPAL | CHANDIGARH | DELHI | GUWAHATI | HYDERABAD | JAIPUR | JODHPUR | LUCKNOW | PRAYAGRAJ | PUNE | RANCHI

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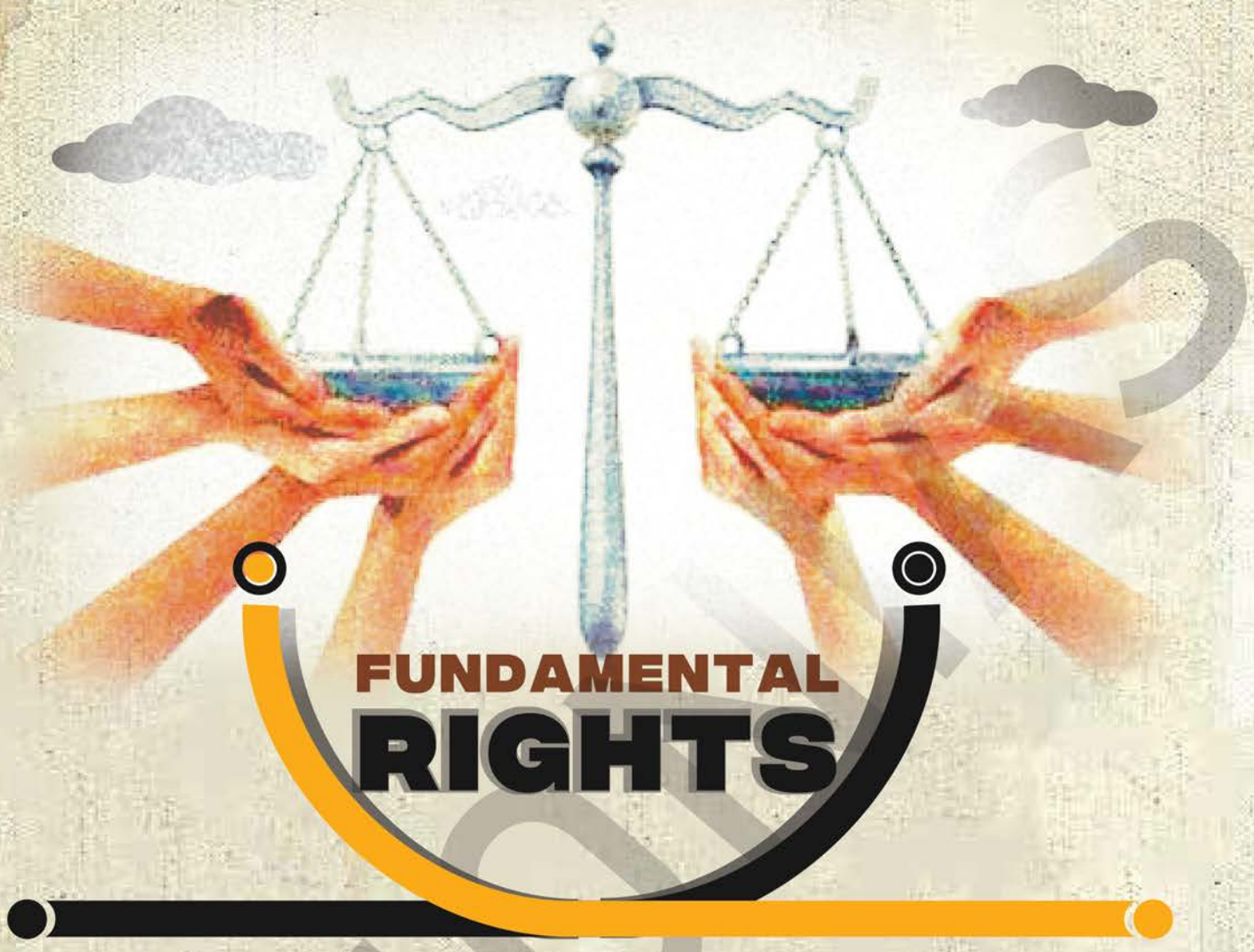


FUNDAMENTAL RIGHTS

RIGHTS

Rights are entitlements to perform or not to perform certain actions, OR to be or not to be in-certain states.

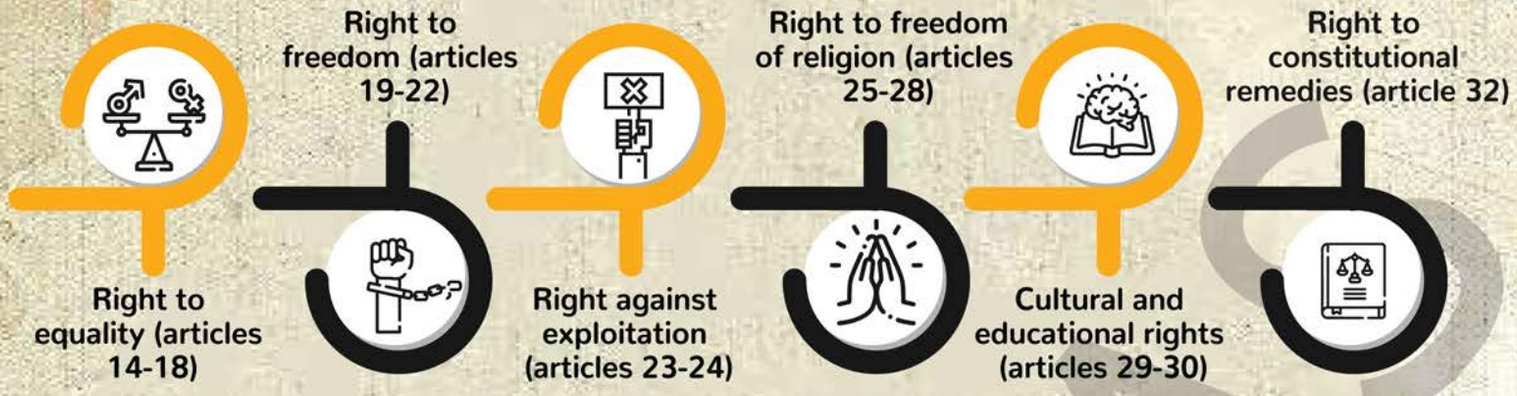
Categories of Rights

- **Natural Rights -** Become available to the individuals by virtue of their birth as human beings, **for example, Right to Life and Liberty.**
- **Human Rights -** Rights considered as fundamental to human dignity and well-being. E.g. **Right to freedom of religion, the Right to a fair trial** when charged with a crime etc.
- **Legal Rights -** Rights which are conferred by the statutes enacted by the legislature. E.g. **Right to strike, Patent Right.**
- **Constitutional Rights -** Rights enshrined in the constitution. **Include Fundamental Rights and other Constitutional Rights.**
- **Civil and Political Rights -** Political Rights are concerned with the structures of government and the institutions of public power. E.g. **Right to Vote** or to hold public office. Civil rights are those rights which provide opportunity to each person to lead a civilized social life. E.g. **Right to Freedom.**

FUNDAMENTAL RIGHTS

- They are called Fundamental Rights because of two reasons. **First,** these are mentioned in the Constitution which guarantees them and the **second,** these are **justiciable** i.e. enforceable through courts.
- Enshrined in **Part III** of the Constitution (Art 12 to 35).

  Influence:
  - Freedom struggle **(Nehru Report,** resolution of **1931 Karachi Session)**
  - The **Constitution of USA** (i.e. Bill of Rights)



Originally, the Constitution provided for 7 types of Fundamental Rights **(Now 6 FR's).**The **right to property was deleted** from the list of Fundamental Rights by the **44th Amendment Act, 1978.** It is made **a legal right under Article 300-A** in Part XII of the Constitution.

FEATURES OF FRs

Available to:

Some FRs are available **only to the citizens** while others are available to all persons whether citizens, foreigners or legal entities.

- Article 15
- Article 16
- Article 19
- Article 29&30

Available against:

Most of them are available against the arbitrary action of the State, with a few exceptions (Art 17, 15(2)). When the rights that are available against the State's action only are violated by the private individuals, there are no constitutional remedies but only ordinary legal remedies.

Nature of FRs:

Some FRs place limitations on the authority of the State i.e. negative in character such as Art 14, 15(1), 16(2) etc. Some confer certain privileges on the persons i.e. positive in nature such as Art 25, 29(1), 30(1) etc.

Amendability:

An Parliament can curtail or repeal them by a constitutional amendment act, without altering the 'basic structure' of the constitution.

Justiciable:

The aggrieved person can directly go to the Supreme Court in case of violation of their FRs.

Restrictions on FRs:

They are not absolute, but instead subject to reasonable restrictions by state. The scope of these rights is also limited by Articles 31A, 31B, 31C, 33, 34 and 35.

Suspension of FRs:

They can be suspended during the operation of a National Emergency except the rights guaranteed by Articles 20 and 21. The six rights guaranteed by Article 19 can be suspended only when emergency is declared on the grounds of war or external aggression and not on the ground of armed rebellion.

ARTICLE 12 – DEFINITION OF STATE

- State has been defined in a wider sense and includes all its agencies - executive and legislative organs of Union, states and local authorities, along with other statutory or non-statutory authorities like LIC, ONGC, SAIL, etc.
- The courts fall within the definition of the 'State', only while they perform their non-judicial functions.
- Even a private body/agency working as an instrument of the State falls within the meaning of the 'State' under Article 12.

WHAT IS INCLUDED IN ARTICLE 13 ?

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

- All laws in force in the territory of India immediately before the commancement of this Constitution, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void.
- The State shall not make any law, which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void.
- In this article, unless the context otherwise requires,
  - "Law" includes any Ordinance, order, bye-law, rule, regulation, notification, custom or usage having in the territory of India the force of law;
  - "Law in force" includes laws passed or made by a Legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, not with standing that any such law or any part thereof may not then in operation either at all or in particular areas.
- Nothing in this article shall apply to any amendment of this Constitution made under article 368.

ARTICLE 13 RELATED DOCTRINES

1

Doctrine of Eclipse:
If a FR, which 'eclipses' the pre-constitutional law, is amended to the extent that the pre-constitutional law is no more inconsistent with the amended FR, then such a law becomes valid again.

2

Doctrine of Severability:
When a law violates any provision of the Constitution, then instead of declaring the entire law as illegal, only that portion of the law may be removed, which is inconsistent.

3

Doctrine of Waiver:
When a person intentionally chooses not to exercise a right, he is precluded from challenging the constitutionality of law for the benefit of which, the right is waived. In India, a person can waive statutory rights but cannot waive constitutional rights.

4

Doctrine of Prospective Over-Ruling:
The SC can overrule its earlier judgment, but the impact will apply from the prospective effect and not retrospectively.

AMENDABILITY OF FUNDAMENTAL RIGHTS

Sankari Prasad Case (1951)
Paliament has the power to amend FRs.

Golaknath Case (1967)
FRs given a transcendental position in constitution; cannot be amended

Keshavananda Bharati Case (1973)
The doctrine of the 'Basic Structure of the Constitution'.

Minerva Mills Case (1980)
SC invalidated Art 368(4) and 368(5) as they curtailed judicial review.

IR Coehlo Case (2007)
Laws placed in the 9th schedule from the date of Keshavananda Bharti verdict subject to judicial review.

RIGHT TO EQUALITY

ARTICLE -14

It provides for:

Equality before the law
Inspired from the British tradition

Negative in its orientation i.e. the State is restricted from making any discrimination between two citizens

Equal protection of the laws
Borrowed from the American Constitution

Positive concept i.e. the equality of treatment under equal circumstances, allows protective discrimination

- SC - **'Rule of Law'** (Absence of Arbitrary Power & Equality before law) as embodied in Article 14 is a part of the 'basic structure' of the constitution.

  Note: Indira Sawhney case, 1992: Rule of Law mentioned as part of basic Structure.
- **Exceptions to Equality:**
  - For implementing certain DPSPs.
  - Immunities available to the President of India and Governors of States, the MPs and MLAs, the foreign diplomats.

ARTICLE 15 - PROHIBITION OF DISCRIMINATION ON GROUNDS OF RELIGION, RACE, CASTE, SEX OR PLACE OF BIRTH

- Art 15(1) **prohibits the state** from discriminating against any citizen on grounds only of **religion, race, caste, sex, place of birth** or any of them.
- Art 15(2) **prevents private citizens** from discriminating against other citizens on the same grounds.
- **Exceptions:** The state can make special provisions for
  - women and children
  - SCs and STs- **added as Article 15(4) by 1st Constitutional amendment act, 1951.**
  - socially and educationally backward classes of citizens - added as A**rticle 15(5) by 93rd Constitutional amendment act, 2006.**
  - economically weaker section of citizens-**added as Article 15(6) by 103rd Constitutional amendment act, 2019.**

ARTICLE 16 – EQUALITY OF OPPORTUNITY IN PUBLIC EMPLOYMENT

- Prohibits discrimination against citizens in respect of employment under the state on grounds only of **religion, race, caste, sex, descent, place of birth, residence** or any of them.
- **Exceptions:**
  - Parliament can prescribe residence as a condition for certain employment or appointment in a state or union territory or local authority or other authority.
  - The State can provide for reservation of appointments or posts in favour of any backward class that is not adequately represented in the state services.
  - The state is permitted to make a provision for the reservation of upto 10% of appointments or posts in favour of any economically weaker sections of citizens. (Article 16 (6)).

ARTICLE 17 - ABOLITION OF UNTOUCHABILITY

- Abolishes untouchability & empowers Parliament to make it a punishable offence.
- Parliament made 2 enabling Acts to enforce this provision :
  - The **Protection of Civil Rights Act, 1955** (initially the Untouchabilities (Offences) Act, 1955), and
  - The **Scheduled Castes and Tribes (prevention of atrocities) act,** 1989.
- The right under Article 17 is **available against private individual as well.**

ARTICLE 18 - ABOLITION OF TITLES

- Prohibits state from conferring any title, other than military or academic distinction.
- Places limitation upon any citizen or a non-citizen, who holds any office of profit under the State, in respect of accepting any title, present or emolument from any foreign State, without the consent of the President.

RIGHT TO FREEDOM

Article 19 – Protection of certain rights regarding freedom of speech, etc.

- Guarantees to all citizens the six rights.
- The State can impose 'reasonable' restrictions on the enjoyment of these 6 rights only on the grounds mentioned in the Art 19 itself and not on any other grounds.

RIGHT TO	GROUNDS FOR REASONABLE RESTRICTION
(a) Freedom of speech and expression → Freedom of Press → Propagate one's views → Rights against tapping telephonic conversation → Right against bundh → Right to demonstration but not strike → Freedom of Silence **Note:** Right to Strike is a statutory right and not Constitutional right.	Sovereignty and integrity of India, security of the state, friendly relations with foreign states, public order, decency or morality, contempt of court, defamation, and incitement to an offence.
(b) Assemble peacefully and without arms → Right to hold public meetings, demonstrations (not right to strike) → Exercised only on Public land.	Sovereignty and integrity of India and public order.
(c) Form associations or unions or co-operative societies → Right to form Political parties, companies, organisations. → Even right to not join any organisation. **Note:** Right to obtain recognition of an association is not FR.	Sovereignty and integrity of India, public order and morality.

(d) Move freely throughout the territory of India

Note: Right to move out of country comes under Article 21.

Interests of general public and the protection of interests of any scheduled tribe (The court held that movement of prostitutes or persons affected by AIDS can be restricted in the interest of general public and public morals).

(e) Reside and settle in any part of the territory of India

Interest of general public and the protection of interests of any scheduled tribes.

(f) Practise any profession, or to carry on any occupation, trade or business

Interest of the general public; the state may also restrict activity which is immoral (E.g. trafficking in women or children) or dangerous (E.g. harmful drugs or explosives, etc.). Also, prescribe professional or technical qualifications.

Note: The State is empowered to carry on by itself any trade, business, industry or service whether to the exclusion (complete or partial) of citizens or otherwise.

ARTICLE 20 - PROTECTION IN RESPECT OF CONVICTION FOR OFFENCES.

It grants protection against arbitrary and excessive punishment to an accused person. It provides that there be:

No ex-post-facto law:

- The limitation on enactment of an ex-post facto law is imposed only on criminal laws and not on civil laws or tax laws.

No double jeopardy:

- Departmental inquiries are however not treated as violation of this principle.

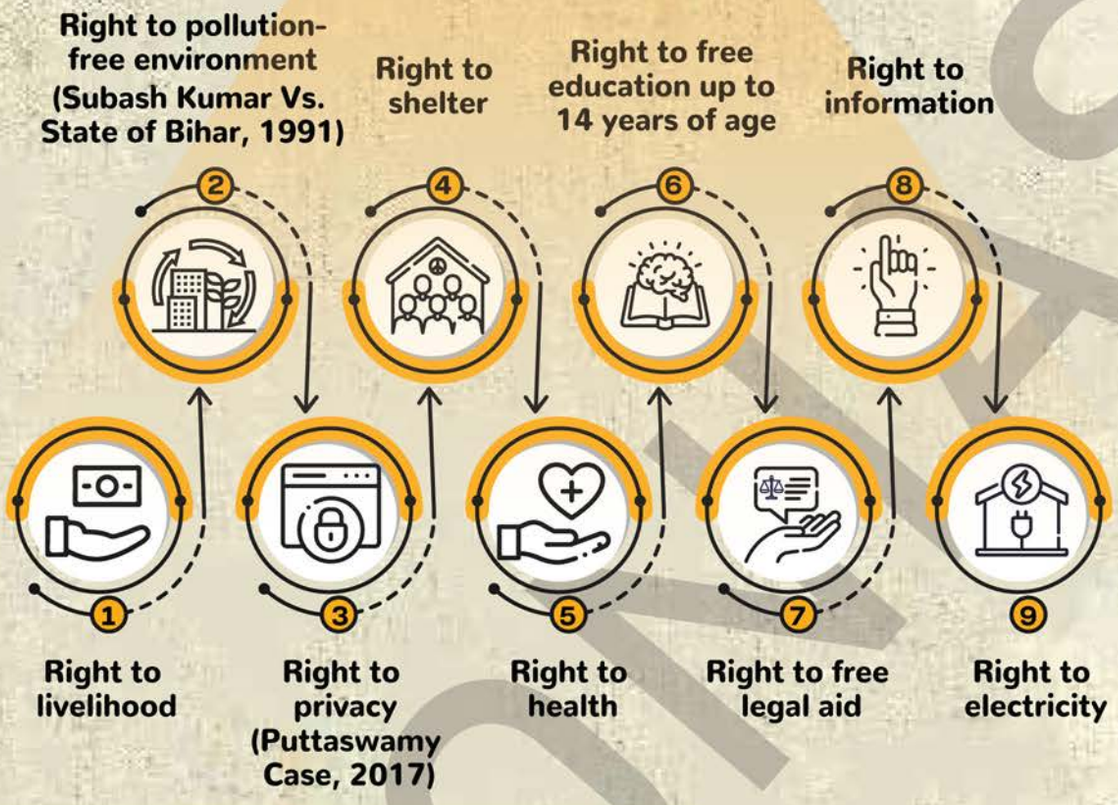
No self-incrimination:

- The protection does not extend to compulsory production of material objects, thumb impression, specimen signature, blood specimens etc.

ARTICLE 21 - PROTECTION OF LIFE AND PERSONAL LIBERTY.

- No person shall be deprived of his life or personal liberty except according to procedure established by law.
- Gopalan case (1950) - SC held that the protection under Article 21 is available only against arbitrary executive action and not from arbitrary legislative action.
- Maneka case (1978) – SC took a wider interpretation and held that the protection is available not only against arbitrary executive action but also against arbitrary legislative action.
- Broadening the scope of Right to life and personal liberty by SC:

ARTICLE 21



ARTICLE 21A - RIGHT TO EDUCATION.

- It mandates the state to provide free and compulsory education to all children of the age of six to fourteen years.
- Added by the 86th Constitutional Amendment Act of 2002.
- In pursuance of Article 21A, the Parliament enacted the Right of Children to Free and Compulsory Education (RTE) Act, 2009.

DELHI

HEAD OFFICE Apsara Arcade, 1/8-B, 1st Floor, Near Gate 6, Karol Bagh Metro Station
+91 8468022022, +91 9019066066
Mukherjee Nagar Centre
635, Opp. Signature View Apartments, Banda Bahadur Marg, Mukherjee Nagar

AHMEDABAD BENGALURU BHOPAL CHANDIGARH DELHI GUWAHATI HYDERABAD JAIPUR JODHPUR LUCKNOW PRAYAGRAJ PUNE RANCHI

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QUICK REVISION MODULE
(UPSC PRELIMS 2022)

POLITY
FUNDAMENTAL RIGHTS PART - 2

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FUNDAMENTAL RIGHTS

ARTICLE 22 - PROTECTION AGAINST ARREST AND DETENTION

1st Part

The cases of ordinary law

Rights Conferred:

- Right **to be informed of** the grounds of arrest.
- Right **to consult & be defended** by a legal practitioner.
- Right to be **produced before a magistrate within 24** hours, excluding the journey times.
- Right to be **released after 24 hours,** unless the Magistrate authorises further detention.

Applicability of rights

- Rights **not available to ENEMY alien.**
- Not available to a person arrested or detained under a **preventive detention law.**

2nd Part

The cases of preventive detention law

Rights Conferred:

- Right to be informed of the grounds.

  (Exception - Grounds not to be disclosed if that is against public interest).
- Right to **make a representation against the detention** order.
- Right to be **released after three months** unless report of advisory board suggests otherwise.

Applicability of rights

- Available to **both citizens as well as aliens.**

Constitutional division of legislative power w.r.t preventive detention.

Exclusive authority of parliament.

- Defence.
- Foreign Affairs and.
- Security of India.

Both Parliament and State Legislature.

- Security of a State.
- Maintenance of Public order.
- Maintenance of supplies & services essential to the community.

Right Against Exploitation:

ARTICLE 23

Prohibition of Traffic in Human Beings and forced Labour.

ARTICLE 24

Prohibition of Employment of Children in factories, etc.

Article 23 prohibits :

- Traffic in human beings.
- Begar (forced labour) and
- Other Similar form of forced labour.

Applicability- Citizens & Non-Citizens.

- Protects the individual against State & Private persons.

Exception: State can impose compulsory service for

Public purpose — Military service. / Social Service etc.

Legislations made to check human trafficking

- The Immoral traffic (prevention) Act, 1956.
- Bonded Labour system Abolition Act 1976.
- Juvenile Justice (Care and Protection of Children) Act, 2015.

Article 24 prohibits :

Employment of Children below 14 yrs of age.

- In any factory.
- Mine or
- Any other hazardous employment.

Applicability- All children regardless of citizenship status.

Exception: No prohibition for harmless or innocent work.

Legislations made w.r.t prohibition of child labour

- Child Labour (Prohibition & Regulation) Amendment Act 2016
  - Amended the Child labour (Prohibition & Regulation) Act , 1986
  - Prohibits the employment of children below 14 yrs in all occupations & processes .
  - Prohibits the employment of adolescent (14 yrs to 18 yrs) in certain hazardous occupations and processes.

Right to Freedom of Religion:

1. **Article 25** - Freedom of Conscience and free Profession, Practice and Propagation of religion.
2. **Article 26** - Freedom to manage Religious affairs.
3. **Article 27** - Freedom from taxation for the promotion of a Religion.
4. **Article 28** - Freedom from Religious instruction.

ARTICLE 25 - FREEDOM TO AN INDIVIDUAL

All persons are equally entitled to:

- Freedom of Conscience — Inner freedom, relation with God.
- Right to Profess — Declaration of religious belief.
- Right to Practice — worship, rituals, ceremonies etc.
- Right to Propagate — Transmission and dissemination of one's religious belief.

Note: No right to forcefully convert.

Applicability- Citizens as well as Non-citizens.

Exceptions: 1. Public order, morality, health and other provision relating to fundamental rights.

2. State is permitted to.

(a) Regulate or restrict any economic , financial or other secular activity associated with religious practice and,

(b) Provide for social welfare and reform or throw open Hindu religious institution of a public character to all classes & sections of Hindus (Sikhs, Jains & Buddhists).

ARTICLE 26 - ENTIRE RELIGIOUS DENOMINATION OR ITS SECTION

Every religious denomination or any of its section shall have the following rights :

- Right to establish and maintain institutions for religious and charitable purposes.
- Right to manage its own affairs in matter of religion.
- Right to own and acquire movable and immovable property.
- Right to administer such property in accordance with law.

Exception: Public order , morality and health.

ARTICLE 27

- No person shall be compelled to pay any taxes for the promotion or maintenance of any particular religion or religious denomination.

ARTICLE 28 - FREEDOM FROM ATTENDING RELIGIOUS INSTRUCTION

Types of Educational Institutions	Religious instructions permitted under Article 28 or NOT
1. Institutions wholly maintained by the State.	✗ Completely prohibited.
2. Institutions administered by the State but established under any endowment or trust.	✓ Permitted.
3. Institutions recognised by the State.	Voluntary basis (i.e. consent is required).
4. Institutions receiving aid from the State.	Voluntary basis (i.e. consent is required).

CULTURAL AND EDUCATIONAL RIGHTS

1. Article 29 – Protection of interest of Minorities.
2. Article 30 – Rights of minorities to establish and administer educational institutions.

ARTICLE 29 - PROTECTION OF INTERESTS OF MINORITIES

29 (1) - Recognises the rights of **any section of the citizens** residing in India to conserve **their language, script or culture.**

29 (2) - **Prohibits state from making discrimination** (only on grounds of religion, race, caste, language or any of them) while **granting access to educational institution maintained by the State or receiving aid out of State funds.**

Note 1 - Scope of this article is available to "all sections" including **MAJORITY.**

Applicability Citizens residing in India

ARTICLE 30

Article 30 grants rights to Minorities (Religious or Linguistic).

30 (1) Right to establish or administer educational institutions of their choice.

30 (1) (A) Right to get adequate compensation if property acquired by State.

30 (2) The **State** shall **not discriminate against a minority institution** while **granting aid** to educational institutions.

Article -30 confined only to minorities (religious or linguistic) unlike Article 29 which extends to "all sections".

Minority term has not been defined anywhere in the constitution.

ARTICLE 32 - RIGHT TO CONSTITUTIONAL REMEDIES

Dr-B.R Ambedkar - Heart and Soul of the Constitution.
Supreme Court - A Basic feature of the Constitution (can not be taken away by way of Constitutional amendment)

It contains the following provisions:

- The right to move Supreme court (SC) for enforcement of Fundamental Rights (Frs).
- The SC shall have power to issue direction or orders or writs for enforcement of FRs.
- Parliament can empower any other court to issue directions, orders or writs.

  Note:

  1. The above can be done without prejudice to the above powers conferred on the SC.
  2. Any other court does not include High Court as HC has been Conferred such power under Article 226.
- The right to move SC **shall not be suspended** except as otherwise provided by the Constitution

  Article 359: President can suspend the right to move any court for the enforcement of the FRs (except Article 20 and 21) during the Proclamation of emergency.

SC & HC can issue various writs under Article 32 & Article 226 respectively.

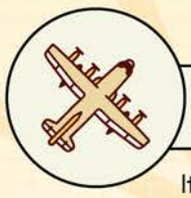
Habeas Corpus → "To have the body of"	The SC/HC can cause any person who has been detained or imprisoned to be physically brought before the court. The Court then examines the reason for his detention and if there is no legal justification of his detention, he can be set free. **Note:** It can be issued against both public authorities as well as private individuals.
Mandamus → "We command"	The SC or HC orders to a person, corporation, lower court, public authority or state authority to perform their specific duty. **Note:** It cannot be issued against a private individual or body; to enforce a contractual obligation; against the President or Governors; and against the Chief Justice of a HC acting in judicial capacity.
Prohibition → "To forbid"	It is issued by a higher court to a lower court or tribunal to prevent the latter from exceeding its jurisdiction or usurping a jurisdiction that it does not possess. **Note:** It can be issued only against judicial and quasi-judicial authorities.
Certiorari → "To be certified or to be informed "	It is issued by a higher court to a lower court or tribunal either to transfer a case pending with the latter to itself or to squash the order of the latter in case. **Note:** It is not available against legislative bodies and private individuals or bodies.
Quo-Warranto → "By what authority or warrant "	It is issued by a court to enquire into the legality of claim of a person to a public office. Hence, it prevents illegal usurpation of public office by a person. **Note:** It cannot be issued in cases of ministerial office or private office.

Some important points related to Article 32 or inferred from Article 32

- Article 32 makes the **SC protector and guarantor of fundamental rights** as **SC cannot refuse to entertain an application** seeking protection against infringement of such rights.
- This power of SC is **Original** & wide but **Not Exclusive.**
  - **It is concurrent with the jurisdiction of the High Court under article 226.**
  - **An aggravated citizen can directly go to the SC & not necessarily by way of appeal.**

THE WRIT JURISDICTION OF SC AND HC.

	SC	HC
1. Enforcement of Fundamental Rights.	✓	✓
2. For any other purpose i.e. enforcement of legal rights.	✗	✓
3. Territorial Jurisdiction.	Throughout India.	Within the jurisdiction of the particular HC. Exception - outside jurisdiction only if cause of action arises within its jurisdiction.
4. Exercise of writ power.	Mandatory ie. can not refuse to exercise.	Discretionary may refuse.



ARTICLE 33

It empowers the parliament to restrict or abrogate the FR's of the members of armed forces, paramilitary forces, police forces, intelligence agencies & analogous forces.

ARTICLE 34

Restriction of Fundamental Rights while Martial law is in force in any area within the territory of India.

ARTICLE 35

Only the parliament can make laws to give effect to certain specified Fundamental rights eg. Prescribing Residence as a condition- (Article 16), Prescribing punishment for untouchability (Article-17).

RIGHTS OUTSIDE PART III

Note: (known as constitutional rights or legal rights or Non fundamental rights).

ARTICLE 265

- No tax shall be levied or collected except by authority of law.

ARTICLE 300 - A

- No person shall be deprived of his property save by authority of law.
- 44th constitutional Amendment Act abolished, the Right to property as a Fundamental Right by repealing Article 19 (I) (f) and Article 31 & Instead inserted Article 300 A- Right to property as a legal right.

ARTICLE 301

- Trade, Commerce and intercourse throughout the territory of India shall be free.

ARTICLE 326

- The election to the Lok Sabha and the state Legislative Assembly shall be on the basis of Adult Suffrage.

In case of rights outside part III, An aggrieved person can not go to the SC directly. He can go to the High court by an ordinary suit or under Article 226.

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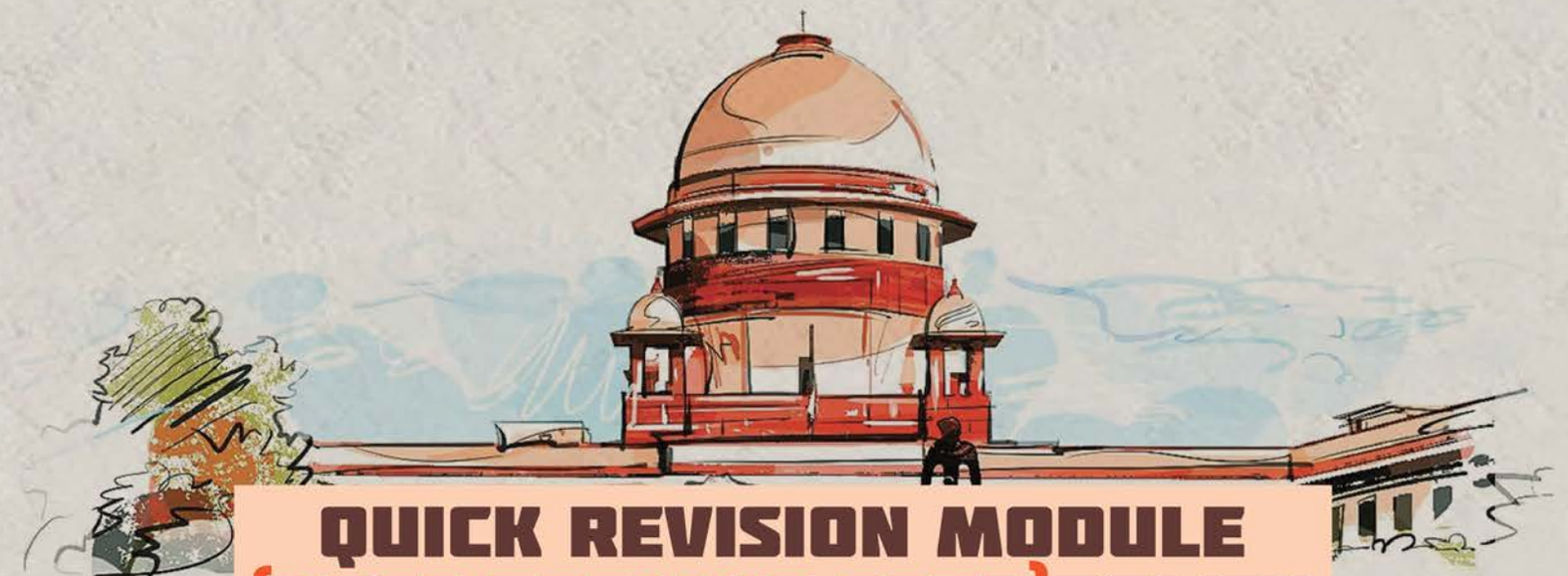


QUICK REVISION MODULE (UPSC PRELIMS 2022) POLITY

FUNDAMENTAL DUTIES

SOME IMPORTANT INFORMATION:

- **Not mentioned in the original Constitution.**
- Based on the **Swaran Singh Committee Recommendations** (1976) – Ten Fundamental duties **(Part IVA, Article 51A)** were added by **42nd Constitutional Amendment Act** (CAA), 1976.
  - **Note:** Recommendations such as- **Duty to pay taxes, Penalty for non-compliance of duties** were not incorporated in the Constitution.
- In 2002, **by 86th CAA –** One more Fundamental duty was added.

Note: Japanese Constitution is, perhaps, the **only other democratic Constitution** in world which contains a list of duties of citizens.

LIST OF FUNDAMENTAL DUTIES:

a) To **abide by the Constitution** and respect its **ideals and institutions,** the **National Flag** and the **National** Anthem;

b) To cherish and follow the **noble ideals** which inspired our **national struggle for freedom;**

c) To uphold and protect the **sovereignty, unity and integrity** of India;

d) To **defend the country** and render **national service** when called upon to do so;

e) To promote **harmony** and the spirit of **common brotherhood** amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the **dignity of women;**

f) To value and preserve the **rich heritage** of our composite culture;

g) To protect and improve the **natural environment** including forests, lakes, rivers and wild life, and to have compassion for living creatures;

h) To develop the **scientific temper,** humanism and the spirit of inquiry and reform;

i) To safeguard **public property** and to **abjure violence;**

j) To strive **towards excellence** in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement;

k) **Added by 86th Constitutional Amendment Act, 2002 -** who is a parent or guardian, to provide opportunities for **education to his child** or, as the case may be, ward between the age of **six and fourteen years.**

FEATURES OF THE FUNDAMENTAL DUTIES:

1

Some of the Fundamental duties are moral duties while others are civic duties. For instance, **cherishing noble ideals of freedom struggle is a moral precept and respecting the Constitution, National Flag and National Anthem is a civic duty.**

2

Fundamental duties are **confined to citizens only** and do not extend to foreigners.

3

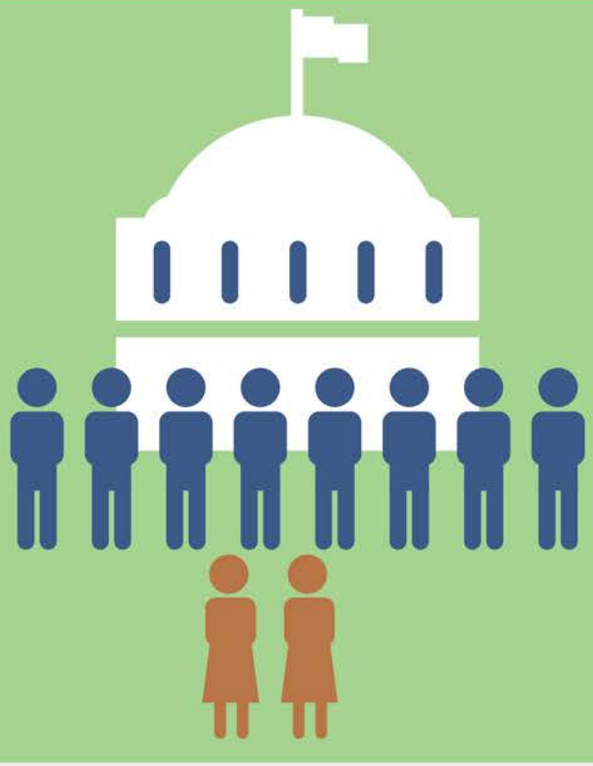
Fundamental duties, **like DPSP, are non-justiciable.** However, parliament is free to enforce them by suitable legislation.

SIGNIFICANCE OF FUNDAMENTAL DUTIES

- They help the **courts in examining and determining the constitutional validity of a law.**
- They serve as a **source of inspiration for the citizens** and promote a **sense of discipline** and commitment among them.

DPSP

QUICK REVISION MODULE (UPSC PRELIMS 2024) POLITY



Article	What it says
36	Defines the "state".
37	Part IV of the Indian Constitution shall not be enforceable in any court of law.
38	Social, Political and Economic Justice.*
39	Principles of Policy.*
39A	Free Legal aid.*
40	Organization of Panchayats.
41	Welfare Government.
42	Securing just and humane work and maternity relief.
43	Living wages and a decent standard of life
43A	Workers participation in management.*
43B	Promotion of Cooperatives.*
44	Uniform Civil Code.
45	Early Childhood Care and Education
46	Protection of SCs, STs and other weaker sections from exploitation.
47	Nutrition, Standard of living and public health
48	Scientific agriculture and animal husbandry.
48A	Environment and Wildlife Protection.*
49	Protection of monuments and place and objects which have national importance.
50	Judiciary should be separate from the Executive.
51	The state shall promote international peace and security

Def - DPSP is comprehensive programme for ushering in social, economic, and political democracy
PART - IV (Article 36 - 51)

INFLUENCE

- Constitution of Ireland
- GoI, 1935 - Instrument of accession
- Gandhian philosophies
- Freedom struggle

AMENDMENTS*

Since the Indian constitution came into force, there have been number of amendments - addition, and modification from the part IV of the constitution

Affected Article	Change	Through
38 (2)	Added	44th Amendment Act, 1978
39 (f)	Added	42nd Amendment Act, 1976
39A	Added	42nd Amendment Act, 1976
43A	Added	42nd Amendment Act, 1976
43B	Added	97th Amendment Act, 2011
45	Modified Text*	86th Amendment Act, 2002
48A	Added	42nd Amendment Act, 1976

CHARACTERISTICS

- Ideas to be followed by State
- Non-Enforceable
- Limitation on Arbitrary power of State
- Amplification of Preamble vision
- Moral obligation
- Creating Welfarist State

CLASSIFICATION OF DPSP

Gandhian - Article
40, 43, 43B, 46, 47, & 48

Socialist - Article
38, 39, 39A, 41, 42, 43, 43A, 47

Liberalism - Article
44, 45, 48, 48A, 49, 50, 51

Common to both

MAINS ISSUES

REASONS FOR NON-ENFORCEABILITY

- Lack of resources
- Large scale illiteracy
- Historical influence-partition
- Diverse societal section

UNIFORM CIVIL CODE (A-44)

Set of personal laws of citizen which apply on all citizens equally, regardless of their religion.

Argument for UCC

- ✓ It will help to establish equality before law
- ✓ Will facilitate women empowerment
- ✓ Reduce vote bank politics
- ✓ Reduce role of informal bodies like khaap Panchayat
- ✓ Help to modernise society

Argument against/challenges

- ✓ Long history of personal law- difficult to give up
- ✓ Need broad consensus
- ✓ Lack of political will
- ✓ Drafting an integrated personal law for heterogeneous group itself challenging

Way Forward

- ✓ Consensus oriented, well discussed, widely inclusive

DPSP	FR
1. Ireland	1. USA
2. Non-Enforceable	2. Enoforceable
3. Social & Economic democracy	3. Political democracy & civil rights
4. Group centric	4. Individual centric
5. Positive obligation over state	5. Prohibition on state & pvt individual

CRITICISM OF DPSP

- Not-Enforceable
- Illogically Arranged
- Lack of Clarity
- Reactionary in Nature
- Constitutional Conflict

SIGNIFICANCE OF DPSP

- Useful as beacon - lights to the court
- Give vision for welfarist state
- Put positive obligation over state
- They guide executive in administration
- They facilitate in establishing friendly relation with foreign countries
- They serve as standard & crucial test for the performance of govt.
- Supplement Fundamental rights.

RELATION WITH FR

Champakam Dorairajan case (1951) - DPSP has to be in conformity with FR. Fundamental Right can be amended to implement DPSP through constitutional amendment.

Golaknath case (1967) - SC overturn its earlier decision - Said FR have transcendental position and can not be abridged.

25th CA (1971) - Inserted a new Article 31C that protected to DPSP's 39(b), 39 (c) in case of violation with Article 14 & 19 and restricted judicial review.

Kesavananda Bharti case (1973) - judicial review will be unhindered. However protection against Article 14 &19 will remain.

Minerva Mills Case (1980) -Established doctrine of Harmonious Construction between FRs and DPSPs.

IMPLEMENTATION OF DPSP

- ✓ Right to work - MGNREGA Act,2005
- ✓ Right to Education Act, 2009
- ✓ Maternity Benefits Act 1961 was repealed and has now been subsumed into the Code on Social Security, 2020.
- ✓ Wildlife Protection Act, 1972, Biodiversity Act, 2002
- ✓ Prevention of Cruelty to Animals Act, 1960

APPLICATION OF DPSP

WOMEN

- Equal right to livelihood **[A-39 (Article)]**
- Equal pay for equal work **[Article 39 (d)]**
- Equal justice and free legal aid
- Just & humane condition of work and for maternity relief **(Article 42)**
- Special care to protect economic and educational interests of weaker sections.
- Raise level of nutrition & standard of living **(Article 47)**

SC/ST

Article 46-

Promotion of educational & economic interests of SC, ST & other weaker section

Panchayat

Article 40

Article 40 of the Constitution which enshrines one of the Directive Principles of State Policy lays down that the State Shall take steps to organise village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government.

Older people

Article 41-

- Right to work, to education, and to public assistance in certain cases The State shall, within the limits of its economic capacity and development make effective provision for securing the right to work, to education and to public assistance in case of unemployment, **old age,** sickness and disablement, and in other case undeserved want

Article 46

Provides that the State shall promote with special care the educational and economic interest of the **weaker sections of the society** and in particular, of the Scheduled Castes and Scheduled Tribes and shall **protect them from social injustic and all forms of exploitation**

Divyangjan

Article 41-

- **Right to work, to educational and to public assistance in case of disablement**

Environment

Article 48 A

[The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country.]

Children

- Right to be protected from being abused and forced by economic necessity to enter occupations unsuited to their age or strength **[Article 39 (e)]**
- Right to equal opportunities and facilites to develop in a healthy manner and in conditions of freedom and dignity and guaranteed protection of childhood and youth against exploitation and against moral and material abandonment **[Article 39 (f)]**
- Right to early childhood care and education to all children until they complete the age of six years **[Article 45]**

Agriculture & Animal husbandry

The State shall endeavour to **organise agriculture and animal husbandry** on modern and scientific lines and shall, in particular, take steps for preserving and improving the breeds, and **prohibiting the slaughter, of cows and calves and other milch and draught cattle**

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VISIONIAS
INSPIRING INNOVATION

QUICK REVISION MODULE (UPSC PRELIMS 2023) POLITY

PARLIAMENT PART 1

ORGANIZATION OF PARLIAMENT

PARLIAMENT

PRESIDENT

- Integral part of the Parliament (though not a member of either House of Parliament).
- Bill passed by both houses cannot become law without the President's assent
- Summons & prorogue both the Houses,
- Dissolves the Lok Sabha
- Addresses both the Houses,
- Issues ordinances

LOK SABHA

- Also called as Lower House (First Chamber or Popular House or House of the People).
- Represents people's will.

RAJYA SABHA

- Also called as Upper House (Second Chamber or House of Elders or Council of state).
- Represent state's interest in Parliament.

COMPOSITION OF TWO HOUSES

1. LOK SABHA

550 MEMBERS MAXIMUM

530 MEMBERS

Representation of States: Directly elected by the people from the territorial constituencies in the states

20 MEMBERS

Representation of Union Territories: Union Territories (Direct Election to the House of People) Act 1965 provides for direct from the UTs of Andaman and Nicobar Islands, Lakshadweep, and Dadra and Nagar Haveli and Daman and Diu.

NOTE: 104th CA Act does not extend the provision of nominating Anglo Indians to Lok Sabha and State Assemblies

2. RAJYA SABHA

250 MEMBERS MAXIMUM

238 MEMBERS

Representation of States: Schedule IV
- Elected by the elected members of state legislative assemblies by proportional representation by single transferable vote
- Seats in states according to population

Representation of Union Territories:
- Indirectly elected by members of an electoral college specially constituted for the purpose.
- Out of the 9 union territories, only three (Delhi, Puducherry and Jammu & Kashmir) have representation in Rajya Sabha.

12 MEMBERS

Nominated Members:
Nominated by president from people who have special knowledge or practical experience in art, literature, science and social service.

SYSTEM OF ELECTIONS TO LOK SABHA

TERRITORIAL CONSTITUENCIES

Constitution ensures that there is uniformity of representation in two respects:
1. Between the different state.
2. Between the different constituencies in the same state
Note: This provision does not apply to a state having a population of less than 6 millions.

READJUSTMENT AFTER EACH CENSUS

After every census, a readjustment is to be made in:
- allocation of seats in the Lok Sabha to the states,
- division of each state into territorial constituencies.

Parliament is empowered to determine the authority (Delimitation Commission) and the manner in which it is to be made.

RESERVATION OF SEATS FOR SCS AND STS

Constitution provides for the reservation of seats for SCs & STs in the Lok Sabha on the basis of population ratio. Extended by 104th CA Act 2020 till 25th January, 2030 (which was expiring in 2020).

FIRST-PAST-THE-POST SYSTEM

Constitution has adopted:
- System of territorial representation (First-past-the-post system} for elections to Lok Sabha

DURATION OF TWO HOUSES

LOK SABHA

- Non continuing chamber as it dissolve in every five years
- Term of 5 years
- President dissolves Lok Sabha and this cannot be challenged in a court of law.
- Term of the Lok Sabha can be extended during National emergency for 1 year at a time for any length of time.
- Extension cannot continue beyond a period of 6 months after the emergency has ceased to operate.

RAJYA SABHA

- Continuing chamber as 1/3rd members retire every second year (eligible for re-election and renomination)
- Permanent body and not subject to dissolution
- Term of office of members is not fixed by Constitution and it is left to the Parliament.
- Representation of the People Act (RPA) 1951 provides the term of a member to be 6 years.
- RPA 1951 empowers President to curtail term of members.

MEMBERSHIP OF PARLIAMENT

ACCORDING TO CONSTITUTION

QUALIFICATIONS

- Citizen of India.
- Make and subscribe to an oath or affirmation before the person authorised by the election commission for this purpose.
- Rajya Sabha: Not less than 30 years of age.
- Lok Sabha: Not less than 25 years of age.
- Possess other qualifications prescribed by Parliament.

DISQUALIFICATIONS

- Holds any office of profit under Union or state.
- Unsound mind and stands so declared by a court.
- Undischarged insolvent.
- Not a citizen of India or voluntarily acquired the citizenship of a foreign state or is under any acknowledgement of allegiance to a foreign state.
- Disqualified under any law made by Parliament.

ACCORDING TO RPA 1951

QUALIFICATIONS

- Registered as an elector for a parliamentary constituency.
- For Rajya Sabha, member can be an elector from any state.
- Member of a SC or ST in any state or UT, if he wants to contest a seat reserved for them.
- SC or ST can also contest a seat not reserved for them.

DISQUALIFICATIONS

- Found guilty of certain election offences.
- Convicted for any offence resulting in imprisonment for 2 or more years. (Not valid for preventive detention law).
- Failed to lodge an account of his election expenses.
- Any interest in government contracts, works or services.
- Be a director or managing agent nor hold an office of profit in a corporation in which the government has at least 25% share.
- Dismissed from government service for corruption or disloyalty to the State.
- Convicted for promoting enmity between different groups or for the offence of bribery.
- Punished for preaching and practising social crimes such as untouchability, dowry and sati.
- Note: President's decision is final on the question on any of the above disqualifications with opinion of the election commission.

DISQUALIFICATION ON GROUND OF DEFECTION

- **10th Schedule of Constitution**
- Final decision by the Chairman in the case of Rajya Sabha and Speaker in the case of Lok Sabha (and not by the President of India)
- Decision is subject to judicial review (Kihoto Hollohan case 1992).

1. Voluntarily gives up the membership of the political party on whose ticket he is elected to the House;
2. Votes or abstains from voting in the House contrary to any direction given by his political party;
3. Any independently elected member joins any political party
4. Any nominated member joins any political party after the expiry of six months

VACATING OF SEATS

1. DOUBLE MEMBERSHIP	According to RPA 1951, • If elected to both the Houses, he must intimate within 10 days in desired House. In default, his seat in Rajya Sabha becomes vacant. • If a sitting member of one House and elected to other House, first House seat becomes vacant. • If a person is elected to two seats in a House, he should exercise his option for one. Otherwise, both seats become vacant. • If a person is elected for both Parliament and state legislature, his seat in Parliament becomes vacant if he does not resign his seat in the state legislature within 14 days.
2. DISQUALIFI-CATION	• As specified in the Constitution. • Disqualification on the grounds of defection (10th Schedule).
3. RESIGNATION	• By writing to Chairman of Rajya Sabha or Speaker of Lok Sabha. • Chairman/ Speaker may not accept the resignation if he is satisfied that it is not voluntary or genuine.
4. ABSENCE	• Member absent from all its meetings for a period of 60 days without house's permission • 60 days does not include any period during which House is prorogued or adjourned for more than 4 consecutive days.
5. OTHER CASES	Members vacate seat if : • Election is declared void by the court • Expelled by the House • Becomes President or Vice President or Governor Note: Constitution lays down no procedure to declare the election void. This matter is dealt by RPA 1951 which enables the high court to declare an election void and he can also appeal to the Supreme Court.

OATH OR AFFIRMATION BY MP

• President or some person appointed by him for this purpose

• MP cannot vote and participate in the proceedings without taking oath and also can not enjoy parliamentary privileges and immunities.

- To uphold the sovereignty and integrity of India
- To bear true faith and allegiance to the Constitution of India
- To faithfully discharge the duty upon which he is about to enter

SALARIES AND ALLOWANCES

- Determined by Parliament
- Salaries, Allowances and Pension of Members of Parliament Act, 1954
- No provision of pension in Constitution, however Parliament has provided pension to the members.
- Salaries and allowances of the Speaker and Deputy Speaker and the Chairman and Deputy Chairman are charged on the Consolidated Fund of India and are not subject to annual vote of Parliament.

PRESIDING OFFICERS OF PARLIAMENT

LOK SABHA

SPEAKER OF LOK SABHA

ELECTION AND TENURE	• Elected by the Lok Sabha from amongst its members. • Date of election fixed by President. • **Vacate his office in three cases:** 1. ceases to be a member of Lok Sabha; 2. resigns by writing to the Deputy Speaker; 3. removed by a resolution passed by a majority of all members of the Lok Sabha. Such a resolution can be moved only after giving 14 days' advance notice. • While removal is under consideration, speaker cannot preside at the sitting of the House. However, he/ she can speak and take part in the proceedings of the House and vote in the first instance, though not in the case of equality of votes. • **On dissolution** of Lok Sabha, Speaker does not vacate his office and continues till the newly-elected Lok Sabha meets. • Speaker and the Deputy speaker **do not make and subscribe any separate oath or affirmation.** • Provisions of Speaker and Deputy speaker originated from Government of India Act of 1919 (Montague-Chelmsford Reforms).
ROLE OF SPEAKER	• Head of the Lok Sabha, and its representative. • Guardian of powers and privileges of the members, the House and its committees. • Principal Spokesperson of the House, and his decision in all Parliamentary matters is final. • Chairman of the Business Advisory Committee, the Rules Committee and the General Purpose Committee.
SOURCE OF POWERS	• Constitution of India, • Rules of Procedure and Conduct of Business of Lok Sabha • Parliamentary Conventions (residuary powers that are unwritten or unspecified in the Rules).
POWERS AND FUNCTIONS OF SPEAKER	• Maintains order and decorum in the House. • Final interpreter of the provisions of Constitution, Rules of Procedure and Conduct of Business of Lok Sabha, and parliamentary precedents, within the House. • Adjourns the House or suspends the meeting in absence of a quorum. • Casting vote in the case of a tie. • Presides over a joint sitting summoned by President • Allow a 'secret' sitting of the House at the request of Leader of House. • Decides whether a bill is a money bill or not and this decision is final. • Decides the questions of disqualification under 10th Schedule. This decision is subject to judicial review • Acts as the ex-officio chairman of the Indian Parliamentary Group and conference of presiding officers of legislative bodies in the country. • Appoints the chairman of all the parliamentary committees of the Lok Sabha and supervises their functioning.
INDEPENDENCE AND IMPARTIALITY	• Provided with a security of tenure. • Removed only by a resolution passed by the Lok Sabha by an absolute majority. Motion of removal need support of at least 50 members. • Salaries and allowances are fixed by Parliament and charged on Consolidated Fund of India. • His work and conduct cannot be discussed and criticised in the Lok Sabha except on a substantive motion. • His powers of regulating procedure or conducting business or maintaining order in the House are not subject to the jurisdiction of any Court. • Placed at **seventh rank, along with the Chief Justice of India.** **NOTE:** Speaker does not resign from the membership of his party on his election to the exalted office.

SPEAKER PRO TEM

- Temporary office.
- President appoints a member of the Lok Sabha as the Speaker Pro Tem.
- Usually, the seniormost member.
- President adminsters oath to Speaker Pro Tem.
- Presides over the first sitting of the newly elected Lok Sabha.
- Administer oath to the new members.
- Enables the House to elect the new Speaker and ceases his office after new speaker elected.

PANEL OF CHAIRPERSONS OF LOK SABHA

- Nominated under the Rules of Lok Sabha.
- Speaker nominates from amongst the members a panel of not more than 10 chairpersons.
- Any of them can preside over the House in the absence of the Speaker or the Deputy Speaker.
- Holds office until a new panel of chairpersons is nominated.
- House can determine any person as a speaker if no member of panel of chairpersons is present.
- They cannot preside over the House, when the office of the Speaker or the Deputy Speaker is vacant. In such cases President appoints any member to preside over the House.

DEPUTY SPEAKER OF LOK SABHA

Ÿ Elected by the Lok Sabha itself from
Ÿ amongst its members.
Ÿ Date of election fixed by the Speaker.
Ÿ Performs the duties of the Speaker's office when it is vacant or absent.
Ÿ Presides over the joint sitting, in case the
Ÿ Speaker absent.
Ÿ Not subordinate to the Speaker but
Ÿ directly responsible to the House.
Ÿ Whenever appointed as a member of a
Ÿ parliamentary committee, he automatically
Ÿ becomes its chairman.
Ÿ Since the 11th Lok Sabha, consensus is that the Speaker comes from the ruling party and Deputy Speaker goes to the main opposition party.
Ÿ Casting vote in the case of a tie while presiding over the sitting of the House.
Ÿ Vacancy of Deputy speaker in 3 cases:

1. ceases to be a member of Lok Sabha;
2. Resigns by writing to the Speaker;
3. Removed by a resolution passed by a majority of all the then members of the Lok Sabha. Such a resolution can be moved only after giving 14 days' advance notice.

RAJYA SABHA

CHAIRMAN OF RAJYA SABHA

- Vice-president of India is the ex-officio Chairman of the Rajya Sabha.
- Presiding officer of the Rajya Sabha.
- Removed from his office only if removed from the office of the Vice-President.
- Chairman is not a member of the House.
- Chairman also cannot vote in the first instance and has a casting vote in case of tie.
- Speaker has two special powers which are not enjoyed by the Chairman:
  1. Speaker decides on money bill and his decision is final.
  2. Speaker presides over a joint sitting.

DEPUTY CHAIRMAN OF RAJYA SABHA

- Elected by the Rajya Sabha itself from amongst its members.
- Not subordinate to the Chairman but directly responsible to the Rajya Sabha.
- Vacates office in any of three cases:
  1. ceases to be a member of the Rajya Sabha;
  2. resigns by writing to the Chairman;
  3. removed by a resolution passed by a majority of all the then members of the Rajya Sabha. Such a resolution can be moved only after giving 14 days' advance notice.

PANEL OF VICE-CHAIR-PERSONS OF RAJYA SABHA

- Nominated under the Rules of Rajya Sabha.
- Chairman nominates from amongst the members a panel of vice-chairpersons.
- Any one of them can preside over the House in the absence of the Chairman or the Deputy Chairman.

SECRETARIAT OF PARLIAMENT

- Each House of Parliament has separate secretarial staff of its own.
- Recruitment and service conditions regulated by Parliament.
- Headed by a secretary-general (permanent officer) appointed by the presiding officer of the House.

LEADER IN PARLIAMENT

LEADER OF THE OPPOSITION IN BOTH HOUSES

- Provide a constructive criticism of the policies of the government and to provide an alternative government.
- Leader of the largest Opposition party **having not less than 1/10th seats** of the total strength of the House.
- **Not mentioned in the Constitution of India**
- **Mentioned under Parliamentary Statute**
- **Accorded statutory recognition in 1977.**
- Salary, allowances and other facilities equivalent to cabinet minister.
- First time recognised in 1969.
- USA: 'Minority leader'.

WHIP

- **Neither mentioned in Constitution nor in the Rules of the House nor in a Parliamentary Statute.**
- Based on the conventions of the parliamentary government.
- Both ruling or Opposition party has its own whip in the Parliament.
- Serve as an assistant floor leader.
- Responsibility of ensuring the attendance of his party members and securing their support.
- Regulates and monitors their behaviour in the Parliament.
- Members are supposed to follow the directives given by the whip. Otherwise, disciplinary action can be taken.

LEADER OF THE HOUSE (LoH) IN BOTH HOUSES

- Exercises direct influence on the conduct of business.
- **Not mentioned in the Constitution of India**
- **Mentioned under the Rules of Houses.**
- Prime minister, if he is a member of the Lok Sabha.
- Minister who is a member of the Lok Sabha and nominated by the Prime Minister.
- 'Leader of the House' in the Rajya Sabha is a minister who is a member of the Rajya Sabha and nominated by the Prime Minister.
- Can also nominate a deputy leader of the House.
- USA: 'Majority Leader'

SESSIONS OF PARLIAMENT

Summoning

- President summons each House of Parliament to meet.
- Maximum gap between two sessions of Parliament cannot be more than 6 months.
- There are usually 3 sessions in a year
  - o Budget Session (February to May);
  - o Monsoon Session (July to September);
  - o Winter Session (November to December).
- 'Session' of Parliament: period spanning between the first sitting of a House and its prorogation.
- Recess: period spanning between the prorogation of a House and its reassembly in a new session.

TERMINATION OF SESSION

Adjournment

- Suspends the work in a sitting for a specified time, which may be hours, days or weeks.
- Done by presiding officer of the House.

Adjournment Sine Die

- Terminating a sitting of Parliament for an indefinite period.
- Adjourned without naming a day for reassembly.
- Done by presiding officer of the House.
- Does not affect the bills or any other business pending.

Prorogation

- Terminates a sitting and session of the House.
- Done by the President.
- Does not affect the bills or any other business pending.
- All pending notices lapse on prorogation and fresh notices have to be given form the next session.

Dissolution

- Ends the very life of the existing House and a new House is constituted after general elections are held.
- Only the Lok Sabha is subject to dissolution.
- By way of Automatic dissolution (expiry of tenure) or whenever President decides to dissolve the House.
- Dissolution is irrevocable
- All business including bills, motions, resolutions, notices, petitions and so on pending before Lok Sabha or its committees lapse

QUORUM

Minimum number of members required to be present in the House before it can transact any business. It is **1/10th of the total number of members in each House** including the presiding officer. If no quorum, then presiding officer either adjourn the House or suspend the meeting until there is a quorum.

LANGUAGE IN PARLIAMENT

- Constitution has **declared Hindi and English to be the languages** for transacting business in the Parliament
- Presiding officer can permit a member to address the House in his mother-tongue.
- Official Languages Act 1963 allowed English to be continued along with Hindi.

VOTING IN HOUSE

All matters at any sitting of either House or joint sitting of both the Houses decided by a majority of votes of the members present and voting, excluding the presiding officer. Presiding officer of a House caste vote in the case of an equality of votes.

LAME-DUCK SESSION

- Last session of the existing Lok Sabha, after a new Lok Sabha has been elected.
- Lame-ducks: members of the existing Lok Sabha who could not get re-elected to the new Lok Sabha

RIGHTS OF MINISTERS AND ATTORNEY GENERAL

- In addition to members of a House, every minister and the Attorney General of India have the right to speak and take part in the proceedings of either House, any joint sitting of both the Houses and any committee of Parliament of which he is a not member, without being entitled to vote.
- A minister can participate in the proceedings of a House, of which he is not a member.

LAPSING OF BILLS ON DISSOLUTION

BILL THAT LAPSE

- A bill pending in the Lok Sabha lapses (whether originating in the Lok Sabha or transmitted to it by the Rajya Sabha).
- A bill passed by the Lok Sabha but pending in the Rajya Sabha lapses.

BILL THAT DOES NOT LAPSE

- A bill not passed by the two Houses and if the president has notified the holding of a joint sitting before the dissolution of Lok Sabha.
- A bill pending in the Rajya Sabha but not passed by the Lok Sabha does not lapse.
- A bill passed by both Houses but pending assent of the president does not lapse.
- A bill passed by both Houses but returned by the president for reconsideration of Houses does not lapse.

ARTICLES RELATED TO PARLIAMENT

GENERAL

A-79. Constitution of Parliament
A-80. Composition of the Council of States
A-81. Composition of the House of the People
A-82. Readjustment after each census
A-83. Duration of Houses of Parliament
A-84. Qualification for membership of Parliament
A-85. Sessions of Parliament, prorogation and dissolution
A-86. Right of President to address and send messages to Houses
A-87. Special address by the President
A-88. Rights of Ministers and Attorney-General as respects Houses

OFFICERS OF PARLIAMENT

A-89. The Chairman and Deputy Chairman of the Council of States
A-90. Vacation and resignation of, and removal from, the office of Deputy Chairman
A-91. Power of the Deputy Chairman or other person to perform the duties of the office of, or to act as, Chairman
A-92. The Chairman or the Deputy Chairman not to preside while a resolution for his removal from office is under consideration
A-93. The Speaker and Deputy Speaker of the House of the People
A-94. Vacation and resignation of, and removal from, the offices of Speaker and Deputy Speaker
A-95. Power of the Deputy Speaker or other person to perform the duties of the office of, or to act as, Speaker
A-96. The Speaker or the Deputy Speaker not to preside while a resolution for his removal from office is under consideration
A-97. Salaries and allowances of the Chairman and Deputy Chairman and the Speaker and Deputy Speaker
A-98. Secretariat of Parliament

DISQUALIFICATIONS OF MEMBERS

A-101. Vacation of seats
A-102. Disqualifications for membership
A-103. Decision on questions as to disqualifications of members
A-104. Penalty for sitting and voting before making oath or affirmation under Article 99 or when not qualified or when disqualified

IMPORTANT CONSTITUTIONAL AMENDMENT ACTS (CAA)

42nd CAA, 1976
Froze the allocation of seats till the year 2000 at the 1971 level.

61st CAA, 1988
Voting age reduced from 21 to 18 years.

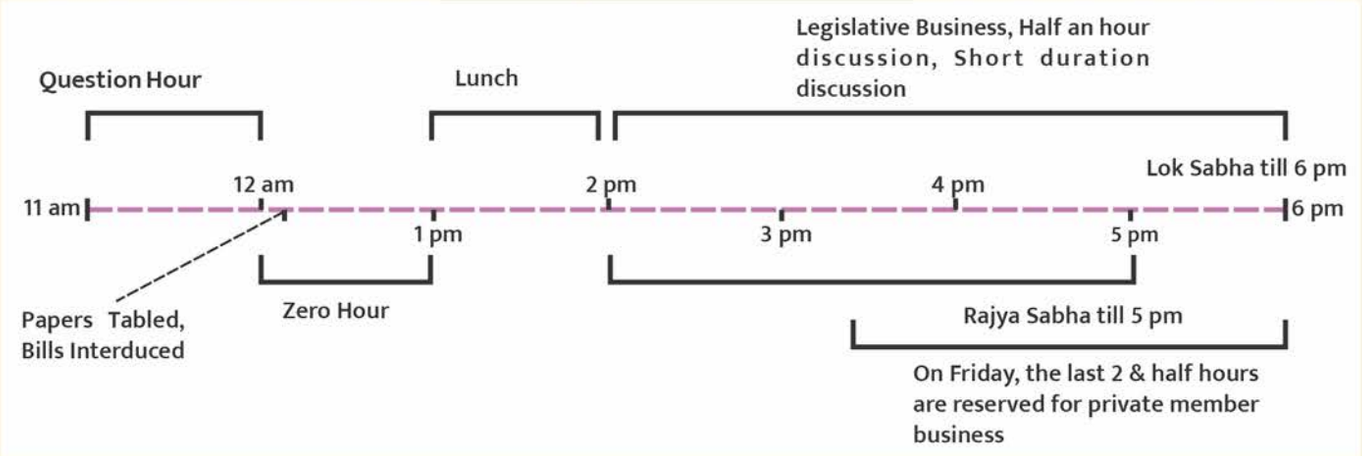
84th CAA, 2001
Froze the allocation of seats till the year 2026 at the 1971 level.

87th CAA, 2003
Provided for the delimitation of constituencies on the basis of 2001 census and not 1991 Census without altering the number of seats allotted to each state in Lok Sabha.

104th CAA, 2020:
- Extended reservation for SC and ST to Lok Sabha and legislative bodies.
- Not extending the provision of nominating Anglo Indians to Lok Sabha and legislative bodies

PARLIAMENT PART-2

A Day in Parliament



Question Hour

1st hour of every parliamentary sitting.
Mentioned in the Rules of Procedure.
Members ask questions and the **ministers usually give answers.**
In addition to the ministers, the **questions can also be asked to the private members.**

3 kinds of questions		
Type of question	**Oral/written answer**	**Supplementary questions**
1. Starred question > Distinguished by an asterisk(*). > Submitted in advance (15 days). > Only 20 questions are picked (through ballot) for oral answer on a day.	Oral answer	Yes
2. Unstarred question > Submitted in advance (15 days).	Written answer	No
3. Short notice question > Asked by giving a notice of less than 10 days > Admitted at discretion of Speaker.	Orally	Yes
4. Questions to private members	–	–

Zero Hour

- Indian Innovation since 1962 and **Not mentioned in the Rules of Procedure.**
- Informal device available to the MPs to **raise matters that are urgent** without any prior notice.
- MPs give notice **before 10 am to the Speaker** on the day of the sitting.
- **Starts immediately after the question hour** and lasts until the agenda for the day is taken up.
- **Speaker decides whether to allow** the matter to be raised.

Motions

- **House expresses its decisions or opinions** on various issues through the adoption or rejection of motions.
- With the **consent of the presiding officer.**

3 Principal Categories of Motions

Substantive Motion
Self-contained independent proposal dealing with a very important matter like impeachment of President.

Substitute Motion
Moved in substitution of an original motion and proposes an alternative to it which then supersedes the original motion.

Subsidiary Motion
By itself has no meaning and cannot state the decision of the House without reference to the original motion or proceedings of the House.

Amendment
Seeks to modify or substitute only a part of the original motion.

Superseding Motion
Moved in the course of debate on another issue and seeks to supersede that issue.

Ancillary Motion
Used as the regular way of proceeding with various kinds of business.

Motions	Description
Closure Motion	• By a member to **cut short the debate on a matter** before the House and matter is put to vote. • 4 kinds of closure motions: ○ **Simple Closure:** Matters having been sufficiently discussed be now put to vote. ○ **Closure by Compartments :** Clauses of a length in bill are grouped into parts before commencement in the debate ○ **Kangaroo Closure:** Only important clauses are taken up for debate. ○ **Guillotine Closure:** Undiscussed clauses of a bill or a resolution are also put to vote.
Privilege Motion	• Concerned with the **breach of parliamentary privileges by a minister.** • **Moved by a member** when he feels that a minister has committed a breach of privilege of House or by withholding facts of a case or by giving wrong or distorted facts. • **To censure the concerned minister.**
Calling Attention Motion	• By a member to call the attention of a minister to a **matter of urgent public importance, and to seek an authoritative statement** from him on that matter. • Indian innovation since 1954. • **Mentioned in the Rules of Procedure.**

Adjournment Motion

- **To draw attention of the House to a definite matter** of urgent public importance.
- Needs support of **50 members.**
- **Not in Rajya Sabha.**
- Discussion should last for **not less than 2.5 hours.**
- **Conditions for motion:**
  - Not more than 1 matter;
  - Restricted to a specific matter of recent occurrence and should not be framed in general terms;
  - Not raise a question of privilege;
  - Not revive discussion on a matter that has been discussed in the same session;
  - Not deal with any matter that is under adjudication by court;
  - Not raise any question that can be raised on a distinct motion.

No-Confidence Motion

- Need simple majority to pass the motion
- Needs the support of 50 members to be admitted.
- Lok Sabha can only remove the govt from office by passing a no confidence motion.
- **Word not mentioned in Constitution.**

Confidence Motion

- **New procedural device to cope with the emerging situations** of fractured mandates resulting in hung parliament, minority governments and coalition governments.
- **Called upon by President** to prove their majority on the floor of the House.
- If the confidence motion is **negatived, it results in the fall of the government.**

Motion of Thanks

- First session after each general election and first session of every fiscal year is addressed by the President.
- Here, the **President outlines the policies and programmes of the government** in the preceding year and ensuing year.
- This address is discussed in both the Houses of Parliament on a motion **called the 'Motion of Thanks' and the motion is put to vote.**
- **Must be passed in the House,** otherwise amounts to the defeat of the government.

No-Day-Yet-Named Motion

- Admitted by the Speaker but **no date has been fixed for its discussion.**

Dilatory Motion

- **Motion for the adjournment of the debate** on a bill / motion / resolution etc.
- **Motion to retard or delay the progress of a business** under consideration of the House.
- Moved by a member at any time after a motion has been made.

Censure Motion	No Confidence Motion
• State the reasons for its adoption	• Need not state the reasons for its adoption
• Moved against an individual minister or group/entire council of ministers	• Moved against the entire council of ministers only
• For censuring the council of ministers for specific policies and actions	• For ascertaining the confidence of Lok Sabha in the council of ministers
• If passed, council of ministers need not resign	• If passed, council of ministers need to resign

Point of Order

- When the proceedings **do not follow the normal rules of procedure.**
- Extraordinary device as it **suspends the proceedings before the House.**
- **No debate is allowed** on a Point of order.
- **Related to interpretation or enforcement of the Rules of the House** or other articles that regulate the business of House.

Half-an-Hour Discussion

- For discussing a **matter of sufficient public importance.**
- Speaker can allot **3 days in a week for such discussions.**
- **No formal motion** or voting before the House.

Short Duration Discussion

- Known as **2-hour discussion** as the time allotted for such a discussion should not exceed 2 hours.
- **Matter of urgent public importance.**
- **Speaker can allot 2 days** in a week for such discussions.
- **No formal motion** or voting before the House.

Special Mention

- A matter which is **not a point of order, half-an hour discussion,** etc. can be raised under special mention in the Rajya Sabha.
- **'Notice (Mention) Under Rule 377'** in the Lok Sabha.

Resolutions

- To **draw the attention of the House or the government** to matters of general public interest.
- **3 categories:**
  - **Private Member's Resolution:** Moved by a private member (other than a minister) and discussed only on alternate Fridays and in the afternoon sitting.
  - **Government Resolution:** Moved by a minister and can be taken up **any day from Monday to Thursday.**
  - **Statutory Resolution:** Moved either by a private member or a minister and Tabled in pursuance of a provision in the Constitution or an Act of Parliament.
- **All resolutions come in the category of substantive motions,** but all motions need not necessarily be substantive.
- All motions are not necessarily put to vote of the House, whereas all the **resolutions are required to be voted upon.**

Youth Parliament

- Started on the **recommendation of the 4th All India Whips Conference.**
- To **acquaint the younger generations** with practices and procedures of Parliament.
- **Ministry of parliamentary affairs** provides necessary training and encouragement to the states in introducing the scheme.

Legislative Procedure in Parliament

- Bill is a **proposal for legislation** and it becomes an act or law when duly enacted.

Bills in the Parliament	
Public bills (Government bills)	**Private bills (Private members' bills)**
1. Introduced by a **minister.** 2. **Reflects of the policies** of the government (ruling party). 3. **Greater chance to be approved** by the Parliament. 4. Rejection **may lead to Govt's resignation.** 5. Introduction requires **7 days' notice.** 6. **Drafted by the concerned department** in consultation with the Law department.	1. Introduced by **any member of Parliament** other than a minister. 2. **Reflects the stand of opposition party** on public matter. 3. **Lesser chance to be approved** by the Parliament. 4. Rejection by House has no **implication on the parliamentary confidence** in the government or its resignation. 5. Introduction requires **1 month's notice.** 6. Drafting is the **responsibility of the member concerned.**

4 Categories of bills

Ordinary bills
Concerned with any matter other than financial subjects.

Money bills
Concerned with the financial matters like taxation, public expenditure, etc.

Financial bills
Concerned with financial matters (but are different from money bills).

Constitution amendment bills
Concerned with the amendment of provisions of the Constitution

Ordinary Bills

First Reading

- **Introduction of the bill and its publication in the Gazette** constitute the first reading of the bill. Introduced **in either House** of Parliament.
- Either by a minister or by any other member and have to ask for the leave of the House.
- Introduced by **reading title and objectives.**
- **No discussion** on the bill takes place at this stage.
- **Published in the Gazette of India.**
  * If a bill is published in the Gazette before its introduction, leave of the House to introduce the bill is not necessary.

Second Reading

- **General and detailed scrutiny** of bill and assumes its final shape.
- **Three sub-stages**
- **1 Stage of General Discussion:**
  - Printed copies distributed to all the members.
  - Principles of the bill and its provisions are discussed generally, but the details of the bill are not discussed.
- **4 actions by House:**
  - Take the bill into consideration immediately or on some other fixed date;
  - Refer the bill to a select committee of the House (consists of members of the House where the bill has originated);
  - Refer the bill to a joint committee of the two Houses (consists of members of both the Houses of Parliament);
  - Circulate the bill to elicit public opinion.
- **2 Committee Stage:**
  - **Committee examines the bill thoroughly** and in detail, clause by clause.
  - Can also amend its provisions. but without altering the principal underlying it.
- **3 Consideration Stage:**
  - House now **considers the provisions of the bill clause by clause.**
  - Each clause is discussed and voted upon separately.
  - **Members can also move amendments** and if accepted, they become part of the bill.

Third Reading

- **Confined to the acceptance or rejection** of the bill as a whole.
- **No amendments are allowed.**
- If the majority of members present and voting accept the bill, the bill is regarded as passed by the House.
- Then, Bill is authenticated by the presiding officer and **transmitted to the second House for consideration and approval.**

Bill in the Second House

- **Passes through all the three stages as above.**
- **4 alternatives before this House:**
  - Pass the bill without amendments;
  - Pass the bill with amendments and return it to the first House for reconsideration;
  - Reject the bill altogether;
  - Not take any action and thus keep the bill pending.
- If first house accepts the amendments then it is deemed to be passed and **sent to President.**
- If first house rejects the amendments by second house or no action is taken by second house in 6 months then **deadlock happens and president can summon joint sitting.**

Assent of the President

- 3 alternatives before the president:
  - **Give his assent and bill becomes an act** and is placed on the Statute Book.
  - **Withhold his assent** then bill ends and does not become an act
  - **Return the bill for reconsideration of the Houses.** If it is passed by both the Houses again with or without amendments and presented to the President for his assent, the president must give his assent to the bill.

  Thus, the President enjoys only a **"suspensive veto."**

Money Bill

Article 110

Bill is deemed to be a money bill if it contains **'only' provisions dealing with all or any of the following matters:**

1. **Imposition, abolition, remission,** alteration or regulation of any tax;
2. **Regulation of the borrowing** of money by the Union government;
3. **Custody of the Consolidated Fund of India or the contingency fund of India,** the payment of moneys into or the withdrawal of money from any such fund;
4. **Appropriation of money** out of the Consolidated Fund of India;
5. **Declaration of any expenditure charged on the Consolidated Fund of India** or increasing the amount of any such expenditure;
6. **Receipt of money on account of the Consolidated Fund of India** or the public account of India or the custody or issue of such money, or the audit of the accounts of the Union or of a state;
7. **Any matter incidental** to any of the matters specified above.

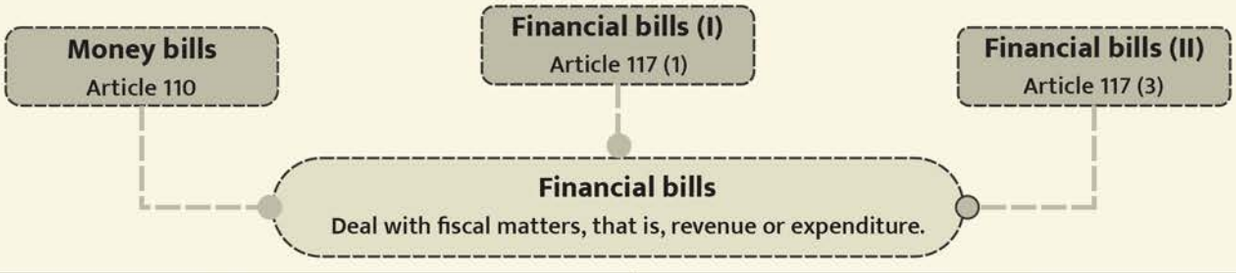
However, a **bill is not to be deemed to be a money bill** by reason only that it provides for:

- **Imposition of fines** or other pecuniary penalties,
- Demand or payment of fees for **licenses or fees for services rendered;**
- Imposition, abolition, remission, alteration or regulation of any tax by **any local authority or body for local purposes.**

Other features of bill

- **Decision of the Speaker of the Lok Sabha is final** on question whether a bill is a money bill or not.
- His decision **cannot be questioned in any court of law** or in the either House of Parliament or even the president.
- Money bill can **only be introduced in the Lok Sabha with the recommendation of the president.**
- Rajya Sabha is a **government bill** and can be introduced only by a minister.
- **Rajya Sabha cannot** reject or amend a money bill.
- It can only make the **recommendations and return the bill to the Lok Sabha within 14 days,** whether with or without recommendations.
- Lok Sabha can either **accept or reject all or any of the recommendations of the Rajya Sabha.**

Financial Bill

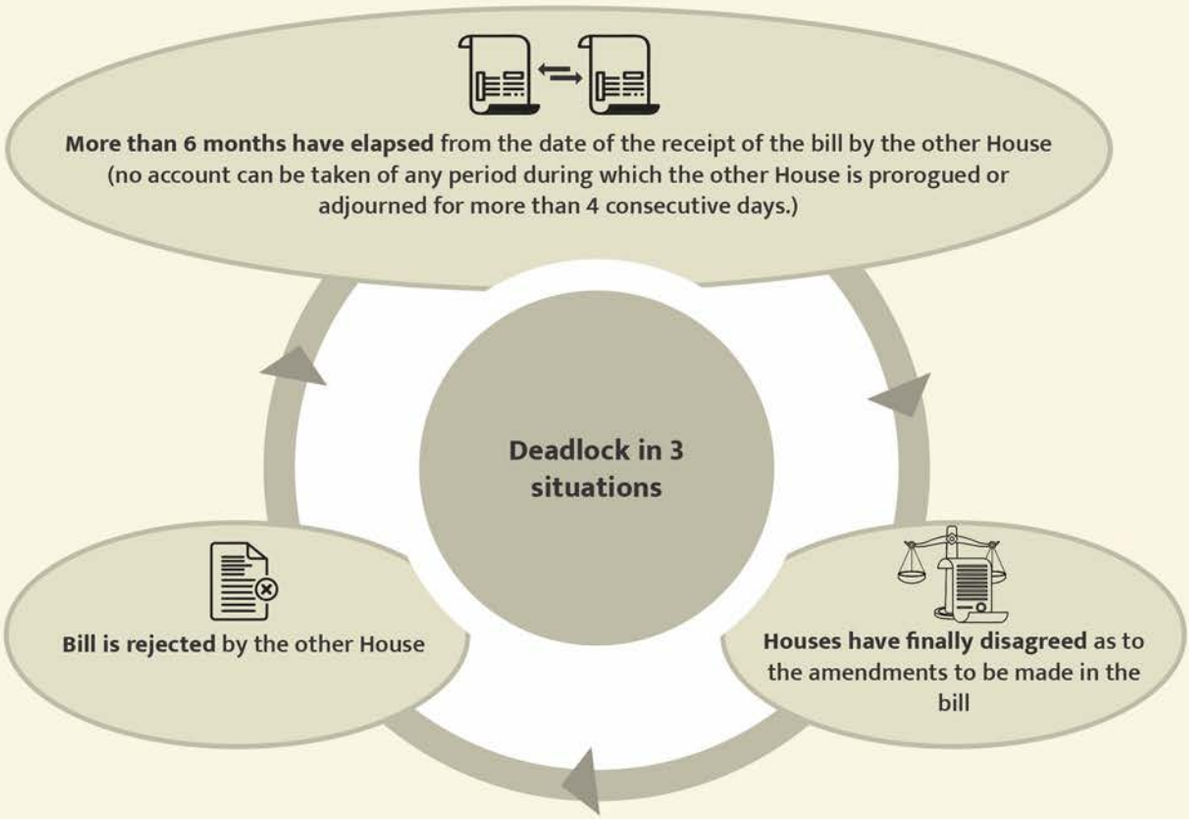


Financial Bills (I)	Financial Bills (II)
• Bill that contains all the matters **mentioned in Article 110 as well as other matters of general legislation.** • It can be **either rejected or amended by the Rajya Sabha.** • **Joint sitting** to resolve the deadlock. • **President can either give his assent or withhold or return** the bill for reconsideration of the Houses. • **Similarity in financial bill (I) and money bill–** (a) both of them can be **introduced only in the Lok Sabha** and not in the Rajya Sabha, (b) both of them can be introduced only on the **recommendation of the president.** • In all other respects, a financial bill (I) is governed by the **same legislative procedure applicable to an ordinary bill.**	• Contains provisions **involving expenditure from the Consolidated Fund of India**, but does not include any of the matters mentioned in Article 110. • Can be **either rejected or amended by either House of Parliament.** • **Joint sitting** to resolve the deadlock. • **President can either give his assent or withhold or return the bill** for reconsideration of the Houses. • **Recommendation of the President is not required at the introduction stage but is required** at the consideration stage. • **Treated as an ordinary bill.**

Joint Sitting of two Houses

What it is ? Extraordinary machinery provided by the Constitution to resolve a deadlock between the two Houses over the passage of a bill.

- **Who Summons? President**
- **Applicable to: Ordinary bills or financial bills**
- **Not applicable to: Money bills or Constitutional amendment bills.**
- **In case of dissolution of Lok Sabha:**
  - If the bill has already **lapsed due to the dissolution of the Lok Sabha, no joint sitting can be summoned.**
  - **Joint sitting can be held if the Lok Sabha is dissolved after the President has notified his intention** to summon such a sitting (as the bill does not lapse in this case).
- **Quorum: 1/10th of the total number** of members of the two Houses.
- **Governed by? Rules of Procedure of Lok Sabha** and not of Rajya Sabha.
- **Majority needed: Majority of the total number of members** of both the Houses present and voting in the joint sitting.
- **No New Amendment:** Constitution has specified that at a joint sitting, new amendments to the bill cannot be proposed except in two cases:
  1. Those amendments that have **caused final disagreement between the Houses;**
  2. Those amendments that might have **become necessary due to the delay in the passage of the bill.**
- **Provision used:** Only Thrice in: **Dowry Prohibition Bill, 1960, Banking Service Commission (Repeal) Bill, 1977 and Prevention of Terrorism Bill, 2002.**



Who presides?

- Speaker of Lok Sabha
- Deputy Speaker
- Deputy Chairman of Rajya Sabha
- Such other person as may be determined by the members present at the joint sitting

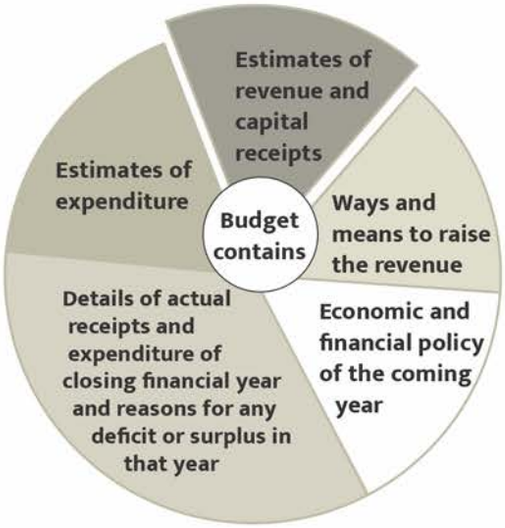
Chairman of Rajya Sabha cannot preside in joint session

BUDGET IN PARLIAMENT

Article 112

Budget (Annual Financial statement) is a Statement of the estimated receipts and expenditure of the Government of India in a financial year, which begins on 1 April and ends on 31 March of the following year.

- **Term 'budget' has no where been used** in the Constitution.
- In 2017, Central Government **merged the railway budget into the general budget.**
- Railway Budget was separated from the General Budget in 1924 on the recommendations of the **Acworth Committee Report (1921)** to



Constitutional Provisions

- **President shall in respect of every financial year** cause to be laid before both the Houses of Parliament a statement of estimated receipts and expenditure of the Government of India for that year.
- No demand for a grant shall be made **except on the recommendation of the President**
- No money shall be withdrawn from the Consolidated Fund of India except under appropriation made by law.
- **No money bill imposing tax shall be introduced in the Parliament except** on the recommendation of the President, and such a bill shall not be introduced in the Rajya Sabha.
- No tax shall be levied or collected **except by authority of law.**
- Parliament can **reduce or abolish a tax but cannot increase it.**
- A money bill or finance bill **dealing with taxation cannot be introduced in the Rajya Sabha** – it must be introduced only in the Lok Sabha.
- **Rajya Sabha has no power to vote on the demand for grants.**
- Rajya Sabha should return the **Money bill (or Finance bill) to the Lok Sabha within 14 days.**
- Estimates of expenditure embodied in the budget shall show **separately the expenditure charged on the Consolidated Fund of India and the expenditure made from the Consolidated Fund of India.**
- Budget shall **distinguish expenditure on revenue account** from other expenditure.
- **Expenditure charged on the Consolidated Fund of India shall not be submitted** to the vote of Parliament. However, it can be discussed by the Parliament.

Charged Expenditure

Budget consists of 2 types of expenditure

- **Expenditure 'charged' upon the Consolidated Fund of India:** non-votable by the Parliament, can only be discussed by the Parliament.
- **Expenditure 'made' from the Consolidated Fund of India:** voted by the Parliament.

List of the charged expenditure

1. **Emoluments and allowances of the President** and other expenditure relating to his office.
2. Salaries and allowances of the Chairman and the Deputy Chairman of the **Rajya Sabha and the Speaker and the Deputy Speaker of the Lok Sabha.**
3. Salaries, allowances and pensions of the **judges of the Supreme Court.**
4. Pensions of the **judges of high courts.**
5. Salaries, allowances and pension of the **CAG.**
6. Salaries, allowances and pension of the chairman and members of the **UPSC.**
7. **Administrative expenses of the Supreme Court,** the office of the CAG and the UPSC including the salaries, allowances and pensions of the persons serving in these offices.
8. **Debt charges for which the Government of India is liable,** including interest, sinking fund charges and redemption charges and other expenditure relating to the raising of loans and the service and redemption of debt.
9. Any sum required to satisfy any judgement, decree or **award of any court or arbitral tribunal.**
10. Any other expenditure **declared by the Parliament to be so charged.**

Stages in Enactment

1. Presentation of Budget

- Presented to the Lok Sabha **by Prepared Deptt of Economic Affairs on 1st of February.**
- Can be presented to the House in **2 or more parts.**
- **No discussion of the budget on the day** on which it is presented to the House.
- Finance minister presents the budget with a speech known as the **'budget speech'.**
- At the end of the speech in the Lok Sabha, the budget is laid before the **Rajya Sabha, which can only discuss it and has no power to vote on the demands for grants.**

  NOTE: Chief Economic Advisors Economic Survey indicating the status of the national economy is presented one day or a few days before the presentation of the budget.

Budget documents		
1. Budget Speech 2. Annual Financial Statement 3. Demands for Grants 4. Appropriation Bill	5. Finance Bill 6. Statements mandated under the FRBM Act: a) Macro-Economic Framework Statement b) Fiscal Policy Strategy Statement C) Medium Term Fiscal Policy Statement 7. Expenditure Budget 8. Receipts Budget	9. Expenditure Profile 10. Memorandum Explaining the Provisions in the Finance Bill 11. Budget at a Glance 12. Outcome Budget

2. General Discussion

- Begins a **few days after its presentation.**
- Takes place in **both the Houses of Parliament** and lasts usually for 3 to 4 days.
- **No cut motion can be moved** nor can the budget be submitted to the vote of the House.
- **Finance minister has a general right of reply** at the end of the discussion.

3. Scrutiny by Departmental Committees

- **Houses are adjourned** for about 3 to 4 weeks.
- During this gap period, **24 departmental standing committees of Parliament examine and discuss** in detail the demands for grants of the concerned ministers and prepare reports on them.
- **Reports are submitted** to both the Houses of Parliament for consideration.
- Committee makes parliamentary financial control over ministries much **more detailed, close, in-depth and comprehensive.**

4. Voting on Demands for Grants

- **Lok Sabha takes up voting of demands** for grants.
- Demands are presented **ministry wise.**
- Each demand is **voted separately by the Lok Sabha.**
- A **demand becomes a grant** after it has been duly voted.
- Demands for grants is the **exclusive privilege of the Lok Sabha.**
- **Voting is confined to the votable part of the budget**– the expenditure charged on the Consolidated Fund of India is not submitted to the vote (it can only be discussed).
- MPs can also move motions to reduce any demand for grant called as **'cut motion'.**

Cut Motion: A cut motion is special power vested in members of the lok sabha to oppose a demand for grant.

These are 3 types :

4.1. Policy Cut Motion

- Represents the disapproval of the policy underlying the demand.
- States that the amount of the demand be **reduced to Re 1.**
- Members can also advocate an alternative policy.

4.2. Economy Cut Motion

- Represents the economy that can be affected in the proposed expenditure.
- States that the amount of the **demand be reduced by a specified amount** (which may be either a lumpsum reduction in the demand or ommission or reduction of an item in the demand).

4.3. Token Cut Motion

- Ventilates a specific grievance that is within the sphere of responsibility of the Government of India.
- States that the amount of the **demand be reduced by ₹100.**

Significance of a cut motion

- **Facilitating the initiation of concentrated discussion** on a specific demand for grant;
- **Upholding the principle of responsible government** by probing the activities of the government.
- Their passage by the Lok Sabha amounts to the **expressions of want of parliamentary confidence** in the government and **may lead to its resignation.**
- On the last day of the days allotted for discussion and voting on the demands for grants, the Speaker puts all the remaining demands to vote and disposes them whether they have been discussed by the members or not. This is known as **'guillotine'.**

Conditions for cut motion
Should
1. Relate to one demand only. 2. Clearly expressed and should not contain arguments or defamatory statements. 3. Confined to one specific matter.
Should not
1. Make suggestions for the amendment or repeal of existing laws. 2. Refer to a matter that is not primarily the concern of Union government. 3. Relate to the expenditure charged on the Consolidated Fund of India. 4. Relate to a matter that is under adjudication by a court. 5. Raise a question of privilege. 6. Relate to a trivial matter. 7. Revive discussion on a matter on which a decision has been taken in the same session. 8. Reflect on the character or conduct of any person whose conduct can only be challenged on a substantive motion. 9. Anticipate a matter which has been previously appointed for consideration in the same session. 10. Seek to raise a discussion on a matter pending before any statutory tribunal or statutory authority performing judicial or quasi-judicial functions or any commission or court of enquiry.

5. Passing of Appropriation Bill

- Constitution **states that 'no money shall be withdrawn from the Consolidated Fund of India except under appropriation made by law'.**
- **Appropriation bill is** introduced to provide for the appropriation, out of the Consolidated Fund of India, all money required to meet:
  - Grants voted by the Lok Sabha.
  - Expenditure charged on the Consolidated Fund of India.
- **Appropriation Bill becomes the Appropriation Act** after it is assented to by the President.
- This takes time and **usually goes on till the end of April**.
- **Vote on account:** Special provision by which the government obtains Parliament's nod for funds sufficient to incur expenditure for a part of the year, enabling it to incur expenses for a short period of time or until a full Budget is passed. It is passed (or granted) after the general discussion on budget is over. It is generally granted for 2 months for an amount equivalent to 1/6th of the total estimation.

6. Passing of Finance Bill

- **Finance Bill is introduced to give effect to the financial proposals** of the Government of India for the following year.
- It is subjected to all the **conditions applicable to a Money Bill.**
- Unlike the Appropriation Bill, the amendments (seeking to reject or reduce a tax) can be moved in the case of finance bill.
- **According to the Provisional Collection of Taxes Act of 1931,** the Finance Bill must be enacted (i.e., passed by the Parliament and assented to by the president) **within 75 days.**
- **Finance Act legalises the income side of the budget** and completes the process of the enactment of the budget.

Other Grants

Supplementary Grant

- Granted when the amount authorised by the Parliament through the appropriation act **for a particular service for the current financial year is found to be insufficient for that year.**

Additional Grant

- Granted when a need has arisen during the current financial year for additional expenditure upon **some new service not contemplated in the budget** for that year.

Excess Grant

- Granted when money has been spent on any service during a financial year **in excess of the amount granted for that service** in the budget for that year.
- Voted by the Lok Sabha **after the financial year.**
- Must be **approved by the Public Accounts Committee.**

Vote of Credit

- Granted for meeting an **unexpected demand upon the resources of India,** when on account of the magnitude or the indefinite character of the service, the demand cannot be stated with the details ordinarily given in a budget.

Exceptional Grant

- Granted for a **special purpose** and forms no part of the current service of any financial year.

Token Grant

- Granted when funds to meet the proposed expenditure on a **new service can be made available by reappropriation.**

Funds

Consolidated Fund of India (Article 266)

- Fund to which all receipts are credited and all payments are debited i.e.
  - **All revenues received by the Government of India;**
  - **All loans raised by the Government by the issue of treasury bills, loans or ways and means of advances;**
  - **All money received by the government in repayment of loans forms the Consolidated Fund of India.**
- All the legally authorised payments on behalf of the Government of India are made out of this fund.
- **No money out of this fund can be appropriated (issued or drawn) except in accordance with a parliamentary law.**

Public Account of India (Article 266)

- **All other public money** (other than those which are credited to the Consolidated Fund of India) received by or on behalf of the Government of India.
- This includes **provident fund deposits, judicial deposits, savings bank deposits, departmental deposits, remittances etc.**
- This account is **operated by executive action,** that is, the payments from this account can by made without parliamentary appropriation.
- Such payments are **mostly in the nature of banking transactions.**

Contingency Fund of India (Article 267)

- Amounts determined by law are paid from time to time.
- This fund is placed at the **disposal of the President.**
- President can make advances out of it to **meet unforeseen expenditure** pending its authorisation by the Parliament.
- The fund is **held by the finance secretary on behalf of the President.**
- **Operated by executive action.**

VISIONIAS
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Quick Revision Module (UPSC Prelims 2022) Polity

PARLIAMENT PART-3

POSITION OF RAJYA SABHA

ROLE OF RAJYA SABHA

Revising Chamber (sober look at hasty decisions)

Federal Chamber (representation to states)

Chamber of **continuity** (not subject to dissolution)

Effective **Smaller** Chamber (strength less than Lok Sabha)

Chamber not concerned with Government formation (relatively free from competitive party politics)

Chamber **Securing Executive Accountability** (through various committees)

Chamber of **Ventilating Public Grievances** of states

COMPARISON WITH LOK SABHA

Equal Powers in relation to Lok Sabha

- Election and impeachment of the **President** (Article 54 and 61)
- Make law defining **parliamentary privileges** and also to punish for **contempt**
- Enlargement of the jurisdiction of the **Supreme Court and the UPSC**
- Approve **Emergency** under Article 352 and 356
- Election and removal of the **Vice-President** (however, RS alone initiate removal + RS special majority & LS agree by simple majority)
- Approval of **ordinances** by President
- **Receive reports** and papers from various statutory authorities
  - Annual Financial Statement
  - Audit Reports from CAG
  - Reports of UPSC
  - Reports of the Special Officer for the SCs & STs
  - Report of the Commission to investigate the conditions of the Backward Classes
  - Report of the Special Officer for Linguistic Minorities
- Introduction and passage of **ordinary and constitutional amendment bills.**

Unequal status with Lok Sabha

- **Money Bill can be introduced** only in the Lok Sabha
- Cannot amend or reject a **Money Bill**; can only recommend which can be accepted or not by Lok sabha (has to return within 14 days)
- Final say on **if bill is money bill** or not lies with speaker of Lok Sabha
- A **Financial Bill**, not containing solely the matters of **Article 110,** also can be introduced only in the Lok Sabha
- **Joint sitting** presided by Lok Sabha speaker (Lok sabha also wins in such sitting due to larger-numbers)
- Resolution for the **discontinuance of the national emergency** can be passed only by the Lok Sabha
- **Only discuss the budget** but cannot vote on the demands for grants
- **Cannot remove the Council of Ministers** by passing a no-confidence motion

Special Powers of Rajya Sabha

Legislation on State matters

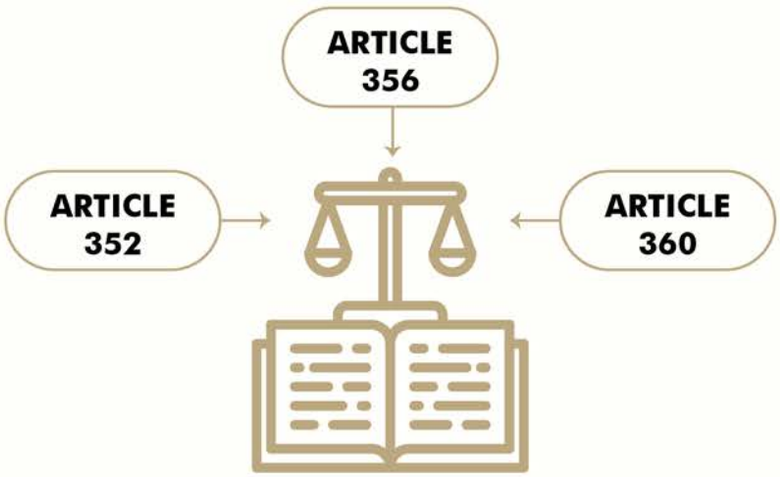
- Can initiate Central intervention in the State Legislative field **(Art 249)**
- Rajya Sabha may pass resolution, by a majority of not less than two-thirds of the Members present and voting, to the effect
- Remains in force for a maximum period of one year (extendable by 1 year at a time by similar resolution)

Creation of All India Services

- Under **Article 312,** Rajya Sabha can pass a resolution by a majority of not less than two-thirds of the members present and voting to this effect.
- Resolution declaring that it's necessary in the national interest to create one or more All India Services
- Parliament then will have the power to create by law such services.

Approval of Proclamation

- If a Proclamation is issued at a time when Lok Sabha has been dissolved or the dissolution of Lok Sabha takes place within the period allowed for its approval, then the proclamation remains effective, if the resolution approving it is passed by Rajya Sabha within the period specified in the Constitution under articles 352, 356 and 360

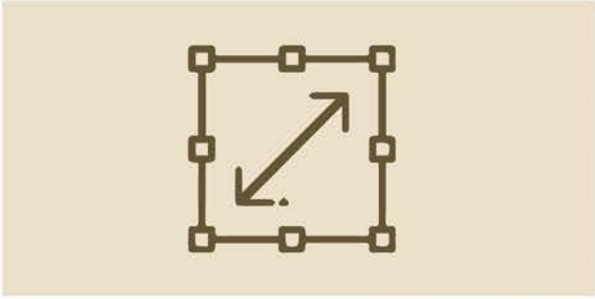


PARLIAMENTARY PRIVILEGES

Special rights, immunities and exemptions enjoyed by the two Houses of Parliament, their committees and their members

To secure the independence and effectiveness of their actions

Extended to attorney general of India and Union ministers



Do not extend to the president

Collective Privileges

- Right to publish its reports, debates and proceedings and also the right to prohibit others from publishing the same (true reports allowed – 44th CAA)
- Can exclude strangers from its proceedings and hold secret sittings
- Can make rules to regulate its own procedure and the conduct of business
- Can punish members as well as outsiders for breach of its privileges or its contempt
- Right to recieve immediate information of the arrest, detention, conviction, imprisonment and release of a member
- No person (member or outsider) can be arrested, and no legal process (civil or criminal) can be served within the precints without presiding officer permission.
- Can institute inquiries and order the attendance of witnesses and send for relevant papers and records
- Courts are prohibited to inquire into the proceedings

Individual Privileges

- They cannot be arrested during the session of Parliament and 40 days before the beginning and 40 days after the end of a session.
  - Available only in civil cases and not in criminal cases or preventive detention cases.
- **Freedom of speech in Parliament.**
  - No member is liable to any proceedings in any court for anything said or any vote given by him in Parliament or its committees.
  - This freedom is subject to the provisions of the Constitution and to the rules and standing orders regulating the procedure of Parliament.
- **They are exempted from jury service.**
  - They can refuse to give evidence and appear as a witness in a case pending in a court when Parliament is in session

Sources of Privileges

- **Constitution (Article 105)** expressedly mentioned only two privileges, that is, freedom of speech in Parliament and right of publication of its proceedings
- Parliament, till now, has not made any special law to exhaustively codify all the privileges.
- They are based on **five sources**, namely,
  - Constitutional provisions
  - Various laws made by Parliament
  - Rules of both the Houses
  - Parliamentary conventions
  - Judicial interpretations.

Breach of Privileges (BoP)

- When any of the privileges (individual or collective) are disregarded - 'breach of privilege'.
- Some examples
  - Any action 'casting reflections' on MPs, parliament or its committees; could be considered BoP.
  - Publishing of news items, editorials or statements made in newspaper/magazine/TV interviews or in public speeches.

Contempt of the House (CoH)

- Any act or omission which obstructs or impedes (directly/indirectly) functions or any officers duty in either House of Parliament.
- All BoP constitute CoH, but a person may be guilty of CoH even though he does not violate any privilege, e.g., when he disobeys an order to attend a committee or publishes reflections on the character or conduct of a member in his capacity as a member.

Punishment in case of breach of privilege or contempt of the House

- The house can ensure attendance of the offending person.
- The punishment may take the form of admonition, reprimand or imprisonment.

SOVEREIGNTY OF PARLIAMENT

- This doctrine associated with British Parliament
- Parliament supreme power – no legal restrictions on its authority
- Indian Parliament not sovereign – legal restrictions arises from
  - Written nature of Constitution
  - Federal System of Government
  - System of Judicial Review
  - Fundamental Rights

MULTIFUNCTIONAL ROLE OF PARLIAMENT

Accountability of the executive

Law Making

Controlling Finance

Delibrations

Constitutional Amendment

Electoral functions – VP and president election

Judicial Functions – impeach President, Vice-President, judge etc & can punish for CoH

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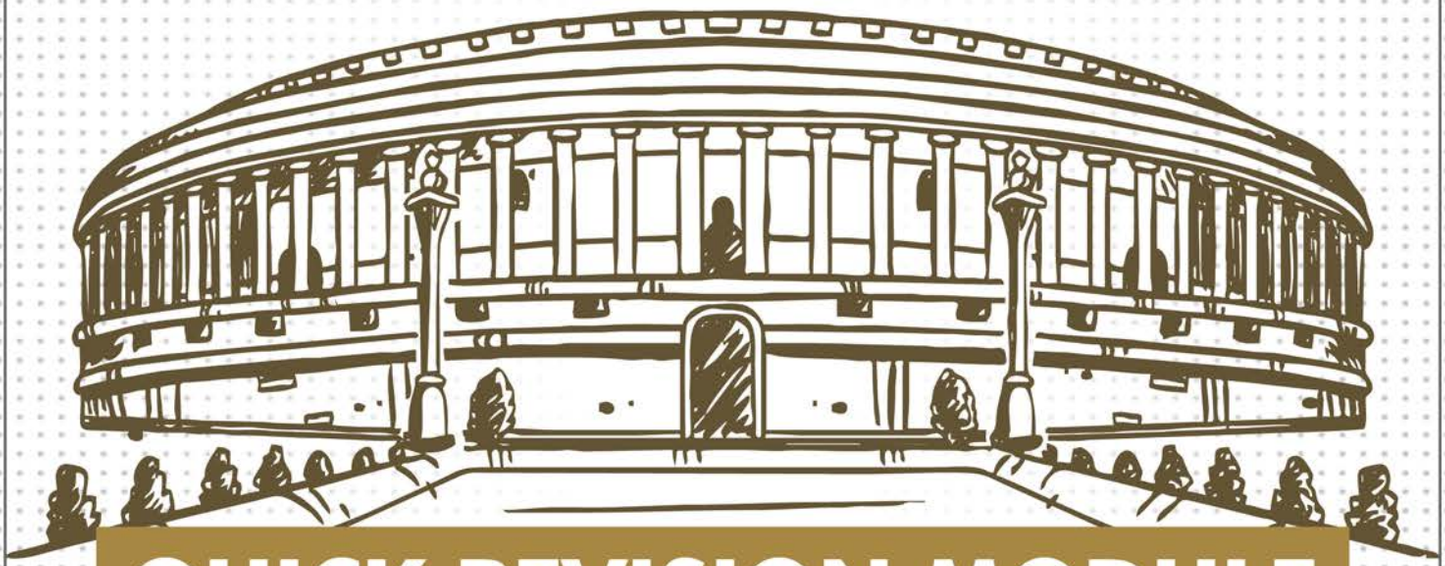


QUICK REVISION MODULE (UPSC PRELIMS 2024) POLITY

UNION EXECUTIVE-I

PRESIDENT

- Titular head of State (Art–52)
- First Citizen
- Symbol Of Unity, Integrity & Solidarity

VICE-PRESIDENT

- Second highest office
- Accorded a rank next to the President in the official warrant of precedence.

PRESIDENT OF INDIA

QUALIFICATION [Article 58]

- Citizen of India.
- 35 years of age.
- Qualified to contest elections as a member of the Lok Sabha.
- Not hold any office of profit under the Government of India or State or any local or other authority subject to the control of any of the said Government.

CONDITIONS OF OFFICE [Article 59]

- **Not** be a **member** of **any house of Union or State legislature.** (If such member is elected, he shall be deemed to have vacated his seat in that house on entering upon office of President).
- **Not** hold any other **office of profit.**
- Entitled, without payment of rent, to the use of his official residence (the Rashtrapati Bhavan).
- Emoluments and allowances (determined by Parliament) cannot be diminished during his term.

TERM OF OFFICE [Article 56]

- 5 years from entering upon his office.

Termination before 5 years in two ways

1. By resignation in writing to Vice-President.
2. By removal ONLY for violation of the Constitution, by the process of impeachment.

IMPEACHMENT PROCEDURE

- The impeachment charges can be initiated by either House of Parliament. These charges should be signed by **1/4th members of the House** (that framed the charges), and a **14 days' notice** should be given to the President.
- After the impeachment resolution is passed by a **majority of two-thirds of the total membership** of that House, it is sent to the other House, which should investigate the charges.
- The President has the right to appear and to be represented at such investigation. If the other House also sustains the charges and passes the impeachment resolution by a majority of two-thirds of the total membership, then the President stands removed from his office from the date on which the resolution is so passed.

ELECTION PROCEDURE

The President of India is elected by **indirect election,** i.e. by an **electoral college,** in accordance with the **system of proportional representation** by means of a **single transferable vote,** and the voting is by **secret ballot.**

ELECTORAL COLLEGE

- Elected members of the both the Houses of Parliament.
- Elected members of Legislative Assemblies of States.
- Elected members of legislative assemblies of the Union Territories of Delhi and Puducherry.

NOT INCLUDED IN COLLEGE

- Nominated members of Lok Sabha, Rajya Sabha & Legislative Assemblies of State & Legislative Assembly of Delhi & Puducherry.
- Elected and Nominated members of the Legislative Councils of States.

MANNER OF ELECTIONS

- Each member of the electoral college is given only one ballot paper.
- The voter, while casting his vote, is required to indicate his preferences by marking 1,2,3,4, etc. against the names of candidates.
- This means that the voter can indicate as many preferences as there are candidates in the fray.
- In the first phase, the first preference votes are counted.
- In case a candidate secures the required quota in this phase, he is declared elected.
- Otherwise, the process of transfer of votes is set in motion.
- The ballot of the candidate securing the least number of first preference votes are cancelled and his second preference votes are transferred to the first preference votes of other candidates.
- This process continues till a candidate secures the required quota.
- Parliament regulate matters relating to elections of President and Vice President.

REQUIREMENT FOR NOMINATION FOR OFFICE OF PRESIDENT

- 50 electors as proposers and 50 electors as seconders (elector= member of electoral College).

President is a representative of the nation as well as people in different States

- Uniformity of representation of the different States at the election, according to the population and number of elected MLAs of each State.

Value of the vote of an MLA

- (Total Population of the State)/ (Total number of elected members in the Legislative Assembly X 1000).
- Parity shall also be maintained between the States as a whole and the Union.

Value of the vote of an MP

- (Total number of votes assigned to the elected members of all the State Assemblies)/(Total number of elected members of both Houses of the Parliament).
- Successful candidate wins by an absolute majority of votes. He must secure a fixed quota of votes. The quota of votes is determined by dividing the total number of valid votes polled by the number of candidates to be elected plus one and adding one to the quotient.

Electoral Quota

- [Total Number of valid votes polled/((1+1)=2)]+ 1

VACANCY IN THE OFFICE OF PRESIDENT

CONDITION OF VACANCY

- On Expiry of his Term of Five years.
- By his Death, Resignation, Remove by impeachment, Otherwise, for e.g. he become disqualified to hold office.
- Illness or Absence from India.

WHO SHALL ACT AS PRESIDENT

- Election must be conducted before expiry of the term. If somehow election is delayed, the outgoing President continues to hold the office, until his succes or assumes the office.
- Vice President assumes the office until a new President is elected. Elections are to be held within six months of occurrence of the vacancy.
- Vice President assumes the office until the President resumes his duties.

Note: In case the office of President is vacant, Vice-President assumes the office. And in case office of Vice-President is also vacant, the Chief Justice of India (or if his office is also vacant. The senior most judge of Supreme Court available) shall act as the President of India.

POWER AND FUNCTIONS OF THE PRESIDENT

EXECUTIVE POWERS

- **Article 53(1)** provides that **executive powers** can be **exercised by the President** either directly or through officers subordinated (Council of Minister – Article 74) to him.
- All **executive actions formally taken in his name** and can make rules manner in which orders are made and executed in his name.
- **Appoints Prime Minister (PM)** and other ministers (both hold office during his pleasure).
- **Appoints Attorney General of India** and determines his remuneration. He holds office during the pleasure of the President.
- Appoints CAG, the chief election commissioner and other election commissioners, the chairman and members of UPSC, the governors of states, the chairman and members of finance commission.

- Can seek any information relating to the administration of affairs of the Union, and proposals for legislation from PM.
- Can require PM to submit, for consideration of the council of ministers, any matter on which a decision has been taken by a minister but, which has not been considered by the council.
- Can appoint a commission to investigate into the conditions of SCs, STs and other backward classes.
- Can **appoint an inter-state council.**
- Directly administers UTs through administrators appointed by him.

LEGISLATIVE POWERS

- Can **summon or prorogue the Parliament** and dissolve the Lok Sabha.
- Can also **summon a joint sitting** of both the Houses.
- Can **address the Parliament** at the commencement of the first session after each general election and the first session of each year
- Can send messages to the Houses of Parliament regarding pending bill in Parliament or otherwise
- Can appoint any member of the Lok Sabha to preside over its proceedings when the offices of both the Speaker and the Deputy Speaker fall vacant. Similarly, any member of the Rajya Sabha when the offices of both the Chairman and the Deputy Chairman fall vacant.
- **Nominates 12 members of the Rajya Sabha** and **2 to Lok Sabha.**
- His prior recommendation or permission needed to introduce certain types of bills in the Parliament. For example, a bill involving expenditure from the Consolidated Fund of India, or a bill for the alteration of boundaries of states or creation of a new state.
- For **bill sent to the President** after passed by the Parliament, he can: **give assent/withhold assent/return bill** (if not money bill).

  - On returning for reconsideration of the Parliament, if the bill is passed again by the Parliament, with or without amendments, the President has to give his assent to the bill.

- For **bill passed by State legislature** (reserved by the governor for consideration of the President), the President can: **give assent/withhold assent/direct governor to return bill (if not money bill).**

  - On returning the bill for reconsideration of the state legislature, not obligatory for the President to give his assent even if the bill is again passed by the state legislature and sent again to him for his consideration.

- Can promulgate ordinances on subjects where Parliament has legislative power(Art 123) provided parliament not in session, immediate action is required, parliament approve within 6 week of reassembly.

  - President may withdraw an ordinance at any time.
  - Promulgation and withdrawal subject to Council of Ministers approval.
  - May have retrospective effect and may modify or repeal any act of Parliament, or even another ordinance.
  - May also amend or alter a tax law, but not amend Constitution.
  - A statement explaining the circumstances that had necessitated immediate legislation by ordinance should also be placed before the House.
  - Such power not found in most of the democratic Constitutions including USA and UK.

- Lays the reports of CAG, UPSC, Finance Commission and others, before the Parliament.
- Can make regulations for the peace, progress and good government of the Andaman and Nicobar Islands, Lakshadweep, Dadra and Nagar Haveli and Daman and Diu. In the case of Puducherry also, the President can legislate by making regulations but only when the assembly is suspended or dissolved.

FINANCIAL POWERS

- Prior recommendation for introduction of money bills in Parliament.
- Causes to be laid Annual Financial Statement (i.e. Union Budget) before the Parliament.
- No demand for a grant can be made except on his recommendation.
- Can make advances out of the Contingency Fund of India for unforeseen expenditure constitutes.
- Finance commission after every five years.

JUDICIAL POWERS

- Appoints the Chief Justice & judges of Supreme Court and High Courts.
- Can seek advice from the Supreme Court on question of law or fact.
- Can grant pardon, reprieve, respite and remission of punishment, or suspend, remit or commute the sentence of any person convicted of any offence (by a court martial or against a Union law or sentence of death).
  - **Pardon:** Removes both the sentence and conviction.
  - **Reprieve:** Stay of the execution of a sentence (especially that of death) for a temporary period.
  - **Respite:** Denotes awarding a lesser sentence in place of one originally awarded due to some special fact (physical disability or pregnancy).
  - **Remission:** Reducing the period of sentence without changing its character.
  - **Commutation:** Denotes the substitution of one form of punishment for a lighter form.

MILITARY POWERS

- **Supreme commander of the defence forces** and appoints the chiefs of the Army, Navy and Air Force.
- Can declare war or conclude peace, subject to approval of Parliament.

DIPLOMATIC POWERS

- International treaties and agreements are negotiated and concluded on behalf of the President subject to the approval of Parliament.
- Represents India in international forums and affairs.
- Sends and receives diplomats like ambassadors, high commissioners, and so on.

EMERGENCY POWERS

- The Constitution confers extra ordinary powers on the President to deal with **National Emergency** (Article 352); **President's Rule** (Article 356 & 365); **Financial Emergency** (Article 360).

VETO POWER

ABSOLUTE VETO

- Power of the President to withhold his assent to a bill passed by the Parliament.
- Usually exercised with respect to private members bill or when cabinet resigns & new cabinet advises not to give assent.

SUSPENSIVE VETO

- The President exercises this veto when he returns a bill for reconsideration of the Parliament.
- But veto is overridden by a re-passage of the bill by the same ordinary majority (and not a higher majority as required for Qualified Veto in U.S.A.).
- Not possess this veto in the case of Money bills.

POCKET VETO

- Neither ratifies nor rejects or returns the bill, but simply keeps the bill pending for an indefinite period.
- Constitution does not prescribe any time limit within which he has to take the decision with respect to a bill presented to him for his assent. In USA, the President has 10 days.

NOTE: No veto power with President for Constitutional Amendment Bill. The 24th Constitutional Amendment Act of 1971 made it obligatory for the President to give his assent to a constitutional amendment bill.

CONSTITUTIONAL POSITION OF THE PRESIDENT

- **42nd Constitutional Amendment Act of 1976** made the President bound by the advice of the council of ministers headed by the Prime Minister.
- **44th Constitutional Amendment Act of 1978** authorised the President may return a matter once for reconsideration of his ministers, but the reconsidered advice shall be binding.
- **President can act on his discretion** (that is, without the advice of the ministers) under the following situations:

(i) Appointment of Prime Minister when no party has a clear majority in the Lok Sabha or when the Prime Minister in office dies suddenly and there is no obvious successor.

(ii) Dismissal of the council of ministers when it cannot prove the confidence of the Lok Sabha.

(iii) Dissolution of the Lok Sabha if the council of ministers has lost its majority.

VICE PRESIDENT

Qualifications

- Citizen of India.
- 35 years of age.
- Qualified for election as a member of the Rajya Sabha.
- Not hold any office of profit under the Union government or any state government or any local authority or any other public authority.

NOTE:

1. **Sitting President or Vice-President of the Union, the governor of any state and a minister for the Union or any state is not deemed to hold any office of profit.**
2. **MPs and MLAs are also eligible but if elected as Vice-President then he is deemed to have vacated his seat in that House without separate resignation.**
3. **The nomination of a candidate for election of Vice-President must be proposed by 20 electors and seconded by 20 electors as well.**

ELECTION

- **Indirect election.**
- Elected by the members of an electoral college consisting of the elected and nominated members of both Houses of Parliament.
- System of proportional representation by means of the single transferable vote and the voting is by secret ballot.

TERM OF OFFICE

- Five years but can hold office beyond his term of **five years** until his successor assumes charge
- Can resign from his office by addressing the resignation letter to the President.
- Also **eligible for re-election to that office.** He may be elected for any number of term

VACANCY IN OFFICE

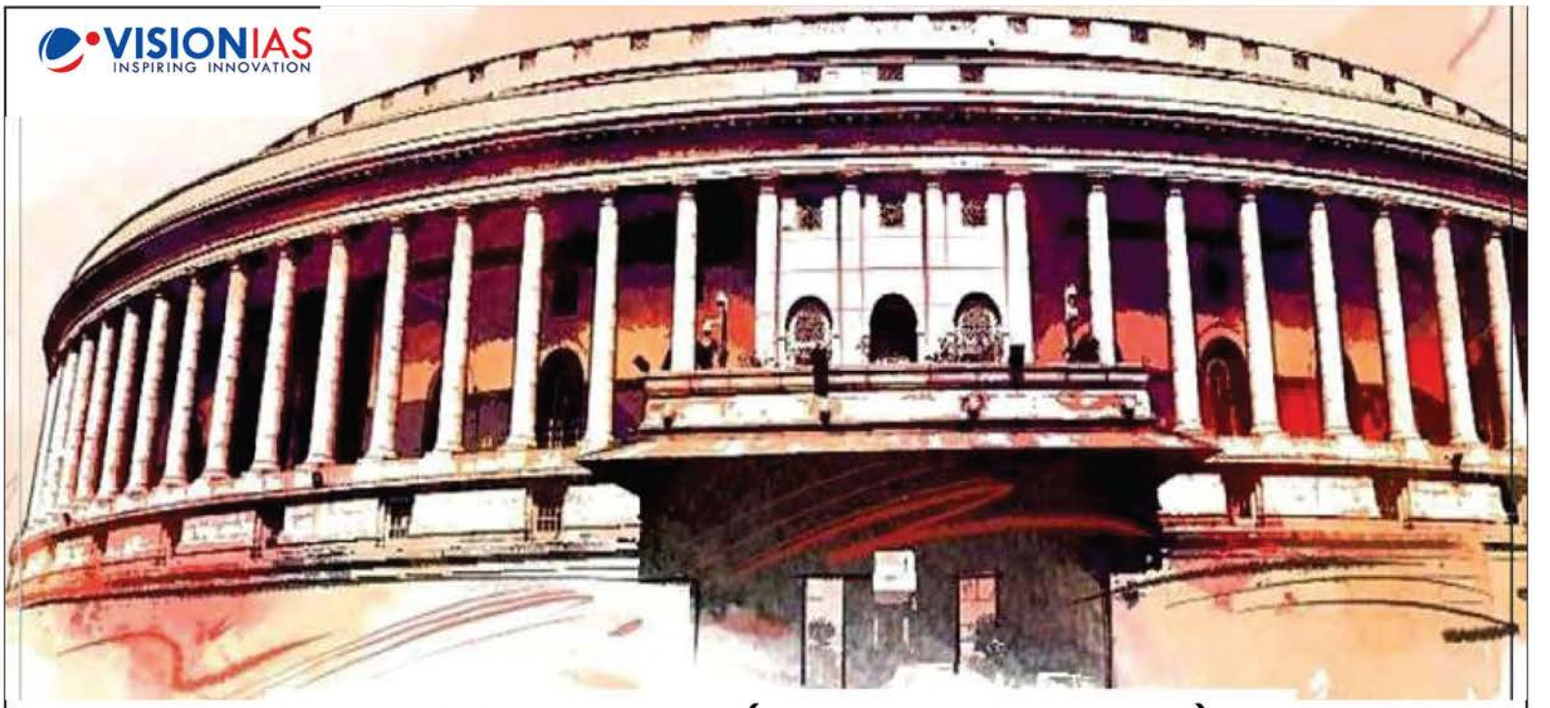
- On the expiry of his tenure of five years. (election to fill the vacancy must be held before the expiration of the term)
- By his resignation.
- On his removal.
- By his death.
- Otherwise, for example, when he becomes disqualified to hold office or when his election is declared void.
- In last 4 conditions, election to fill the vacancy should be held as soon as possible after the occurrence of the vacancy. The newly elected Vice-President remains in office for a full term of five years from the date he assumes charge of his office.

POWERS AND FUNCTIONS

- **Ex-officio Chairman of Rajya Sabha** (powers and functions are similar to those of the Speaker of Lok Sabha).
- Acts as President (only for a maximum period of six months) when a vacancy occurs in the office of the President due to his resignation, removal, death or otherwise.
- When the sitting President is unable to discharge his functions due to absence, illness or any other cause, the Vice-President discharges his functions until the President resumes his office.
- While acting as President or discharging the functions of President, the Vice-President does not perform the duties of the office of the chairman of Rajya Sabha. During this period, those duties are performed by the Deputy Chairman of Rajya Sabha.

REMOVAL

- Formal impeachment is not required.
- Can be removed by a resolution of the Rajya Sabha passed by an effective majority and agreed to by the Lok Sabha. But, at least 14 days' advance notice required.
- No ground mentioned in the Constitution for his removal.



Quick Revision Module (UPSC Prelims 2024) Polity

UNION EXECUTIVE-II

Appointment of PM

- The PM is appointed by the President under **Article 75.**
- Leader of the majority party in Lok Sabha is appointed as the PM.
- When no party has a clear majority, then the President may exercise his **personal discretion** in the appointment of PM.

Powers and Functions of the PM

As Head of Council of Ministers CoM :

- Power to distribute portfolios among ministers, reshuffle portfolios.
- Recommends persons who can be appointed as ministers by President.
- Presides over meeting of CoMs & influence its decisions.
- **Guides, directs, controls and coordinates** activities of all ministries.
- He can ask a minister to resign.
- He can bring about the collapse of the CoM by resigning from the office.

In Relation to the President

- Principal channel of communication between the President and the CoM.
- Advises the President with respect to appointment of important officials.
- Communicate to President all decisions of CoM relating to administration affairs of Union and proposals for legislation.

In Relation to Parliament

- He is the leader of the party in power.
- Advises the President with respect to summoning and proroguing of the sessions of the Parliament.
- He can recommend dissolution of the Lok Sabha to the President at any time.
- Announces government policies on floor of the house.

Role in International affairs

- PM represents India in important international forums and platforms.
- Meeting with counterparts from other countries.
- Making speeches to diaspora etc.

Other Powers and Functions of PM

- He is the chairman of NITI Aayog, National Integration Council, Interstate Council, National Water Resources Council and some other bodies.
- Leads his political party in elections and public rallies.
- Crisis manager-in-chief at political level during emergencies.

Some important Articles related to the PM and the Council of Ministers (CoM)

- **Article 74:** CoM headed by PM to aid and advise President.
- **Article 75:** PM will be appointed by President.
- **Article 75(1A):** Total CoM shall not be more than **15%** of total members of the house- added by the **91st Constitutional Act.** Similarly in the case of States also **(164{1A}).**
- **Article 75(1B):** If disqualified under Anti-defection law then also disqualified to be a minister.
- **Article 75(3):** CoM is collectively responsible to Lok sabha.
- **Article 75(4):** Oath of office and secrecy by Ministers.
- **Article75(5):** Within 6 months of a person being appointed as a minister, a person has to become a member of Parliament.

Constitutional position of PM

- In the scheme of parliamentary system of government provided by the Constitution, the President is the nominal executive authority **(de jure executive)** and Prime Minister is the real executive authority **(de facto executive).**
- It means, the President is the head of the State while the Prime Minister is the head of the government.
- As per Dr. BR Ambedkar, " If any functionary under our constitution is to be compared with the US President, he is the Prime Minister and not the President of the Union."

Council of Ministers

Composition

Cabinet Ministers

- Cabinet Ministers are those Ministers who hold very important portfolios like Defence, Home, Finance and Foreign Affairs, etc.
- They are highest in status, emoluments, and powers. It is these Ministers who constitute the Cabinet, which has been described as a wheel within a wheel (Council of Ministers).
- Their number varies from time to time, but seldom exceeds twenty.
- Cabinet Ministers collectively formulate the policy of the Government and are entitled to attend all meetings of the Cabinet.
- Occasionally, senior leaders are included in the Cabinet as Ministers without portfolio.

Ministers of State:

- They are next in rank and can either be given independent charge of ministries/departments or can be attached to Cabinet Ministers.
- In case of independent charge, they perform the same functions and exercise the same powers in relation to their ministries/departments as cabinet ministers do.
- However, they are not members of the Cabinet and attend Cabinet meetings only when specially invited and when affairs of their departments are to be considered.

Deputy Ministers

- Deputy Minister, who are next in rank to Ministers of State do not hold independent charge of any department.
- They perform such functions as the Minister-in- charge may delegate to them.

Parliamentary Secretaries

- They have no independent powers or functions. They assist the Ministers to whom they are attached in the Parliamentary work.
- They are, in fact, probationers under training and may hope to rise to higher ranks if they do well.

Functions of the CoM

- The main functions of the council of ministers are mainly **to aid and advise the President** in the exercise of his functions. Since the ministry is the highest organ of the Government of India, it determines all the policies relating to the country`s administration.
- It also has the responsibility of **formulating internal and foreign policies.** Peace and prosperity of the country depends largely on the policy formulated by the Ministry.
- The ministers are not only the head of the executive departments, but are also **important members of the majority party in the legislature** or at least having majority support in the legislature.
- The Ministry also plays a key role in **determining the economic activity of the state.** Currency, banking, commerce, trade, insurance and formulation and implementation of other plans are regulated and controlled by the Ministry as well.

Cabinet

Constitutional provision:

- Explicitly Mentioned in the constitution: **Article 352** (Added through 44th CAA,1978).
- The cabinet works on the principle of political homogeneity.
- Collective responsibility obliges the ministers to hold the same views and to champion the same policy.
- Differences between ministers are ironed out in the closed door meetings of the cabinet. In public, they must give the impression of solid unity.

Functions of the Cabinet

Functions of the Cabinet

- The Cabinet is responsible for policy formulation, both with regard to national matters.
- All policy decisions are taken by consensus and are conveyed by the Prime Minister to the President.

Legislative Powers:

- All the Ministers are Members of Parliament and, thus, participate in legislation.
- Most of the Bills are introduced in the Parliament by the Ministers and are always passed by the Parliament because of the support they enjoy.
- The Bills to be introduced by the Ministers are considered by the Cabinet and then approved.
- The Cabinet may make such changes in the Bills as it thinks are necessary.

Financial Powers:

- The Cabinet is responsible for all expenses of the Government and the sources of revenue to finance the expenditure.
- The annual budget prepared by the Finance Minister is controlled by the Cabinet.
- The Cabinet is responsible for approving the economic and fiscal policies. Also for taking decisions on the reports submitted by the Finance Commission and the Comptroller and Auditor-General of India.

Power of making Appointments:

- Although the President enjoys vast powers of appointing high dignitaries of the State, in reality these appointments are made by the President on the recommendation of the Cabinet.
- The advice of the Cabinet is binding on the President and virtually all the functions of the President are performed by this body.
- However, the President may ask the Cabinet to reconsider its advice, but only once. The advice given after reconsideration is binding on the President (44th Constitutional Amendment Act).

Coordination for smooth functioning:

- The Cabinet not only coordinates the work of various departments but also resolves the inter-departmental disputes.

CoM vs Cabinet

Council of Ministers	Cabinet
• Wider body (60-70 members).	• Smaller body (15-20 members).
• Includes all categories of ministers: Cabinet ministers, Minister of state, and deputy ministers.	• Part of CoM.
• It is vested with all the powers but in theory.	• It exercises the powers of the CoM.
• Its functions are determined by the Cabinet.	• It directs the council of ministers.
• It implements the decisions taken by the cabinet.	• It supervises the implementation of its decisions by the CoM.
• It is a constitutional body (Article 74-75).	• It did not find a place in the original text of the Constitution.
• It is collectively responsible to the Lower House of the Parliament.	• It enforces the collective responsibility of CoM to the Lower House of Parliament.

Different forms of Govt

Prime Ministerial form of Govt

- It is a Parliamentary form of government in which PM dominates over the cabinet.
- It is seen when a single party enjoys an absolute majority in Lok Sabha or PM is the first level leader of the party or he has led the party to electoral victory etc.
- The decisions of the PM are accepted by the cabinet, though the decision taken in this context is not necessarily collective and thus can be seen as against the spirit of Parliamentary democracy.
- Though advantage is that decision making becomes faster which is very important during emergency situations however there is a possibility that decision taken may be hasty or maybe taken to secure the political future of the PM rather than serving the interest of the nation.
- PM form of government can also give rise to extra-constitutional authorities in the form of Kitchen Cabinet or inner cabinet which advises PM on important political and administrative issues.

Cabinet form of government

- It is a form of government within the parliamentary form of Government in which the cabinet dominates over the PM.
- Cabinet is responsible to the Parliament, and its members are held accountable to the legislative body for their decisions and actions.
- The decisions taken by the cabinet are truly collective.

Care taker government

- A caretaker government is one which comes into existence when the council of ministers loses the confidence of Lok Sabha Or when Lok Sabha stands dissolved or when PM dies.
- The caretaker govt is the government in Interregnum (Government in transitional phase) and it lasts till a new Government is formed.
- Caretaker govt comes into existence because of Article 74 which says the president shall have a CoM to aid and advice him.
- So Article 74 legitimised caretaker govt though caretaker govt as such has not been discussed in the Indian Constitution.
- SC clarified in 1971 that caretaker govt is a government out of necessity.
- The role and the functions of the caretaker Government are Governed by the conventions it is just to carry out day to day routine administrative tasks and not supposed to take critical decisions since it does not enjoy the confidence of Loksabha.
- It can not financially commit the next government nor should it enter into a treaty with a foreign state.
- However a caretaker Govt in the case of national crisis caused by external threat or internal threat, caretaker govt can take an important policy decision to safeguard the interest of the country.

Interim Government

- An interim government is formed in transitional phase of the political history of the Government.
- It is a full-fledged govt to install a popular government according to the new constitution.

Coalition government

- It is a phenomenon where more than two political parties come together to form a government , sinking their basic ideological differences in the event of the inability of any single party to command a workable majority in the lower House of the legislature.
- This often reduces the dominance of the party that has won the highest number of seats.
- The process of fragmentation of the national party system and emergence of minority or coalition governments started in India from 1967.
- This period also marked the emergence of coalitions and also new parties and mergers along with breakup of some parties and absorption of the others.
- In India, the first coalition government to complete its full-term was the Atal Bihari Vajpayee-led National Democratic Alliance from 1999 to 2004.
- While some say that coalition governments generate more inclusive policies, others believe that coalitions impose constraints on policy making.

Attorney General: The highest law officer in the country (Article 76)

Appointed by:	• President of India
Qualification	• **Same as a Judge of SC** i.e He must be citizen of India. They must have been a judge of some highcourt for five years or an advocated of some high court for ten year or an eminent jurist in opinion of President
Term	• Not fixed
Grounds for removal/ resignation	• Not mentioned in the Constitution. • He may be **removed by the President** at any time. • He may also quit by submitting his resignation to the President. • Conventionally, he resigns when the government (council of minister) resigns or is replaced, as he is appointed on its advice.
Remuneration	• Not fixed by the Constitution. • He receives such remuneration **as the President** may determine.
Duties/Functions	• To give advice to the government of India upon such legal matters, which are referred to him by the President. • To perform such other duties of a legal character that are assigned to him by the President. • To discharge the functions conferred on him by the Constitution or any other law. • To appear on the behalf of the Government of India in all cases in the Supreme Court in which the Government of India is concerned. • To represent the Government of India in any reference made by the President to the Supreme Court **under Art. 143** of the Constitution. • To appear in any high court in any case in which the Government of India is concerned.

Rights provided	• In the performance of his official duties, the Attorney General has the right of audience in all courts in the territory of India. • He has the **right to speak** and **to take part in the proceedings of both the Houses of Parliament** or their joint sitting or any committee of the Parliament of which he may be named a member, but without a right to vote. • He **enjoys all the privileges and immunities** that are available to a member of Parliament.
Limitations imposed on AG	• He should not advise or hold a brief against the Government of India. • He should not advise or hold a brief in cases in which he is called upon to advise or appear for the Government of India. • He should not defend accused persons in criminal prosecution without the permission of the Government of India. • He should not accept appointment as a director in any company or corporation without the permission of the Government of India.
Other notable facts	• He does not fall in the category of government servant and he is **not debarred from private legal practices.** • There are also present the offices of Solicitor General of India and Additional Solicitor General of India (extra constitutional) to assist the Attorney General of India in the fulfillment of his official responsibilities. • In 2017, the **Delhi HC ruled that the office of Attorney General (AGI) does not come under the ambit of RTI Act** as it is **not a public authority under section 2(h) of the act.** • Attorney General gives consent for contempt of court proceedings.

CABINET COMMITTEES, AND PARLIAMENTARY COMMITTEES

Cabinet Committes

(Based on the **Principles of Division of Labour** and **Effective Delegation**).

Features of Cabinet Committees:

- **Extra-constitutional** in nature.
- They are mentioned in the Governments of India **Transaction of Business Rules 1961.**
- **2 types: Standing** (Permanent) and **Ad-hoc** (temporary).
- **Set up by PM** according to the exigencies of the time and requirement of the situation.
- Their **number, nomenclature,** and **composition** varies from time to time.

Composition of Cabinet Committees:

- They usually include only Cabinet Ministers.
- However, the **non-cabinet Ministers are not debarred** from their membership.
- They not only include the Ministers in charge of subjects covered by them but also include other senior Ministers.
- Their membership varies from Three to eight.
- **Head of the Committee-**
- They are **mostly** headed by the **Prime Minister.**
- Sometimes other **Cabinet Ministers** also act as their **Chairman.**
- But,in case the **Prime Ministeris a member** of a committee, he **invariably presides over it.**

Note: Prime Ministeris part of **six panels** except for the **Committee on Accommodation** and **Committee** on **Parliamentary Affairs.**

Functions of Cabinet Committees:

- To sort out issues and formulate proposals for the Cobinet.
- To reduce the enormous workload of the Cabinet.
- To facilitate in-depth examination of policy issues.
- For effective coordination.
- **Note:** The Cabinet can review their decisions.

Important Cabinet Committees:

- At present, **8 cabinet** committees are functional.
- 1. **The PoliticalAffairs Committee:** deals with domestic and foreign affairs. **Headed by PM.**
- 2. **Economic Affairs Committee:** directs and coordinates govt activities in economic affairs. **Headed by PM.**
- 3. **Appointment Committee:** decides all higher level appointments. **Headed by PM.**

- 4. **Cabinet Committee** on Security: It deals with issues relating to law and order, internal security etc. Headed by PM.
- 5. **Parliament Affairs Committee:** looks after the progress of govt business in the Parliament. Headed by
- **6. Cabinet Committee on Accommodation:** determines the rules with regard to the allotment of government accommodation. Headed by Home Minister.
- **7. Cabinet Committee on Investment and Growth:** Its function is to consider measures to promote investment and growth, consider various measures for improving Ease of Doing Business, etc. Headed by PM.
- **8. Cabinet Committee on Employment and Skill Development:** Headed by PM.

Note: Of all the Cabinet committees, the most powerful is the **political Affairs Committee.** It is also described as a **"Super-Cabinet".**

Parliamentary Committees

A Parliamentary Committee means a committee that:

- Is appointed or elected **by the House** or nominated **by the speaker/Chairman.**
- Works under the **direction of the Speaker/ Chairman.**
- Presents its **report to the House** or to the **Speaker/Chairman.**
- Has a **secretariat** provided by LS/RS.

Classification:

- Standing Committees: Permanent in nature. Ex- Public accounts committee, Estimates committee.
- Ad-hoc committees: Temporary in nature. Ex - Committee on MPLAD scheme. Ad hoc committees have two sub-parts 1. **Select committees** (constituted for specific purpose and membership limited to one house only); 2. **Joint parliamentary committees** (Have member from both the houses).

Functions of Parliamentary Committees:

- Members of the House get a **glimpse into the working of Governments** and understand the practical problems and constraints.
- Members can **engage with domain experts.**
- Committees also provide a forum for **building consensus across political parties.**
- Parliamentary committees investigate issues and bills proposed so that the Parliament can be well informed before making a decision of national importance.
- it enhances the ability of Parliament to scrutinize government policies.

Important Parliamentary Committees

A. FINANCIAL COMMITTEES

Name	Composition	Major Function
Public Accounts Committee	• **22** members **(15 LS, 7Rs).** • A **Minister is not eligible** for election to this Committee. • Term: 1 year.	• To ascertain whether the **money granted by Parliament** has been **spent** by the Government within the **scope of the Demand.** • Note: The CAG acts as a guide, friend and philosopher of the PAC.
Estimates Committee	• **30** members **(all from LS).** • A **Minister is not eligible** for election to this Committee. • Term: 1 year.	• To report **what improvements** in organization with the policy underlying the estimates **may be effected.**
Committee on Public Undertakings	• **22** members **(15 from LS, 7 from LS).** • A **Minister is not eligible** for election to this Committee. • Term: 1 year.	• To **examine** the **reports** and **accounts** of **Public Undertakings.**

B. OTHER COMMITTEES

Departmentally Related Standing Committees	• **31 members** (**21** from **LS, 10** from **RS**). • A **Minister is not eligible** to be nominated to these Committees. • Note: In 2004, the number of DRSC's was raised to **24** (from 17).	• Consideration of Demands for Grants. • Examination of Bills. • Consideration of Annual Reports. • Consideration of national basic long-term policy documents presented to the House.

Committee on Petitions	• 15 members in LS. • 10 members in Rs.	• To examine petitions on bills and on matters of general public importance.
Committee on Privileges	• **15** members in **LS.** • **10** members in **Rs.**	• To examine the cases of **breach of privileges** of the House. • Note: It is semi-judicial in nature.
Ethics Committee	• Not fixed.	• To examine the **cases of miscunduct** and recommend appropriate action.

Committee on Government Assurances	• 10 members in LS. • 15 members in Rs.	• To examine the assurances, promises, and undertakings given by ministers from time to time on the floor of the house.
Committee on Subordinate Legislation	• 15 members in LS. • 10 members in Rs.	• To examine whether the powers to make laws, rules, etc delegated by the parliament to the Executive are being properly exercised.
Committee on Papers Laid on the Table	• 15 members in LS. • 10 members in Rs.	• It examines all papers laid by Ministers to see whether they comply with provisions of the Constitution, or the related Act or Rule.
Committee on welfare of SCs and STs	• **30** members (**20** from **LS, 10** from **RS**).	• To **consider** the **reports of NCSC and NCST.** • To examine **all matters** related to the **welfare of SCs and STs.**

Committee on Empowerment of Women	• **30** members (**20** from **LS, 10** from **RS**).	• To consider the report of **National Commission for Women.** • To examine the measures with respect to women.
Joint Committee on Office of Profit	• **15** members (**10** from **LS, 5** from **RS**)).	• To examine the composition and character of committees and other bodies appointed by the Government (Central and Stat/UTs). • To recommend whether persons holding these offices should be disqualified or not.

Business Advisory Committee	• **15** Members in **LS** including **Speaker** as **Chairman.** • **11** Members in **RS** including **Chairman** as **ex-officio Chairman.**	• It **regulates the program** and **timetable of the House.**
Committee on Private Members' Bill and Resolutions	• This is a special committee of the LS and consists of **15** members **including** the **Deputy Speaker** as the **Chairman**. • RS doesn't have such a committee. • The same function in RS is performed by **Business Advisory Committee** of the house.	• To classify bills and allocate time for discussion on bills and resolutions introduced by private members. **Private Member:** An **MP** who is **not a minister.**
Rules Committee	• **LS: 15** members (Speaker as the chairman) • **RS: 16** members (Chairman as its ex officio chairman)	• To recommend necessary **amendments to the Rules of the house.**

Committee on Absence of Members from Sittings of the House	• It is a special committee of LS and consists of **15** members. • **No** such committee in **RS.**	• Examines the case of members who have been absent for 60 days or more without permission.

General Purpose Committee	• In each House, this committee consists of the **presiding officer (Speaker / Chairman) as its ex-officio chairman.** • **Other members include:** › Deputy Speaker, › Members of panel of chairpersons of all the departmental standing committees of the House, › leaders of recognised parties and groups in the House › Such other members as nominated by the presiding officer.	• To **consider and advice** on matters concerning **affairs of the house** which do not fall within the jurisdiction of any other parliamentary committee.
House Committee	• **LS: 12** members. • **RS: not fixed.**	• This committee deals with **residential accommodation** of members and other amenities.
Library Committee	• **9** members (**6** from **LS** and **3** from **RS**).	• To consider all matters relating to library of the Parliament.
Joint Committee on Salaries and Allowances	• **15** members (10 from LS, 5 from RS).	• To frame rules for regulating payment of salary, allowances, and pensions to MPs.

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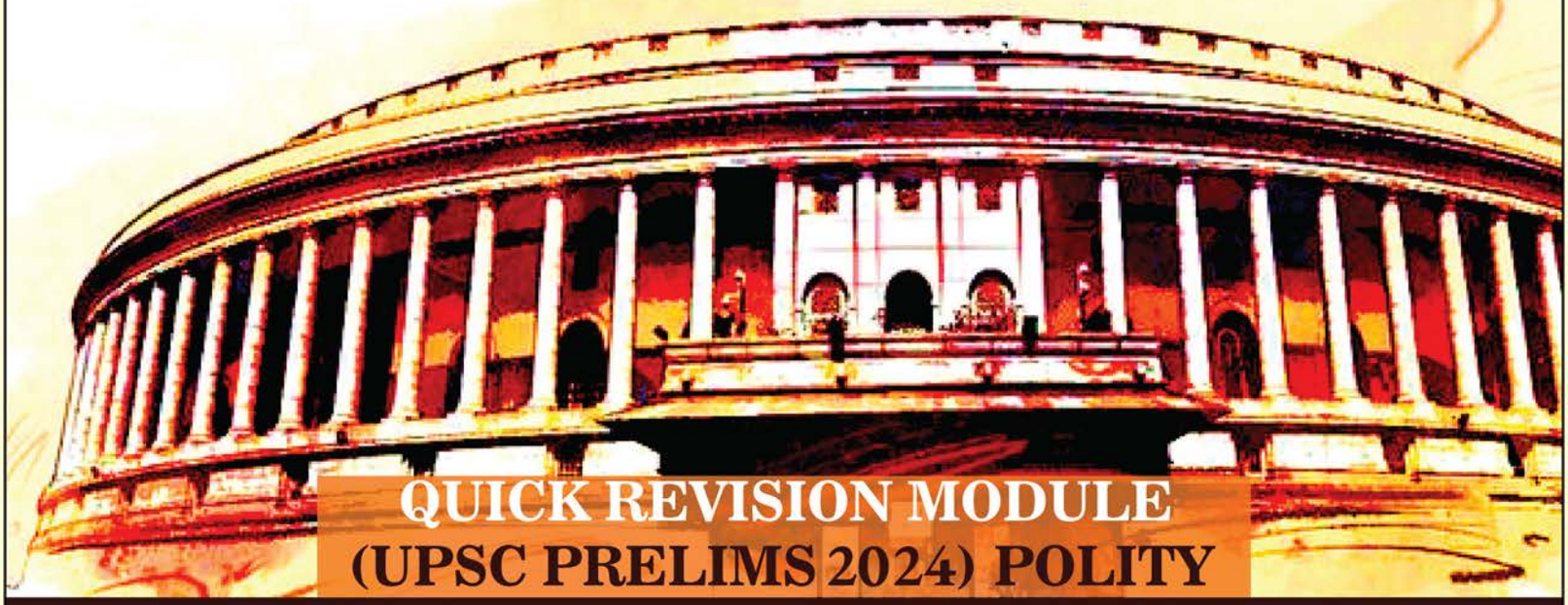


QUICK REVISION MODULE
(UPSC PRELIMS 2024) POLITY

STATE LEGISLATURE

Constitutional Status

- **India** → Federal State + Parliamentary form of Government

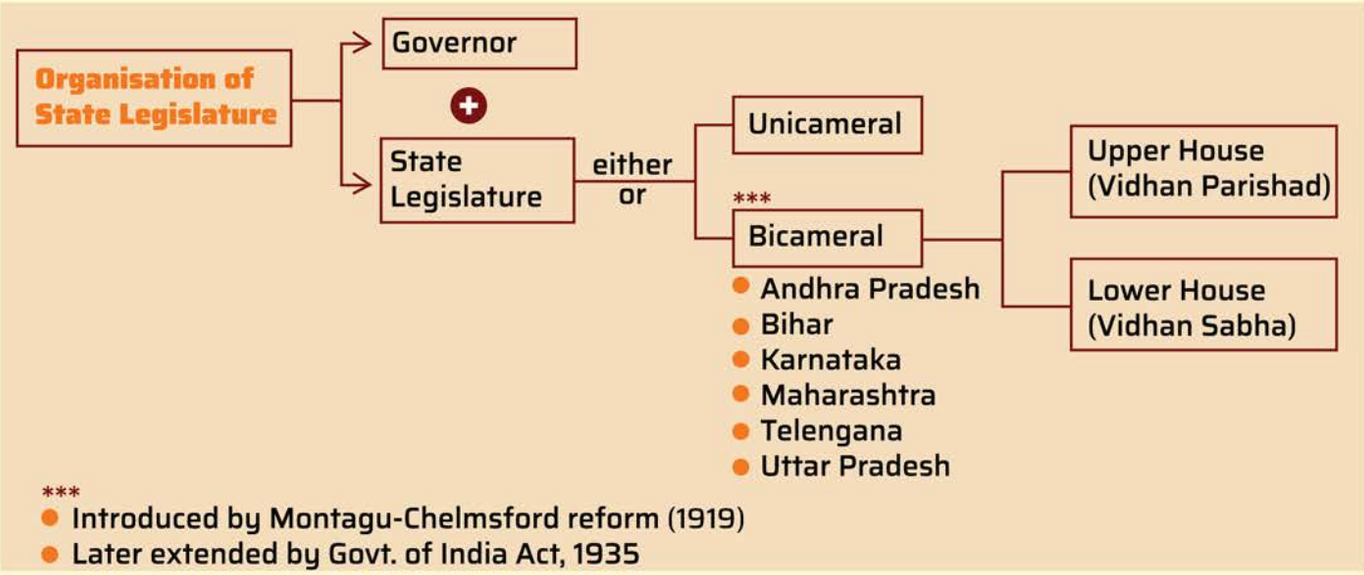
  Legislature → Union level and State level

- **Part VI, Article 168 to 212** → The organisation, composition, duration, officers, powers & so on of State Legislature.

IMPORTANT ARTICLES

Article No.	Subject Matter
168	Constitution of legislatures in states.
169	Abolition or creation of legislative councils in states.
170	Composition of the Legislative Assemblies.
171	Composition of the Legislative Councils.
172	Duration of state legislatures.
173	Qualification for membership of the state legislature.
175	Right of Governor to address and send message to the house or houses.

177	Rights of Minister and Advocate-General.
Related to Officers of the State Legislature	
178	The speaker and Deputy Speaker of Legislative Assembly.
179	Vacation and resignation of, and removal from, the offices of speaker and Dy. speaker.
182	The Chairman and Dy. Chairman of the Legislative council.
Disqualification of Members	
190	Vacation of seats.
191	Disqualification for membership.
Powers, privileges and Immunities of State legislature and their members	
194	Powers, privileges, etc,of the House of legislatures and of the members & committee thereof.
Legislative procedure	
196	Provisions as to introduction and passing of Bills.
197	Restriction on powers of Legislative Council as to Bills other than Money Bills.
198	Special procedure in respect of Money Bill.
199	Definition of "Money Bills".
200	Assent to Bills.
201	Bills reserved for consideration.
Procedure in Financial Matters	
202	Annual Financial Statement.
Legislative powers of the Governor	
213	Power of Governor to promulgate ordinances.



Creation and Abolition of Second Chambers in States

- **Article 169** State Legislative Assembly can pass a resolution with Special Majority.
  - ↓ a majority of the total membership of the Assembly
  - ➕ 2/3rd of members present and voting.
- The process does not involve amendment of the Constitution. Parliament can abolish a legislative Council or create it by a **simple majority,** if L.A passes resolution.

Composition of two houses

Basis	Legislative Assembly (LA)	Legislative Council (LC)
• Strength	• Minimum- 60 Maximum-500 Exception for Minimum Arunachal Pradesh, Sikkim, Goa } 30 Mizoram-40 Nagaland-46	• Minimum- 40 Maximum- 1/3rd of the total strength of Legislative Assembly. • Actual strength of a council is fixed by parliament.
• Election of members	Election by people on the basis of Universal Adult franchise.	• 1/3rd- By the members of local body(Municipalities, District boards, etc). • 1/3rd- By the members of State legislative Assembly. • 1/12th- By graduates of three yrs. standing & residing within the state. • 1/12th- By teachers of three yrs. standing in the state, not lower in standard than secondary school.
• Governor's nomination	1 member of Anglo Indian community. **Note: 104th CAA** removed the nominated seats for the Anglo- Indian community both in Lok Sabha and State assemblies.	1/6th of the total strength.
• Duration	Normal term-5yrs. However, 1. Governor can dissolve the assembly at any time. 2. can be extended for one year at a time (for any length of time) during national emergency by a law of the parliament.	• A continuing chamber and thus not subject to dissolution. • 1/3rd of members retire every second year.

Membership of State Legislature

Qualification for the members of the State legislature

By the Constitution

- Citizen of India.
- make and subscribe to an oath or affirmation before the person authorised by the Election Commission.
- ≥ 25 yrs. of age for L.A.
  ≥ 30 yrs. of age for L.C.

By the parliament under RPA (1951)

- Must be an elector for an assembly constituency in the concerned state.
- For Governor's nomination must be a resident in the concerned state.
- To contest a seat reserved for SCs or STs, the person must be an SC or ST respectively.

Disqualifications for being chosen as and for being a member of State legislature

Under the Constitution

- If the holds any office of profit under the union or State Government.
- If he is of unsound mind and stands so declared by a court.
- Undischarged insolvent Not a citizen of India.
  or
- Voluntarily acquired the citizenship of a foreign state.

By the parliament under RPA, 1951

↓

Similar to those for Parliament.

On the ground of Defection

Under the provision of **Tenth Schedule.**

↓

Question of disqualification to be decided by (subject to Judicial Review).

↓

- In case of Legislative Council → By the Chairman
- In case of Legislative Assembly → By the Speaker

Vacation of Seats

- **Double membership**
  - Can not be a member of both houses at the same time.
  - If elected to both, seat in one house falls vacant.
- **Disqualification**
  - If Subject to any of the disqualification, his seat becomes vacant.
- **Resignation**
  - To the speaker in case of L.A.
  - To the Chairman in case of L.C.
- **Absence**
  - If absent from all its meeting for a period of **sixty days** without its permission.
- **Other Cases**
  - If his election is declared void by the court.
  - If he is expelled by the house.
  - If he is elected to the office of president or office of vice president.
  - If he is appointed to the office of Governor of a State.

Presiding officers of State Legislature

State Legislative Assembly		
Basis	**Speaker of the Assembly**	**Dy. Speaker of the Assembly**
• Election	• From Amongst its members.	• Amongst its members.
• Term	• During the Life of the Assembly.	• During the life of the Assembly.
• Vacation of office before Expiry of term	• If he ceases to be a member of the Assembly. • If he resigns by writing to the Deputy Speaker. • If he is removed by a resolution passed by a majority of **all the then members** of the assembly. Note: 14 days advance notice is required.	• If he ceases to be a member of Assembly. • If he resigns by writing to the speaker. • If he is removed by a resolution passed by a majority of **all the then members** of the assembly. Note: 14 days advance notice is required.

The Deputy Speaker performs the duties of speaker
- → If speaker's office is vacant
- → If the speaker is absent

Note :

1. In both the cases, Dy speaker has all the powers of speaker.
2. If both speaker and Dy speaker is absent – Assembly is presided by one of the chairperson (from panel of chairperson) who are nominated by speaker from amongst the member. Chairperson while presiding has the same power as that of speaker.

State Legislative Council		
Basis	**Chairman of the council**	**Deputy Chairman of the council**
• Election	• From amongst its members	• From amongst its members
• Vacation of office	• If he cases of be a member of the council • If the resigns by writing to the deputy chairman • If he is removed by a resolution passed by a majority of **all the then members** of the council. Note : 14 days advance notice is required	• If he cases to be a member of the council. • If he resigns by writing to the chairman. • If he is removed by a resolution passed by a majority of **all the then member** of the council. Note: 14 days advance notice is required.

- The powers of the chairman are similar to those of the speaker Except when the speaker decides about the Money Bill.

The Deputy Chairman performs the duties of Chairman's office
→ If Chairman's office is vacant
→ If the Chairman is absent

Note :

1. In both cases, deputy Chairman has all the powers of the chairman.
2. If the chairman & Deputy Chairman both are absent – Any member from a panel of Vice-Chairpersons who are nominated from amongst the member.

Vice-Chairperson while presiding has same power as that of the chairman.

Duration of House

State Legislative Assembly

5 Yrs, Except

- The Governor may dissolve it sooner than five years.
- In case of proclamation of Emergency
  - » The term of 5 years can be extended For one year at a time
  - » Till 6 month after the, proclamation ceases to have effect.

State Legislative council

- Not Subject to dissolution
- 1/3rd of its member retire on expiry of every second year.
- Legislative council is permanent body like Rajya Sabha.

Sessions of State Legislature - Similar to those of Union Parliament

Legislative procedure in State Legislature

Broadly **SIMILAR** to that in parliament except certain **DIFFERENCES.**

1. Difference with regards to Money Bills

Parliament	State Legislative
• After passing of Money Bill presented to The President. → Give his Assent. / With hold his Assent. / Can NOT return the Bill for Reconsideration.	• After passing of Money Bill (by Legislative Assembly) presented to The Governor. → Give his Assent. / With hold his Assent. / Can NOT return the Bill for Reconsideration. / Reserve the Bill for President's Assent. → Give his Assent. / With hold his Assent. / can NOT return the Bill for Reconsideration.

2. Differences with regards to Bills other than Money Bills

Parliament	State Legislature
• Deadlock between the two houses. → When the second house, after receiving a bill passed by the first house. → Rejects the Bill. / Proposes amendments unacceptable to the first house. / Does not pass the Bill within 6 months.	• Deadlock between the two houses. → When the Legislative council after receiving the bill passed by the legislative Assembly. → Rejects the Bill. / Proposes amendments unacceptable to the Legislative Assembly. / Does not pass the Bill within 3 months.

• The Constitution provides for a mechanism to RESOLVE the deadlock between the two houses i.e. joint sitting. • The loksabha can NOT override the Rajya Sabha by passing the Bill for the second time and vice versa.	• The Constitution DOES NOT provide for the mechanism of joint sitting of two houses to resolve a deadlock. • The legislative Assembly CAN override the legislative council by passing the Bill for second time. • When a bill is passed by the assembly for the second time and transmitted to the legislative council and **if legislative council.** ↓ Reject the Bill Again. / Proposes unacceptable Amendments t. the Assembly. / DOES NOT pass the Bill within ONE month. ↓ The Bill is deemed to have been passed by both the house.
• The mechanism of Joint sitting is available irrespective of the house in which the bill originates.	• The mechanism of passing the bill for the second time to resolve a deadlock applies to a bill originating in the legislative Assembly only, If the bill originated in the council and sent to the assembly and assembly rejects the bill. ↓ The bill end and becomes dead.

Note :

The council can delay the passage of the bill by a maximum of 4 months

- 3 Months → For the first time
- 1 Month → 2nd time

Governor's power of veto

After the passage of the Bill by both the houses

↓

Bill is presented before the Governor

↓

Steps that Governor may take

↓

1. May give his assent to the bill.

2. May withhold his assent.

3. In case of a bill other than money bill, he may return the bill with a message.

4. May reserve the bill for the consideration of the President. The reservation is COM-PULSORY in case the law in question would diminish the powers of the High court.

In case of a state bill received for President's consideration, he can take the following steps.

1. Money Bill

Can give his assent or withholds his assent.

2. Any other Bill

Can give his assent or withholds his assent.

Return the bill for reconsideration.

The state legislative must reconsider the Bill within 6 months.

If it is passed again with or without amendments.

Needs to be presented to the President directly.

The President is NOT bound to give his assent.

Note :
Once the Governor reserves a bill for the President's consideration, the subsequent enactment of the bill is in the hands of the President and the Governor plays no parts in its career.

Privileges of State Legislature

Artilce 194 – Identical to that of the privileges of the Union parliament (Article 105).

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QUICK REVISION MODULE
[UPSC PRELIMS 2024]POLICY

STATE EXECUTIVE

Article 153 to 167 in Part VI of the constitution deal with the State executive

State Executive = Governor + CM + COM + AG of the state.

GOVERNOR

The Constitution, under Article 153, provides for a Governor for each state.
Note: The 7th CAA of 1956, same person as a Governor for two or more states

Appointment-
President by warrant under his hand and seal

Qualifications:
1.) Should be a citizen of India
2.) Should have completed the age of 35 years.
Note: Additional Convention (not in Constitution): Outsider + President should consult CM of concerned State.

CONDITIONS FOR GOVERNOR'S OFFICE

Governor cannot be a member of either House of the Parliament or any of the State Legislatures

If a Member of a Legislature is appointed as the Governor of any States, he shall immediately cease to be a Member upon such appointment.

Cannot hold any office of profit

The Parliament determines the emoluments and allowances payable to him and also his free official residence.

1

Oath

- By **Chief Justice of the concerned High Court** and in absence of chief justice HC administered by the senior-most available Judge of the concerned High Court.

2

Transfer

from one State to another by the President

- **Resignation -** by addressing his resignation to the President

3

Term

- 5 years , but he remains in office until his successor assume charges.

4

Removal

- Dismissal by the President at whose 'pleasure' he holds the office [Article 156(1)] Resignation [Article 156(2)].
- The grounds on which a Governor may be removed are **not specified** in the Constitution.

POWERS AND FUNCTIONS OF THE GOVERNOR

EXECUTIVE POWERS

All executive actions of the government of a State are formally taken in the Governor's name.

He can seek any information relating to the administration of the affairs of the state and proposals for legislation from the Chief Minister.

He can make a recommendation to the President to impose constitutional emergency in the state under Article 356.

He acts as the **chancellor of universities** in the state. He also appoints the vice-chancellors of universities in the state

He appoints the Chief Minister, the other subordinate ministers, the Advocate General of the State, State Election Commissioner and his conditions of service and tenure of office, Chairman and members of the State Public Service Commission.

LEGISLATIVE POWERS

Governor of the State **summons or prorogues** the state legislature and he can dissolve the State Legislative Assembly.

He **nominates 1/6th of the members of the State** Legislative Council from amongst the persons having special knowledge or practical experience in literature, art,science, cooperative movement and social service

When both the offices of the Speaker and the Deputy Speaker fall vacant then the Governor appoints any member of the State's Legislative Assembly

Can **promulgate ordinances** when the **State Legislature** is not in session, ordinances must be approved by the State Legislature within six weeks from its reassembly.

Governor can reserve for the President's consideration any bill passed by the State Legislature, which endangers the **position of the State High Court, against the Constitution's provisions, opposing DPSP,**

Lays reports of the State Finance Commission, the SPSCs and the CAG relating to the accounts of the State, before the State Legislature.

FINANCIAL POWERS

Confirms that the **state budget or the Annual Financial Statement** is laid before the State Legislature.

Money Bills can be introduced in the State Legislature only with the prior recommendation of the Governor.

Demand for a grant can be made only on the Governor's recommendation.

To review the financial position of the Panchayats and the Municipalities, the Governor **constitutes a Finance Commission** in the state after every five years.

To meet any unforeseen expenditure, he can make advances out of the **Contingency Fund of the State**.

JUDICIAL POWERS

Governor is **consulted by the President,** while appointing the Judges of the concerned State High Court

He makes appointments, **postings and promotions of the district judges in** consultation with the State High Courts.

He appoints persons to the **judicial service of the state** (other than the District Judges) in consultation with the State High Court and the State Public Service Commission

Mercy Powers: The Governor can grant pardons, reprieves, respites and remissions of punishment or suspend, **however Governor cannot pardon a death sentence.**

Note: Unlike, Presient, Governor doesnot have **mercy powers in respect to punishment or sentence by a court-martial (military court).**

SPECIAL POWERS AND RESPONSIBILITIES OF GOVERNOR UNDER THE ARTICLES 371 TO 371J

1. **Nagaland (Art. 371 A)** — With respect to law and order in the State for so long as the internal disturbance in the Naga Hills Tuensang Area continues
2. **Assam (Art. 371 B)** — With respect to the administration of the tribal areas.
3. **Manipur (Art. 371 C)** — With respect to the administration of the Hill areas in the state.
4. **Arunachal Pradesh (Art. 371 H)** — Regarding the law and order in the state.
5. **Sikkim (Art. 371 F)** — For peace and for ensuring social and economic advancement of the different sections of the population.
6. **Gujarat (Art. 371)** — Establishment of separate development boards for Saurashtra and Kutch.
7. **Maharashtra (Art. 371)** — Establishment of separate development boards for Vidarbha and Marathwada.

Note: Schedule VI of the Constitution also accords special powers and responsibilities to the Governor. He has the power to divide the areas inhabited by different scheduled tribes in an autonomous district into autonomous regions.

DISCRETIONARY FUNCTIONS OF THE GOVERNOR

- **Can give or withhold assent to Bills, return a Bill** for reconsideration of the house concerned or both the houses. Also, act in his discretion in the case of reservation of a Bill for the consideration of the President.
- Advise the President on issue of failure of Constitutional machonery and recommends imposition of the President's rule in the cocnerned State.
- Use his dscretion while exercising the functions as the administrator of an adjoining Union Territory (in case of additional charge)

Note: Governor, like the President, also enjoys situational/circumstantial discretion.

ISSUES RELATED TO THE OFFICE OF GOVERNOR

Lack of Objective Criteria for untimely dissolution: While Article 174 gives powers to the Governor to dissolve the assembly, but the Constitution is silent on as to when and under what circumstances can the House can be dissolved

Political reasons being cited for Dissolution: Potential for political instability in the future and to prevent emerging alliances is often used as a reason to dissolve state assemblies.

Missing Political Neutrality in Governor's Office: The post has been reduced to becoming a retirement package for politicians for being politically faithful to the government of the day. For e.g. Bihar State Assembly was dissolved by the Governor in 2005 on apprehensions of "horse trading. Later the Supreme Court called the decision to be illegal and mala fide.

M M Punchhi Commission: The Governor should follow "constitutional conventions" in a case of a hung Assembly. It suggested a provision of 'Localized Emergency' by which the centre government can tackle issue at town/district level without dissolving the state legislative assembly

SC Judgements ;
S.R. Bommai Case (1994): The court accorded primacy to a floor test as a check of majority. The court also said that the power under Article 356 is extraordinary and must be used wisely and not for political gain.

Rameshwar Prasad Case (2006): Bihar Governor's recommendation for dissolving the Assembly the previous year was held to be illegal and mala fide. A Governor cannot shut out post-poll alliances altogether as one of the ways in which a popular government may be formed.

CHIEF MINISTER

1

- He is the head of the government and is the real executive authority **(de facto executive)**
- **Article 164** states that the Chief Minister shall be appointed by the Governor.

2

- Generally, the leader of the majority party in the State Legislative Assembly is appointed by the Governor
- In case of **Hung assembly -** Governor appoints the leader of party or coalition and asks him to seek a vote of confidence in the House within a month.

3

- **Oath -** Governor
- **Note:** In Oath swears allegiance to Constitution, uphold Sovereignty & integrity of India + takes Oath of Secrecy.
- **Term -** Not fixed , hold office during the pleasure of Governor
- **Removal -** Can not be dismissed as long enjoy majority support , if loses confidence of the assembly must resign or Governor can dismiss him.
- **Salary & Allowances:** Determined by the State Legislature

POWERS AND FUNCTIONS OF THE CHIEF MINISTER

In Relation to the COM

- CM is head of the COM, resignation/death lead to the dissolution of COM.
- Presides over the meetings of the COM and influences its decisions.
- Allocates, reshuffles the portfolios among ministers.
- Presides over the meetings of the COM and influences decisions.
- Incase of difference of opinion CM can advise the Governor to dismiss the cocnerned minister.

In Relation to the Governor

- Communicate to the Governor all decisions relating to the administration of the state.
- Advises the Governor for appointment of Advocate-General of the State, Chairman and Members of SPSC, State Election Commissioner.

In Relation to State Legislature

- Advices the Governor for summoning and proroguing of the sessions.
- Can any time recommend the Governor for the dissolution of the assembly

CM ENJOYS SOME OTHER POWERS AND FUNCTIONS

Chairman of the **State Planning Board**

Acts as a Vice-Chairman of the concerned **Zonal Council by rotation,** holding office for a period of one year at a time.

Member of the **Inter-State Council** and the **National Development Council,** both headed by the prime minister.

Acts as the crisis manager-in-chief at the political level during emergencies.

STATE COUNCIL OF MINISTERS
CONSTITUTIONAL PROVISIONS

Article 163	▸ COM to aid and adviseGovernor, subject to his discretionary powers. The advice tendered by Ministers to the Governor shall not be inquired into in any court.
Article 164	▸ CM shall be appointed by the Governor and the otherMinisters shall be appointed by the Governor on the advice of the CM. ▸ COM collectively responsible to the state Legislative Assembly. ▸ A minister who is not a member of the state legislature for **any period of six consecutive months** shall cease to be a minister. ▸ The **salaries and allowances** of ministers shall be determined by the state legislature. ▸ The total number of ministers (including the CM) in a state **shall not exceed 15 per cent** of the total strength ofthe legislative assembly of that state. **Note:** The no. of ministers, including the CM, in a state shall not be less than 12 **(added by 91st CAA).**
Article 177	▸ Every minister shall have the right to speak and take part in the proceedings of the Assembly and any of its Committees. **But not entitled to Vote.**

Collective Responsibility

- **Article-164:** COM is collectively responsible to State legislative assembly
  As a team sink and swim together
- Cabinet decision binds all the ministers even if they differ
- When assembly passes NCM all ministers have to resign

Individual Resposibility

- **Article-164:** also contains the principle of individual responsibility
- Each minister is responsible to the Governor for the department under his care
- In case of difference of opinion or dissatisfaction, CM can ask him to resign

ADVOCATE GENERAL OF THE STATE

1

Article 165
of the Indian Constitution provides for an Advocate General for the State.

2

Appointment- By Governor
Qualification - Judge of a High Court or must have held judicial office for ten years or advocate of HC for 10 years.

3

Functions

- Advices state government upon legal matters
- Article 177 gives **right to speak and take part in the proceedings of the Houses** of Legislature. However, have no right to vote..
  Note: Functions of Advocate General in respect of the State are similar to that of the Attorney General of India.

TERM AND REMOVAL

Constitution does not fix the term of Advocate General in India. He remains in the office during the pleasure of the Governor.

Constitution does not contain the procedure and grounds to remove the Advocate General of State. Governor can remove him/her at any point in time.

Resignation – Submitting the resignation letter to the state Governor.

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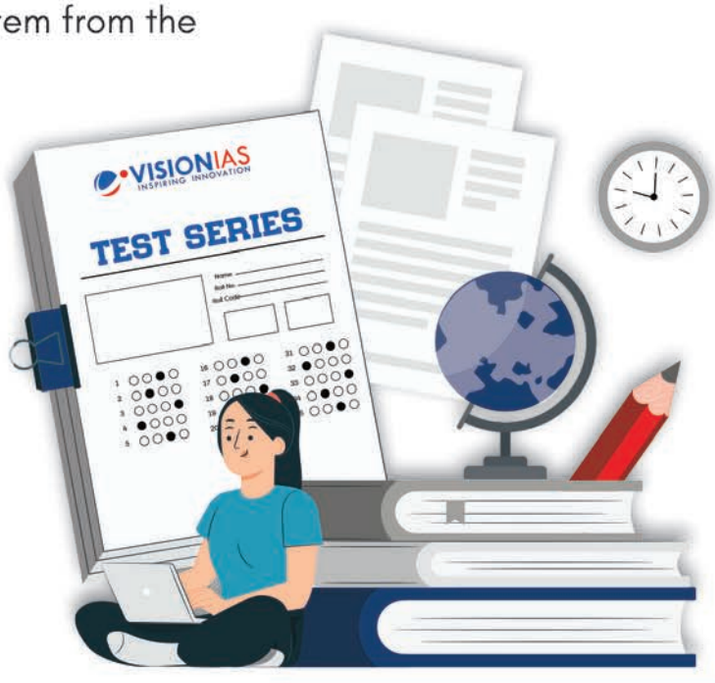
  - Monthly Current Affairs



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QUICK REVISION MODULE (UPSC PRELIMS 2022) POLITY

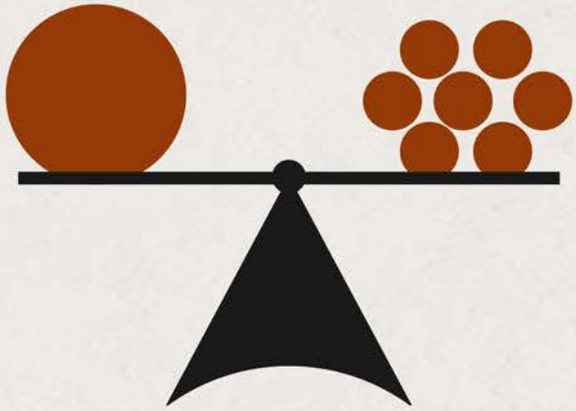
CENTRE–STATE RELATIONS

FEDERALISM

It is a system of polity in which **power is divided** between Union and its constituent units i.e. states.

Purpose of this Division of Power

- Prevent concentration of Power.
- Generating strength of the nation through Union.



Note: S.R Bommai vs. union of India- Federalism is basic feacture of Constitution.

ASPECTS OF INDIAN FEDERALISM

Fiscal Federalism

- Allocation of fiscal rights and responsibilities across different levels of government.
- e.g,:- Distribution of revenues between the Union and the States as envisaged under **articles 268- 293** in part XII of the constitution.

Asymmetric Federalism

- Different constituent units are accorded different powers and autonomy.
- e.g,:-Special constitutional provisions for some states **(Article 371to 371-J).**

Cooperative Federalism

- Federalism in which Union and constituent units interact cooperatively and collectively to solve common problems.
- e.g,:- Cooperative Federalism seems quite vague and there's no such constitutional obligation on Union/ States. A better example would be GST Council (Article 279A) and Inter-State Council (Article 263).

Competitive Federalism

- Deals with relationship among two or more states in the matters of trade, investment, commerce, etc.
- e.g,:Various reports of NITI Aayog like Healthy states progressive India, SDG index, etc which give performance based rankings of states.

CENTRE STATE LEGISLATIVE RELATION (ARTICLE 245 TO 255)

Distribution of Legislative power between the Centre and the States

Territorial Jurisdiction

Parliament

- Whole or any part of the territory of India.
- Extra territorial legislative power-to the Indian Citizen and their property in any part of the world.
- **Exception-**In states where scheduled area is located, the Governor is empowered to direct whether the Parliamentary law will be applicable or not or will be applicable with certain modifications.

State

- Only for the State in which the law has been passed expect when there is sufficent nexus.
- Territorial jurisdiction of state laws extends outside state when there is sufficient nexus between the state and subject.

Subject matter

Three list system adopted from Government of India Act, 1935.

Article 246 + VIIth Schedule

Union List

Exclusive authority of Parliament (100 Subjects).

e.g.,Defence, Atomic energy, Foreign affairs, Citizenship, Banking etc.

State List

Exclusive authority of State (61 Subjects).

e.g.,Public order/Police, Public health, water, land, Agriculture.

Concurrent List

Both, Centre and state can legislative. In case of conflict, Union law will prevail (52 subjects).

e.g.,Criminal law, Marriage law etc.

(Note: Article 248: Residuary power-which are not enumerated in any of the lists in the 7th Schedule, are vested in centre like in Canada and UNLIKE the USA, Australia and Switzerland.)

Special Conditions Under some specific circumstances, the Parliament can legislative on subject included in State list

- **Article 249-In the National Interest:** If the council of states (RajyaSabha) declares that it is necessary for the Centre to legislate upon a subject in the state list, **in national interest,** and passes a resolution to this effect, with a majority of at **least 2/3rd of members present and voting.**

- **Article 252- By agreement between States:** When two or more state legislatures pass a resolution, requesting the Parliament to legislate upon a subject in the state list.
- **Note:** The law will be applicable only to the states, which demanded such legislation.

- **Article 253-** To implement international treaties and agreements.

- **Article 352-During National Emergency:** The Parliament can legislate upon any subject in the state list.
- **Note:** Such a law becomes inoperative on **expiration of six months** after the emergency has ceased to operate.

- **Article 356-Under proclamation of President's rule-**During President's rule in state, the Parliament can make laws w.r.t any subject in the state list. Such a law continues to be operative even after the President's rule. But it can be repealed, altered or re-enacted by the State legislature.

Some other provision for centre's control over State legislations:

- **Article 200-** Governor reserves certain types of bills passed by the State legislature for consideration of the President.
- **Article 304-** Prior approval of the President is required on certain matters mentioned in the State list. e.g.,- Bills imposing restriction on the freedom of trade and commerce.
- **Article 360-** During a financial emergency, the President can direct the states to reserve Money Bills as well as other financial bills passed by the State legislature for his consideration.

ADMINISTRATIVE RELATIONS (ARTICLE 256 TO 263)

- Certain restrictions imposed on the executive power of state so as to give Centre the power to control state in executive or administrative matters.
  - Thus the Executive power of every state is to be exercised in such a way:

Article 256

To ensure **compliance with laws** made by Parliament and any existing law which apply in the state.

Article 257

Not to impede or prejudice the exercise of the executive power of the centre in the state.

In both the cases, the executive power of the centre extends to giving of such directions to the state as are necessary for the purpose.

For e.g,

- The construction and maintenance of means of communication declared to be of national or military importance.
- Protection of railways etc.

⇩

If not complied with the direction

⇩

Article 365- On failure of State to comply with any direction given by the union, President's rule can be imposed in the state under Article 356.

MUTUAL DELEGATION OF FUNCTION

⇩

The Constitution provides for inter-governmental delegation of executive function.

⇩

To mitigate rigidity and avoid a situation of deadlock.

⇩

Article 258(1)

Executive function of Centre to the State.

⇩

President with the consent of the State Government.

Article 258(2)

Executive function of centre to the state.

⇩

Parliament **without** the consent of the State.

⇩

Note: The same thing can not be done by the State legislature.

Article 258A

Executive function of State to the centre.

⇩

Governor with the consent of the Central Government.

All India Service: Controlled jointed by the Centre and the State

⇩

Ultimate Control

Central Government

- Power of appointment
- Taking disciplinary action
- Promotion, training

Immediate Control

State Government

- Power to suspend

Note: Article 312 – The Constitution authorizes the Parliament to create new All India Service on the basis of Rajya Sabha resolution **(majority of not less than two-thirds of members present and voting)** to that effect.

FINANCIAL RELATION (ART.268 TO ART.293):

1

Article 268 - Taxes and duties levied by the Union, but collected and appropriated by the States: Stamp Duty on Bill of exchange, promissory notes, etc.

Except – In case of union territories, this duty is collected by the Union.

Note: These taxes and duties **do not** form part of the Consolidated Fund of India.

2

Article 269 - Taxes levied and collected by the Union, but assigned to the States within which they are levied:

a) Succession duty in respect of property, other than agricultural land.

b) Estate duty in respect of property, other than agricultural land.

c) Terminal taxes on goods or passengers carried by railways, sea or air.

d) Taxes on railway fares and freights taxes on transactions in Stock Exchanges.

3

Article 269A – Goods and Service tax on Inter- state trade or commerce, levied and collected by the Government of India but apportioned between the union and the states as provided by the law of the Parliament.

Note: The amount apportioned to the states **shall not** form part of the Consolidated fund of India.

4

Article 270 - Taxes levied and collected by the Union and distributed between the Union and the States:

All the taxes and duties referred to in the Union list.

Except – three categories mentioned in Article 268, 269, 269A and Surcharge and Cess levied for specific purposes.

5

Article 271 - Surcharge on certain taxes:

The Parliament is, authorized to levy surcharge on the taxes mentioned in the above two categories (Art.269 and Art.270) and the proceeds of such surcharges go to the **Centre exclusively.**

Note: These charges are not sharable.

6

Taxes levied and collected and retained by the states: Taxes enumerated in the state list.

7

Article 275 - Grants –in-aid:

GRANTS IN AID

Article 275: Statutory Grants

1. Parliament makes such grant to those states who are in need of such funds, particularly for the promotion of tribal welfare.
2. These funds are given to the states on the recommendation of Finance Commission.

Article 282: Discretionary Grants

1. Both the Centre and the States can make any grants for any public purpose.

8

Loans: The Union Government may provide loan to any State or give guarantees respect to loans raised by any State.

9

Article 274 -Previous sanction of the President: No Bill or amendment can be introduced or moved in either House of Parliament without the previous sanction of the President, if:

a) It imposes or varies any tax in which the States are interested; or

b) It varies the meaning of the expression "Agricultural Income" as defined in the Indian Income-Tax Act; or

c) It affects the principles on which money are distributed to the States; or

d) It imposes any surcharge on any specified tax or duty for the purpose of the Union.

10

Distribution of Non tax revenues:

DISTRIBUTION OF NON TAX REVENUE

A

The Centre - Major sources of Non tax revenue for the Centre:

1. Post and Telegraph,
2. Railways, Banking Broadcasting,
3. Currency and coinage,
4. Central Public sector enterprises,
5. Escheat and lapse

B

The State - Major sources of Non tax revenue for the State:

1. Irrigation, Forests, Fisheries,
2. State PSUs,
3. Escheat and lapse (States)

FINANCE COMMISSION

Article 280	• Provides for a Finance Commission as a quasi-judicial body. • Constituted by the President every fifth year or even earlier.
Composition	• Consists of a chairman and four other members to be appointed by the President. • They hold office for such period as specified by the President in his order. **Note:** Eligible for reappointment.
Qualification	• Constitution authorises the Parliament to determine the qualifications of members of the commission. • Accordingly, the Parliament has specified the qualifications under the finance Commission (Miscellaneous Provisions) Act, 1951. • Chairman should be a person having experience in public affairs and the four other members should be selected from amongst the following: ▶ A judge of high court or one qualified to be appointed as one. ▶ A person who has specialised knowledge of finance and accounts of the government. ▶ A person who has wide experience in financial matters and in administration. ▶ A person who has special knowledge of economics.
Functions	• Required to make recommendation to the President on the following: **1.** The distribution of net proceeds of taxes to be shared between the Centre and the Stated, and the allocation between the states. **2.** The principle which should govern the grants –in-aid by the Centre to the States. **3.** The measures needed to augment the Consolidated fund of a State to supplement the resources of the Panchayat and Municipalities on the basis of State finance commission recommendations. **4.** Any other matter referred to it by the President.

VISION IAS

QUICK REVISION MODULE (UPSC PRELIMS 2024) POLITY

INTER-STATE COOPERATION

Constitutional mechanism with regard to:

- Coordination through Inter-state council
- Resolution of Inter-state water disputes
- Mutual recognition of public acts, records and judicial proceedings
- Freedom of inter-state trade, commerce and intercourse

Extra Constitutional mechanism: Coordination through

- Zonal councils
- North-Eastern Council

Resolution of Inter-state water disputes

- **Art 262:** Parliament may by law provide for the adjudication of inter-state water disputes. It also provides that neither the Supreme Court nor any other court is to exercise jurisdiction in respect of any such dispute.
- Under Art 262, the Parliament enacted the **Inter-State Water Disputes Act** (1956) which empowers the Central government to set up an ad hoc tribunal for the adjudication of a dispute between two or more states. The decision of the **tribunal is final and binding** on the parties to the dispute.
- Over the years, the Central government has set up eight inter-state water dispute tribunals in relation to rivers such as Krishna, Godavari, Cauvery etc.

Coordination through Inter-State council

- **Article 263** provides for the establishment of an Inter-State Council by an order of the **President** as and when its need is felt.
- **The Sarkaria Commission** on Centre-State Relations (1983–87) recommended establishment of a permanent Inter-State Council under Art 263. Accordingly, the Inter-State Council was established in 1990 by a Presidential Order.

Freedom of inter-state trade, commerce and intercourse

- **Art 301** of Part XIII of the Constitution provides that trade, commerce and intercourse throughout the territory of India shall be free. It provides freedom from all restrictions except those provided in Part XIII itself, as follows:
  - **Parliament can** impose restrictions on the freedom of trade, commerce and intercourse between the states or within a state in public interest.
  - **Legislature of a state** can impose reasonable restrictions on this freedom in public interest, with previous sanction of the **President, and without preference to one state over another.**

Mutual recognition of public acts, records and judicial proceedings

- Under the Constitution, the jurisdiction of each state is confined to its own territory. However, **Art 261** provides that "full faith and credit shall be given throughout the territory of India to public acts, records and judicial proceedings of the Union and of every State."
- The expression **'public acts'** includes both legislative and executive acts of the government.

INTER-STATE COUNCIL

Composition:

- Prime Minister – Chairman
- Chief Ministers of all States
- Chief Ministers of UTs having a Legislative Assembly
- Administrators of other UTs not having legislative assembly
- Governors of States under President's rule
- 6 Cabinet Ministers including Home Minister nominated by PM
- Five Ministers of Cabinet rank / Minister of State (independent charge) as permanent invitees nominated by PM

Standing Committee of the Council: for continuous consultation and processing of matters for consideration of the Council. Currently, it consists of:

- Union Home Minister as the Chairman
- 4 other Union Ministers
- Chief Ministers of 8 States

Role: It is a recommendatory body on issues relating to inter-state, Centre–state and Centre–union territories relations. **(Its decisions are not binding).**

Inter-State Council Secretariat:

- It was set-up in 1991 and is headed by a secretary to the Government of India.
- Since 2011, it is also functioning as the secretariat of the Zonal Councils.

Zonal Council

5 Zonal Councils - Northern, Central, Eastern, Western, Southern.

Statutory bodies established by the **States Reorganisation Act, 1956.**

Composition: Each zonal council consists of:

- Union Home Minister as Chairman
- Chief Ministers of all the States in the zone (each CM acts as Vice-chairman by rotation for one year)
- Two other ministers from each state in the Zone
- Administrator of each UT in the zone

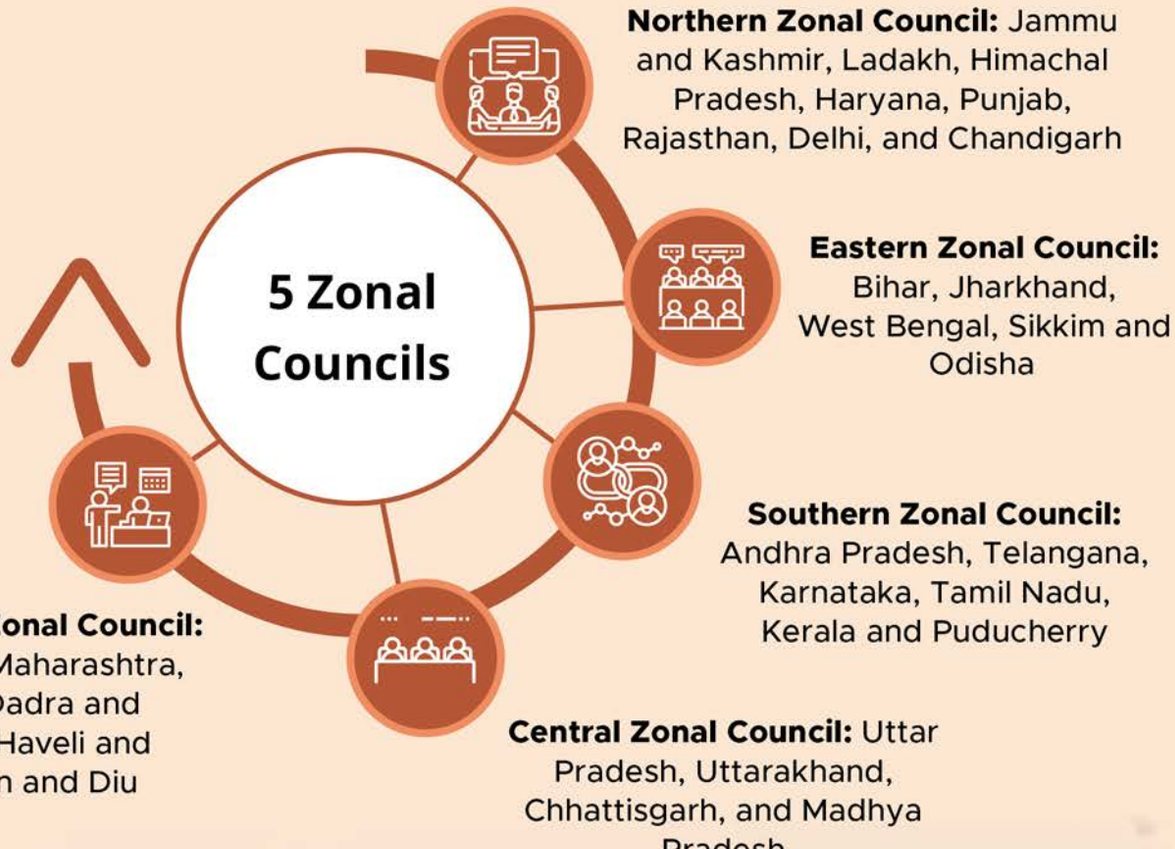
North Eastern Council

Members: Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim and Tripura

Statutory body established by the **North-Eastern Council Act, 1971.**

Composition:

- Union Home Minister as Chairman
- MoS(IC) DoNER as Vice-Chairman
- Governors and Chief Ministers of constituent eight States
- 3 members to be nominated by the President


5 Zonal Councils
Northern Zonal Council: Jammu and Kashmir, Ladakh, Himachal Pradesh, Haryana, Punjab, Rajasthan, Delhi, and Chandigarh
Eastern Zonal Council: Bihar, Jharkhand, West Bengal, Sikkim and Odisha
Southern Zonal Council: Andhra Pradesh, Telangana, Karnataka, Tamil Nadu, Kerala and Puducherry
Central Zonal Council: Uttar Pradesh, Uttarakhand, Chhattisgarh, and Madhya Pradesh
Western Zonal Council: Gujarat, Maharashtra, Goa, Dadra and Nagar Haveli and Daman and Diu

QUICK REVISION MODULE (UPSC PRELIMS 2023) POLITY

EMERGENCY PROVISIONS

EMERGENCY
PART XVIII (ARTICLES 352 TO 360)

- NATIONAL EMERGENCY (ARTICLE 352)
- STATE EMERGENCY (ARTICLE 356 & 365
- FINANCIAL EMERGENCY (ARTICLE 360)

SOURCES OF EMERGENCY PROVISIONS

1. GOVERNMENT OF INDIA ACT, 1935 AND
2. CONSTITUTION OF WEIMER REPUBLIC OF GERMANY

NATIONAL EMERGENCY

ABOUT

- Constitution uses the expression '**proclamation of emergency**' to denote National Emergency (NE).

EXAMPLES

- October **1962: Chinese aggression** - It continued till January 1968.
- December **1971: Indo-Pak war** - It continued till March 1977.
- June **1975: Internal political crisis** - It continued till March 1977.

NOTE: **After 1977, no such emergency** has been pronounced.

GROUNDS (ARTICLE 352)

When the security of India or a part of it is threatened by:

1. War 2. External Aggression	External Emergency
1. Armed Rebellion	Internal Emergency

NOTE:

- **44th Amendment Act (1978)** substituted the words '**armed rebellion**' for '**internal disturbance**'.
- **38th Amendment Act (1975)** allows President to issue different proclamations on grounds of war, external aggression, armed rebellion, or imminent danger thereof.

DECLARED BY

- President of India

TERRITORIAL EXTENT

- **Entire country or only a part** of it.

NOTE: **42nd Amendment Act (1976)** enabled President to limit the operation of NE to a specified part of India.

SAFEGUARDS

- **President can proclaim National Emergency only after a Written recommendation from the Cabinet** (44th Amendment Act).
- Must be ratified by both houses **within one month** from the date of its issue by a **special majority** (44th Amendment Act). Originally, the period allowed for approval was two months.
  - If **Lok Sabha stands dissolved during declaration** of emergency, then it must be **approved by reconstituted Lok Sabha within 30 days** from its first sitting, **provided Rajya Sabha** has **approved it** in the meantime.

DURATION

- Continues for **6 months,** and **can be extended to indefinite period** with **approval** of **Parliament** for every 6 months. (44th Amendment Act)

REVOCATION

REVOCATION BY PRESIDENT:

- It can be revoked **anytime** by president **without requirement of approval by Parliament.**

REVOCATION BY PARLIAMENT:

- **Lok Sabha** can issue a **resolution** disapproving continuation.
- **One-tenth of the total members of Lok Sabha** gives a **written recommendation** to Speaker, if house is in session or President otherwise.
- Special sitting shall be held within 14 days to consider the resolution.
- Resolution has to be passed by simple majority.

EFFECT OF NATIONAL EMERGENCY ON

CENTRE-STATE RELATIONS

EXECUTIVE

- **Centre** is entitled to give **executive directions to a state** on 'any' matter.
- **State governments** are brought **under complete control of Centre,** though they are not suspended.

LEGISLATIVE

- Although the legislative power of a **state is not suspended, Parliament** is empowered to **make laws** on any subject mentioned in **State List.**
- Laws made by Parliament on state subjects become **inoperative six months after emergency**
- **President can issue ordinances on state subjects,** if Parliament is not in session.
- **Parliament** can confer **powers and impose duties upon Centre** or its officers and authorities in respect of **matters outside Union List.**

FINANCIAL

- **President can modify constitutional distribution**
- President can **reduce or cancel transfer of finances** from Centre **to states.**

NOTE:

- Any modification **continues till the end of the financial year** in which
- Every **such order** has to

LIFE OF LEGISLATURE

LOK SABHA

- **May be extended** beyond its normal term (5 years) **by a law** of Parliament for **one year at a time** (for any length of time).

STATE LEGISLATURE:

- **Parliament may extend** the normal tenure of a state legislative assembly (five years) by **one year each time** (for any length of time).

NOTE

- Extension cannot continue beyond a period of six months after emergency ceases to operate.

IMPACT OF NATIONAL EMERGENCY ON THE FRS

ARTICLES 358

- **Automatically suspends** and revives **Article 19** for entire duration of Emergency.
- Impacts Article 19 only.
- Operated **only in External Emergency.**
- Extends to **entire country.**

ARTICLES 359

- **Requires Presidential Order** (PO) **for suspension** of Fbs which can be for entire duration or a shorter period.
- Impacts **all FRs** mentioned in PO except Article 20 and 21.
- Operates in **both types of Emergencies.**
- Extends to **part or entire country.**

JUDUCIAL REVIEW

38TH AMENDMENT ACT (1975)

- **Declaration** of a NE **immune to judicial review.**

44TH AMENDMENT ACT (1978)

- Above provision was **deleted.**

MINERVA MILLS CASE (1980)

Proclamation can be challenged on the ground of:

- **Malafide** or
- **Declaration** was based on **wholly extraneous and irrelevant facts** or is absurd or perverse.

STATE EMERGENCY

ABOUT

- State Emergency is also known as **President's Rule** or **Constitutional Emergency.**
- **Constitution does not use** the word **'emergency' for this situation.**

EXAMPLES

1ST INSTANCE:

- June 1951, the Punjab Government was dismissed despite having a clear majority in the Assembly.
- Till date, Article 356 has been used approximately 120 times.

GROUNDS

ARTICLE 356

- Based on report from Governor of a State or otherwise, if **President is satisfied** that a situation has arisen in which the **government of a State cannot be carried on in accordance with the provisions of the Constitution.** Article 356 confers power upon the Union to ensure that Article 355 becomes effective.

ARTICLE 365

- Whenever a state fails to comply with or to give effect to any **direction from the Centre.**

DECLARED BY

- **President** of India

SAFGUARDS

- It must be **approved by both the Houses within two months** from date of issue.
- Process: **Simple Majority**
- **If the proclamation is issued** at a time when:
  - **Lok Sabha is dissolved** or
  - Dissolution of Lok Sabha takes place during the period of two months without approving the proclamation.
- Then **proclamation survives until 30 days from the first sitting of Lok Sabha** after its reconstitution, **provided Rajya Sabha approves it in the mean time.**
- If approved by both the Houses, the President's Rule **continues for six months.** It can be extended for a **maximum period of three years** with the **approval of the Parliament, every six months.**
- **44th Amendment Act (1978):** Beyond one year, President's Rule can be extended by six months at a time only when **the two conditions** are fulfilled:
  - **Proclamation of National Emergency** is there in whole or part of India;
  - **Election Commission must certify** that general elections to legislative assembly of the concerned state cannot be held on account of difficulties.

REVOCATION

- Proclamation may be **revoked by President at any time** by a subsequent proclamation. Such a proclamation **does not require parliamentary approval.**

EFFECT OF STATE EMERGENCY

PRESIDENT ACQUIRES EXTRAORDINARY POWERS

- **Can take up functions of state government** and **powers** vested in the **governor** or any other **executive authority** in the state.
- Can declare that **powers of state legislature** are to be **exercised** by **Parliament.**
- He can take **all other necessary steps** including the **suspension** of the **constitutional provisions** relating to anybody or authority in the state.

OTHER EFFECTS

- **President dismisses the State Council of Ministers** (however, the powers of the High Court are not affected).
- **Governor,** on behalf of President, **carries on the State administration** with help of Chief Secretary of the State, or the advisors appointed by President.
- **State assembly may be dissolved or suspended** depending upon prevailing circumstances. Such a Proclamation may declare that the powers of the State Legislature shall be exercisable by or under the authority of Parliament.
- **Article 357: Parliament may** confer the **legislative power on the President** and authorize him to further delegate it to any other authority.
- When House of the people is not in the session, Parliament can **authorize President to sanction expenditure from Consolidated Fund of the State.**

OBSERVATIONS OF VARIOUS COMMITTEES/COMMISSIONS

SARKARIA COMMISSION (1987)

- Article 356 should be used very **sparingly** as a matter of **last resort.**
- Any imposition should be accompanied with a **report by Governor** to President.
- **No dissolution of Assembly till proclamation is ratified** by Parliament.

NATIONAL COMMISSION FOR REVIEWING THE WORKING OF CONSTITUTION (2002)

- A **warning should be issued to the errant State,** in specific terms.
- Before taking action under Article 356, any **explanation** received **from the State should be taken into account.**
- No dissolution of Assembly till proclamation is ratified by Parliament. **Article 356 should be suitably amended to ensure this.**
- The **Governor's report should be given wide publicity** in all the media and in full.
- **Safeguards corresponding to Article 352 should** be **incorporated in Article 356.**

PUNCHHI COMMISSION (2008)

- Recommended imposition of **localized emergency.**
- Duration **should not exceed three months.**
- Amendments be made in Article 356 to **incorporate the guidelines in S.R Bommai case (1994).**

LAW COMMISSION

- Situation could have been better handled by the use of Article **355,** than imposition of Article 356.

JUDICIAL REVIEW AND ARTICLE 356

S.R. BOMMAI CASE, 1994

- **No restriction on the court from examining the material** on basis of which President formed his satisfaction.
- The **Proclamation** is **not immune from judicial review.**
- Supreme Court or High Court can strike down the Proclamation **if it is mala fide or** based on wholly **irrelevant or extraneous grounds.**
- **Power** conferred by Article 356 is conditioned and **not an absolute power.**
- President shall **not dissolve the assembly till approved by the Parliament.**
- Centre should issue a **warning notice to the erring state** asking for reasons.
- **Once the proclamation is issued,** the **State Government has to go.** There cannot be two Governments in one sphere.
- **Secularism is a basic feature of the constitution** and its **violation** by the State government makes it **liable to be dismissed as per Article 356.**
- **Court can provide remedy and reinstate the government** if intentions are proved malafide.

CASES OF PROPER AND IMPROPER USE OF ARTICLE 356 AS OUTLINED IN S.R.BOMMAI CASE:

PROPER USE

- In case of **Hung Assembly,** no party gets majority.
- **Party** having a **majority** in the assembly **declines to form a ministry** and the President/Governor cannot find a coalition ministry.
- **Constitutional direction of the Centre is disregarded** by the state government.
- **Internal subversion** where, for example, a government is deliberately acting against the Constitution and the law or is fomenting a violent revolt.
- **Physical breakdown** where the government wilfully refuses to discharge its constitutional obligations endangering the security of the state.

IMPROPER USE

- Where a **ministry resigns or is dismissed on losing majority** support without probing the possibility of forming an alternative ministry.
- **Not allowing the ministry to prove its majority** on the floor of the Assembly.
- Where the **ruling party enjoying majority support** in the assembly has suffered a **massive defeat in the general elections** to the Lok Sabha such as in 1977 and 1980.
- **Internal disturbances** not amounting to internal subversion or physical breakdown.
- **Maladministration in the state or allegations of corruption** against the ministry or stringent financial exigencies of the state.
- Where the state government is **not given prior warning to rectify itself.**

RAMESHWAR PRASAD & ORS VS UOI, 2006

- For fighting social evils like **defection, Article 356 cannot be invoked.**
- **Immunity under Article 361 does not take away power of the Court** to examine validity of the action.

DIFFERENCE BETWEEN NATIONAL EMERGENCY & PRESIDENT RULE

GROUNDS	• **Security** of India or a part of it **is threatened** by war, external aggression or armed rebellion.	• A **state cannot** be carried **in accordance** with the provisions of the **Constitution**
IMPACT ON STATE'S EXECUTIVE AND LEGISLATURE.	• **State executive and legislature continue to function.**	• **State executive is dismissed** and the **state legislature is** either **suspended or dissolved.** • **President administers the state through the governor** and the Parliament makes laws for the state.
DELEGATION OF POWER TO MAKE LAWS	-	• Under this, the **Parliament can delegate the power** to President or to any other authority specified by him.
MAXIMUM PERIOD OF OPERATION	• No maximum period prescribed for its operation. • It can be continued **indefinitely** with the **approval of Parliament every six months.**	• Maximum period prescribed for its operation, that is, **three years.** • Thereafter, it must come to an end and the normal constitutional machinery must be restored in the state.
CENTRE-STATE RELATION	• Relationship of the Centre **with all the states undergoes a modification.**	• Relationship of **only the state under emergency** undergoes a modification.
PARLIAMENTARY APPROVAL	• **Special majority.**	• **Simple majority.**

FUNDAMENTAL RIGHTS	• **Affects Fundamental rights** of the citizens.	• **No effect on Fundamental Rights** of the citizens.
REVOCATION	• **Lok Sabha** can pass a **resolution** for its revocation.	• No such provision. It can be revoked by the **President only on his own.**

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FINANCIAL EMERGENCY

ABOUT

- It is declared when the **financial condition of the country is not in good shape.**
- Till date, **Financial Emergency has not been declared in the country.**
- Even though country faced a severe economic crisis in the years 1990-1991, no financial emergency was declared.

GROUNDS

- If **financial stability or credit of India,** or any part thereof is threatened.

DECLARED BY

- President of India

PROCEDURES & SAFEGUARDS

- Must be **approved within two months** from the date of its issue by the Parliament.
- If Lok Sabha is dissolved within that period of two months, the proclamation has to be approved within thirty days of the first sitting of the newly constituted Lok Sabha.
- **No maximum period prescribed for its operation.** It can continue for an indefinite period, till it is revoked by the President.
- **Repeated parliamentary approval is not required** for its continuation.
- Resolution approving proclamation can be passed by either House of Parliament only by a **simple majority.**

REVOCATION

- May be revoked by the **President at anytime** by a subsequent proclamation. Such a proclamation **does not require the parliamentary approval.**

EFFECTS

- **President can give directions to the States** to observe the **canons of financial propriety.**
- He can issue directions **to reduce the salaries and allowances** of all or any class of persons serving under the State, or the Union **including the judges of the Supreme Court and High Court.**
- **All money and financial bills passed by the State Legislature** can be **reserved for** the **President's consideration** during the period of Financial Emergency.

CRITICISM OF EMERGENCY PROVISIONS

- VIOLATES FUNDAMENTAL RIGHTS
- USED FREQUENTLY, NOT AS MATTER OF LAST RESORT.
- IMPOSED ON POLITICAL GROUNDS.
- COMPROMISES THE FEDERAL SPIRIT.

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UNION TERRITORIES AND SPECIAL PROVISIONS FOR THE DIFFERENT STATES

Union Territory	Capital	Year of creation
Andaman and Nicobar Islands	Port Blair	1956
Lakshadweep	Kavaratti	1956
NCT of Delhi*	Delhi	1956
Dadra and Nagar Haveli and Daman & Diu[1]	Daman	1961/1962
Puducherry*	Puducherry	1962
Chandigarh	Chandigarh	1966
Jammu & Kashmir*	Srinagar (S)/Jammu (W)[2]	2019
Ladakh	Leh	2019

1 – The **UTs of Dadra and Nagar Haveli and Daman and Diu were merged** by the Dadra and Nagar Haveli and Daman and Diu (Merger of Union Territories) Act, 2019.

2 – S = summer capital, W = winter capital

(*) **– UTs provided with legislative assembly**

Administration

- Every UT is administered by the President acting through an administrator appointed by him (acts as agent of the President).
- The President can specify the designation of an administrator; it may be Lieutenant (Lt.) Governor or Chief Commissioner or Administrator.
- The President can also appoint the governor of a state as the administrator of an adjoining UT.
- Under the Government of India (Allocation of Business) Rules 1961, **Ministry of Home Affairs is the nodal ministry for all matters of UTs** relating to legislation, finance and budget, services and appointment of Lt. Governors and Administrators.

Legislative power

- The Parliament can make laws on any subject of the three lists (including the State List) for the UTs. This power of Parliament extends to Puducherry and Delhi, which have their own local legislatures.
- The legislative assembly of Puducherry can also make laws on any subject of the State List and the Concurrent List.
- Similarly, the legislative assembly of Delhi can make laws on any subject of the State List (except public order, police and land) and the Concurrent List.

Judiciary

- Parliament can establish a high court for a UT or put it under the jurisdiction of the high court of adjacent state.
- Delhi is the only UT that has a high court of its own (since 1966).

Special Provisions for Delhi (69th Constitutional Amendment Act of 1991)

- Redesignated the UT of Delhi as the **National Capital Territory of Delhi.**
- Designated the administrator of Delhi as the Lieutenant (Lt.) Governor.
- Created a legislative assembly and a council of ministers for Delhi.
- The chief minister is **appointed by the President** (not by the Lt. Governor).
- In case of failure of constitutional machinery, the President can impose his rule in the territory (like President's Rule in the States).

JAMMU & KASHMIR AND LADAKH

Article 370 of the Constitution proclaimed it to be "Temporary, Transitional and Special Provision" and provided for a special status to Jammu and Kashmir (J&K).

As per Article 370, the centre needed the state government's concurrence to apply laws — except in defence, foreign affairs, finance and communications. Also, the **state's residents lived under a separate set of laws,** such as those related to citizenship, ownership of property, separate penal code and fundamental rights, as compared to other Indian citizens.

On August 5, 2019, President of India promulgated Constitution (Application to Jammu and Kashmir) Order, 2019 which stated that provisions of the Indian Constitution were applicable in the State.

Jammu and Kashmir Reorganization Act, 2019 was passed by the Parliament, which re-organized J&K into two Union Territories (UTs):

- J&K division with a legislative assembly.
- UT of Ladakh without a legislative assembly.

J & K BEFORE AUGUST 5	J&K AFTER AUGUST 5
State with special status.	No special status.
Dual Citizenship.	Single citizenship.
Separate flag for J&K.	Tiranga will be the only flag.
No reservation for minorities such as Hindus and Sikhs.	Minorities eligible for 16% reservation.
Indians from other states can not buy property like land or house.	All Indians can buy or sale property in Jammu & Kashmir.
RTI not applicable.	RTI will be applicable.
Duration of Legislative Assembly was six years.	Assembly will be for 5 years.
Woman from J&K marries person from outside state, she loses citizenship.	Woman will retain citizenship even after marriage like any other part of India.
Right to Education not applicable for children.	Children brought under RTE at par with the rest of the country.

SPECIAL PROVISIONS FOR SOME STATES

- **Articles 371 to 371-J** contain special provisions for certain states to meet various aspirations and interests of the local people. (No special provisions for these states in the original constitution; incorporated by various amendments).

For Maharashtra and Gujarat (Article 371)

- Authorize President to provide that the **Governor of Maharashtra and that of Gujarat would have special responsibility** in respect of the developmental needs of:
  - Vidarbha, Marathwada and the rest of Maharashtra.
  - Saurashtra, Kutch and the rest of Gujarat.

For Nagaland (Article 371-A)

- The Acts of Parliament relating to the following matters would not apply to Nagaland unless the State Legislative Assembly so decides:
  - religious or social practices of the Nagas;
  - Naga customary law and procedure;
  - administration of civil and criminal justice involving decisions according to Naga customary law;
  - ownership and transfer of land and its resources.
- The Governor of Nagaland shall have special responsibility with respect to law and order in **the State of Nagaland so long as the internal disturbances occurring in the Naga Hills-Tuensang Area continues.**
- **Establishment of a regional council** consisting of 35 members for the administration of Tuensang district of the state.

For Assam (Article 371-B)

- Empower President to provide for the **creation of a committee of the Assam Legislative Assembly** consisting of the members elected from the Tribal Areas of the state and such other members as he may specify.

For Manipur (Article 371-C)

- **Authorize President** to provide for the creation of a **committee of the Manipur Legislative Assembly** consisting of the members elected from the Hill Areas of the state.
- The President can also direct that the Governor shall have special responsibility to secure the proper functioning of that committee.

For Andhra Pradesh/Telangana (Articles 371-D and 371-E)

- To provide for equitable opportunities for the people belonging to different parts of the state of Andhra Pradesh or Telangana, the President may require the State Government **to organise civil posts in local cadres for different parts of the state** and provide for direct recruitment to posts in any local cadre.
- The President may provide for the **establishment of an Administrative Tribunal** in the state to deal with certain disputes and grievances relating to appointment, allotment or promotion to civil posts in the state.
  Note: The tribunal is to function **outside the purview of the state High Court.** No court (other than the Supreme Court) is to exercise any jurisdiction in respect of any matter subject to the jurisdiction of the tribunal.
- **Article 371-E** empowers the Parliament to provide for the establishment of a Central University in the state of Andhra Pradesh.

- The **36th Constitutional Amendment Act** of 1975 made Sikkim a full-fledged state of the Indian Union. It included **new Article 371-F** containing provisions with respect to size of the Sikkim Legislative Assembly and representation of Sikkim in the Lok Sabha.
- The Governor is given special responsibility for peace and ensuring the social and economic advancement of the different sections of the Sikkim population.

For Mizoram (Article 371-G)

- The Acts of Parliament relating to the following matters would **not apply to Mizoram unless the State Legislative Assembly so decides:**
  - religious or social practices of the Mizos;
  - Mizo customary law and procedure;
  - administration of civil and criminal justice involving decisions according to Mizo customary law; and
  - ownership and transfer of land.

For Arunachal Pradesh (Article 371-H)

- The Governor of Arunachal Pradesh shall have special responsibility for law and order in the state.

For Goa (Article 371-I)

- Provision with respect to size of Goa Legislative Assembly – **not less than 30 members.**

For Karnataka (Article 371-J)

- The President is empowered to provide that the **Governor of Karnataka would have special responsibility for:**
  - The establishment of a separate development board for Hyderabad-Karnataka region.
  - The equitable allocation of funds for developmental expenditure over the region.
  - The reservation of seats in educational and vocational training institutions in the region for students who belong to the region.

Quick Revision Module (UPSC Prelims 2024) Polity

Local Self Government

Concept of Local self-government :

Local Government is the government at the village and **district level.**

It is the government **closest to common people.**

It is based on the assumption that local knowledge and local interest are essential components for democratic decision making.

To achieve efficient administration, local people can very well interact with local government, raise their concerns and achieve the solutions by themselves being part of the decision-making process.

Historical perspective

Ancient

- **Gramini** - An important village functionary in the Vedic period.
- **Sabha** - Assembly for discussing agricultural matters.
- **Samiti** - Dealt with policy decisions and political matters.

Medieval

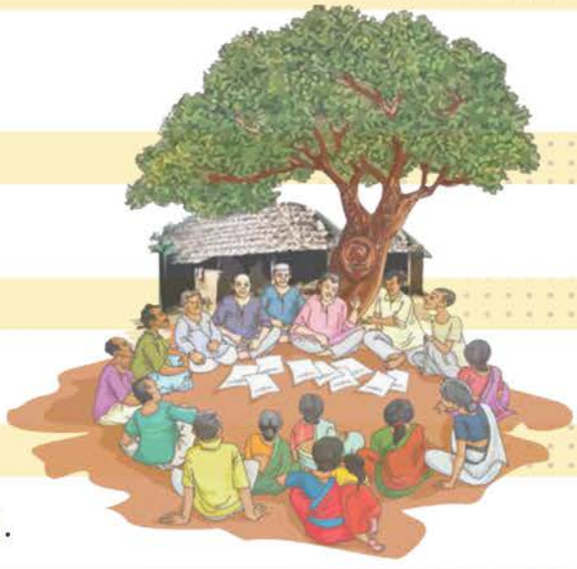
- Marked with centralization of leadership and **decline in local governance.**
- However, the hands of the administration reached only to the district level.
- The village communities continued to exist.

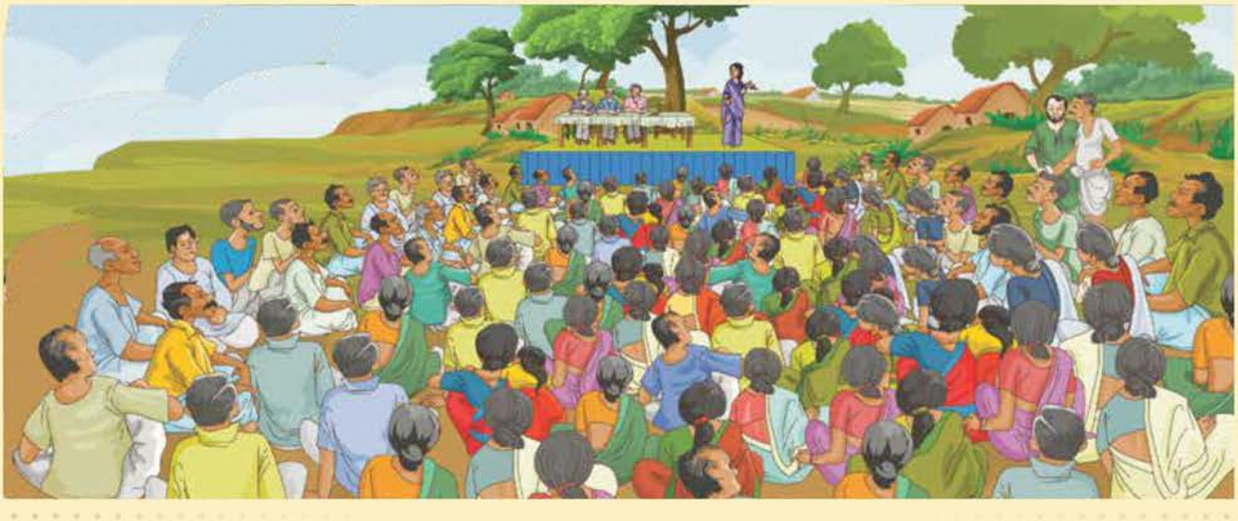
British

- The **Mayo's resolution, 1870** gave impetus to the development of local institutions by enlarging their powers and responsibilities.
- **Bengal Village Chowkidari Act, 1870** empowered the District Magistrate to constitute a panchayat in any village.
- **The Resolution on Local Self Government (Lord Ripon's Resolution) 1882** intended to build local self-government institutions.
- **Morley Minto Reforms, 1909** incorporated the recommendations of **Royal Commission on Decentralization (1907)** which led to the enlargement of the election process in the Local Self Government structure in India.
- **Montagu Chelmsford reforms of 1919** introduced a **dyarchy system** where responsibility of the local government was given to ministers.

Panchayati Raj : A Timeline

1882	Local Self Government (Resolution of 1882).
1919	Montagu-Chelmsford Reforms.
1938	The Aundh Experiment.
1940	Article 40 (Constitution of India).
1957	Balwant Rai Mehta Committee - Rajsathan Become First State to Adopt Panchayati Raj.
1985	G.V.K. Rao Committee.
1986	L.M. Singhvi Committee.
1992	73rd & 74th Constitutional Amendment Act.





Evolution of PRIs after Independence

Major sources/ Committees	Provisions
Constitution of India	• Article 40. • Local government is a state subject. • Given constitutional status through 73rd and 74th amendment act.
Balwant Rai Mehta Committee	• To examine the workings of the National Extension Service and Community Development Program. • The Committee recommended a scheme for "democratic decentralisation", as well as a three-tier system with directly elected members at the village level. • **Rajasthan** became the first state to adopt the system.
Ashok Mehta Committee	• 3 tier PRI should be replaced with a 2 tier PRI with Zila Parishad at the district level and Mandal panchayat below it. • Committee also recommended for **Nyaya panchayat.**
G V K Rao Committee	• The committee recommended reducing the developmental role of the district collector and giving a major role to PRI. • A post of district development commissioner should be created.
L.M Singhvi Committee	• Appointed to recommend on the revitalization of PRI for democracy and development. • It suggested that **constitutional status** must be given to PRI. • Thus 73rd and 74th Constitutional amendment act was passed by Parliament in 1992 and got assent on 20th April 1993.

Role of PRIs in Democracy

Political consciousness

It enabled a large number of people to acquire leadership at local levels.

Women empowerment

Not less than **one-third of seats** are reserved for the women candidates.

Strengthening democratic Institution and process

The experience gained by the new gengration of leadership in democratic management has raised the quality of legislative debates and working of other higher level institutions.

Planning and development

The PRIs have been designed to play a crucial role in planning and development. A number of studies indicate that as units of planning and development, be it at the district or lower level, the Panchayati Raj institutions have contributed substantially.

Giving voice to local demands

PRIs have become the **connecting link between the Parliament and State Legislature** on the one hand and local bodies on the other so that the respective members can exchange views on the objectives of a plan and its priorities.

Executive Institution

Certain civic functions such as rural sanitation, public health, street lighting, drinking water supply, maintenance of village roads, culverts, management of primary and secondary education, etc., have been carried out by the Panchayati Raj bodies.

Breaking hierarchies

Panchayati Raj has become a powerful tool where caste and local interests interact, clash, compromise and arrive at common understanding on various issues.

73rd Constitutional amendment - An Overview

Compulsory Provision

- Organization of Gram Sabhas.
- Creation of a three-tier panchayat system.
- Direct elections.
- The minimum age for contesting would be 21 years.
- Indirection elections to post of chairman.
- Reservation of seats for SC/STs in proportion to population.
- Reservation for the women.
- Creation of SECs (State election committee).
- Creation of SFCs (State finance committee).

Voluntary Provisions

- Voting rights to MPs and MLAs in these bodies.
- Reservation for backward classes.
- Giving the PRIs financial powers.
- Devolution of functions under **XIth schedule.**

73rd Constitutional Amendment Act of 1992

Changes brought in the Constitution

- 73rd Amendment Act, 1992 inserted **Part IX** in the Constitution of India and accorded Panchayats a Constitutional status as institutions of local self-governance for rural India.
- It also added **Eleventh Schedule** to the constitution that contains **29 functional** items for Panchayats.

Major Features

- **A 3-tier system** of Panchayati Raj for all States having **population of over 20 lakh.**
- The Panchayats have been established in each state through acts of the respective states.
- Panchayat elections regularly **every 5 years.**
- Reservation of seats for Scheduled Castes, Scheduled Tribes and women (not less than one-third of seats).
- The seats are to be reserved for SCs and STs in proportion to their population at each level. Out of the Reserved Seats, 1/3rd have to be reserved for the women of the SC and ST. Out of the total number of seats to be filled by the direct elections, 1/3rd have to be reserved for women.
- Appointment of **State Finance Commission** to make recommendations as regards the financial powers of the Panchayats.

Administrative Structure of the PRIs

- All States now have a uniform three tier Panchayati Raj structure. At the base is the **'Gram Panchayat '**. A Gram Panchayat covers a **village or group of villages.**
- The intermediary level is the Mandal (also referred to as Block or Taluka). These bodies are called Mandal or Taluka Panchayats. The intermediary level body need not be constituted in smaller States.
- At the apex is the Zilla Panchayat covering the entire rural area of the District.
- The amendment also made a provision for the mandatory creation of the **Gram Sabha.** The Gram Sabha would comprise all the adult members registered as voters in the Panchayat area. Its role and functions are decided by State legislation.

Elections to the PRIs

- All the three levels of Panchayati Raj institutions are **elected directly by the people.**
- The term of each Panchayat body is **five years.**
- If the State government dissolves the Panchayat before the end of its five year term, fresh elections must be held **within six months** of such dissolution.
- A panchayat constituted upon the dissolution of a panchayat before the expiration of its duration shall continue only for the remainder of the period for which the dissolved panchayat would have continued had it not been so dissolved.
- Also no person shall be disqualified on the ground that he is less than 25 years of age if he has attained the age of **21 years.**

Financial Powers of the PRIs

- **Article 243-G:** Power of PRIs to prepare plans for economic development and social justice.
- **Article 243-H:** State legislature can enact laws for the following:
  - To authorise a Panchayat to levy, collect and appropriate some taxes, duties, tolls and fees.
  - To assign to the Panchayat, such taxes, duties, tolls levied and collected by the State Government.
  - To provide for making grants-in-aid to the Panchayats from the Consolidated Fund of the State.
  - To provide for the constitution of such funds for Panchayats for crediting all money received by or on behalf of Panchayats and also the withdrawal of such money therefrom.

State Election Commission (Article 243K)

- The superintendence, direction and control of the preparation of electoral rolls and the conduct of all elections to the panchayats is vested in the **State Election Commission** appointed by the Governor.

State Finance Commission (Article 243I)

- SFC to be appointed by the state govt once in five years.
- To examine the financial position of the local governments in the State.
- To also review the distribution of revenues between the State and local governments on the one hand and between rural and urban local governments on the other.

Challenges with respect to PRIs

- There is only minimum administrative and fiscal decentralisation, which remain under the control of the State Governments.
- Panchayats have not given adequate responsibilities to levy and collect taxes, fees, duties or tolls. Panchayats should have been granted appropriate powers to generate their own resources.
- Recommendations of State Finance Commissions have been either accepted partially or implemented half-heartedly.
- Powers given to the State Election Commissions vary from State to State.
- Gram Sabhas have not been empowered and strengthened to ensure people's participation and transparency in functioning of Panchayats as envisaged.
- The Constitution does not stipulate any size for Panchayats, either in terms of population or in area.
- In most States, Panchayats do not have the power to recruit their staff and determine their salaries, allowances and other conditions of service.
- Due to the lack of financial resources, the power to recruit staff, even if such power exists remains grossly underutilized or not utilised at all.
- Under various State Panchayati Raj Acts, the respective State Government or their nominated functionaries command considerable power with regard to review and revision of actions taken by PRIs.

2nd ARC recommendation for rural governance

- Gram Panchayats should be of an appropriate size.
- Panchayats should have power to recruit personnel and to regulate their service conditions.
- The provisions in some State Acts regarding approval of the budget of a Panchayat by the higher tier or any other State authority should be abolished.
- State Governments should not have the power to suspend or rescind any resolution passed by the PRIs or take action against the elected representatives.
- States must undertake comprehensive activity mapping with regard to all the matters mentioned in the Eleventh Schedule.
- A comprehensive exercise needs to be taken up regarding broadening and deepening of the revenue base of local governments.

Panchayats (Extension to Scheduled Areas) Act 1996

Context:

- The provisions of the 73rd amendment were not made applicable to the areas inhabited by the Adivasi populations in many States of India.
- In 1996, a separate act was passed extending the provisions of the Panchayat system to these areas.
- Many Adivasi communities have their traditional customs of managing common resources such as forests and small water reservoirs, etc.
- Therefore, the new act protects the rights of these communities to manage their resources in ways acceptable to them.

Objectives:

- The act extends **Part IX** of the Constitution with certain modifications and exceptions, to the Fifth Schedule Areas notified under **Article 244(1)** of the Constitution.
- The Fifth Schedule of the Constitution deals with the administration and control of Scheduled Areas as well as of Scheduled Tribes residing in any State other than the States of Assam, Meghalaya, Tripura and Mizoram.
- At present, Fifth Schedule Areas exist in **10 States** viz. Andhra Pradesh, Chhattisgarh, Gujarat, Himachal Pradesh, Jharkhand, Madhya Pradesh, Maharashtra, Odisha, Rajasthan and Telangana.

Definition of Village and Gram Sabha under PESA Act

- A **village** shall ordinarily consist of a habitation or a group of habitations or a hamlet or a group of hamlets comprising a community and managing its affairs in accordance with traditions and customs.
- Every village shall have a **Gram Sabha** consisting of persons whose names are included in the electoral rolls for the Panchayat at the village level.

PESA Empowers Gram Sabha/Panchayat at appropriate level with:

- Right to **mandatory consultation** in land acquisition, resettlement and rehabilitation of displaced persons.
- Panchayat at an appropriate level is entrusted with **planning and management** of minor water bodies.
- Mandatory recommendations by Gram Sabha or Panchayat at appropriate level for prospective licenses/lease for mines and concession for the exploitation of minor minerals.
- Regulate sale/consumption of intoxicants.
- **Ownership of minor forest produce.**
- Prevent land alienation and restore alienated land.
- Manage village markets.
- **Control over money lending to STs.**
- Control over institutions and functionaries in the social sector, **local plans including Tribal sub plans and resources.**

Importance of PESA:

- It will enhance people's participation in decision making.
- PESA will **reduce alienation** in tribal areas as they will have better control over the utilisation of public resources.
- PESA will **reduce poverty** and **out-migration** among tribal populations as they will have control and management of natural resources and will improve their livelihoods and incomes.
- PESA will **minimise exploitation of tribal population** as they will be able to control and manage money lending, consumption and sale of liquor and also village markets.
- Effective implementation of **PESA will check illegal land alienation** and also restore unlawfully alienated tribal land.
- And most importantly PESA will **promote cultural heritage** through preservation of traditions, customs and cultural identity of tribal population.

Forest Rights Act 2006 (Ministry of Tribal Affairs: Nodal Ministry)

Objectives:

- To undo the historical injustice occurred to the forest dwelling communities.
- To ensure land tenure, livelihood and food security of the forest dwelling Scheduled Tribes and other traditional forest dwellers.
- To strengthen the conservation regime of the forests by including the responsibilities and authority on Forest Rights holders.
- To ensure sustainable use, conservation of biodiversity and maintenance of ecological balance.

Rights granted under the Act

- Title right-> ownership to land farmed by tribals + forest dwellers up to **4 hectares** (as on 13 Dec 2005).
- Use right-> to minor forest produce, grazing areas, pastoralist routes, etc.
- Relief and development rights-> rehabilitation in case of eviction.
- Forest Management Rights-> to protect forests and wildlife.

Eligibility under the Act

- Those who reside primarily in forests.
- Those who depend on forests for livelihood.
- Member of Scheduled Tribes in that area.
- Those residing in forest for more than 75 years.

Role of Gram Sabha:

- **Gram Sabha to decide whose rights to which resources should be recognised.**
- This is done by Gram Sabha through a resolution.
- This resolution is then screened and approved at the higher levels (sub-division-> district) **Screening Committee: 3 govt officials + 3 elected members of local body at that level.**

Significance of FRA

- For the first time Forest Rights Act recognises and secures:

- **Community Rights** or rights over common property resources of the communities **in addition to their individual rights.**
  - Rights in and over disputed land.
  - Rights of settlement and conversion of all forest villages, old habitation, un-surveyed villages and other villages in forests into revenue villages.
  - Right to protect, regenerate or conserve or manage any community forest resource which the communities have been traditionally protecting and conserving for sustainable use.
  - Right to intellectual property and traditional knowledge related to biodiversity and cultural diversity.
  - Rights of displaced communities.
  - Rights over developmental activities.

Urban Local Bodies (ULBs)

- **Historical Background**
  - The era of Urban Local Governance in India started with the formation of **Madras Municipal Corporation in 1687.**
  - Later similar corporations were formed in **Calcutta** and Bombay Municipal Corporation in 1726.
  - In **1882, Lord Ripon** – the Viceroy of India - passed a resolution of local self-government which laid the democratic forms of municipal governance in India.
  - Indian Independence ushered a new era of local governance in India.
  - The Constitution of India allotted the local self-government to the state list of functions.
  - In 1953, the U.P. Government took a decision to set-up Municipal Corporations in five big cities of Kanpur, Agra, Varanasi, Allahabad and Lucknow, popularly known as **KAVAL Towns.**
  - In 1985, the Central Government appointed the **National Commission on Urbanization**, which gave its report in 1988.
  - Finally, it was the Constitution **(74th Amendment) Act, 1992** that gave constitutional status to **the Urban Local governance bodies.**

Key Features of 74th CAA 1992

Levels of Municipal bodies

- 3 levels.
- A 'Nagar Panchayat (town council)' for transitional areas.
- A 'Municipal Council' for a smaller urban area.
- A 'Municipal Corporation' for a larger urban area.

Term

- 5 years.

Election

- An independent State Election Commission for the conduct, superintendence and control of municipal elections.

Reservations

- Seats be reserved for SCs and STs in proportion to their population in the municipal area.
- Mandatory provision of reserving one- third of every elected urban body for women representatives.
- Reservations were also provided for in the position of chairpersons of municipalities.

Finance

- A State Finance Commission to review the financial position of the municipalities and make recommendations for the financial health of ULBs.

Planning

- Via District Planning Committee and Metropolitan Planning Committee.

District Planning Committee

- Under Article **243ZD.**
- **Objective:** to consolidate the developmental plans prepared by Panchayats and Municipalities following within the district and then prepare a single draft development plan for the district as a whole.
- **Note:** DPCs are **not** constituted in **5th Scheduled area, and 6th Scheduled areas.**
- State Legislature makes provisions regarding the composition and the manner of filling the seats of such committees.
- **A minimum of 4/5th of all the members of DPC shall be elected** by and from amongst the elected members of Panchayat at the district level and the Municipalities falling within the district.

Metropolitan Planning Committee

- Under Article **243ZE.**
- **Objective:** To prepare a draft development plan for the metropolitan area as a whole in metropolitan area.
- **Note:** A Metropolitan area is an area having a **population of 10 lakhs or more** comprised in one or more municipalities and Panchayats as specified by the Governor.
- State Legislature makes provisions regarding the composition and the manner of filling the seats of such committees.
- **A minimum 2/3rd of the members of the MPC shall be elected** by and from amongst the elected members of municipalities and **the chairpersons** of Panchayats falling within the metropolitan area.

Types of Urban Govt

Municipal Corporation

- A municipal corporation is a form of urban local government seen in bigger urban areas.
- Has 3 authorities: The Council, The Standing Committee and The Commissioner.
- **Council:** deliberative body, headed by a Mayor.
- **Standing committee:** created to facilitate the work of council.
- **Municipal commissioner:** for implementation of the decisions taken by the council and its standing committees generally an IAS officer.

Municipality/Municipal Council

- Municipal Council found as a form of urban local government in smaller urban areas.
- The structure is the same as that of a corporation.

Notified Area Committee

- For administration of fast developing town.
- Established by a notification of state govt.
- Entirely nominated.

Town Area Committee

- For administration of small town..
- Entrusted with a limited no. of civic functions.

Cantonment Board

- For administration of civilian population in cantonment area.
- Under Ministry of Defence.
- Statutory body, created through Cantonments Act 2006.

Township

- Established by large public sector enterprises to provide civic amenities to its staff.
- Headed by Town administrator: appointed by the public enterprise.

Port Trust

- Established in port areas.
- Created by an act of Parliament.
- Consists of both elected + nominated members.

Special Purpose Agency

- They are function based, not area based.
- Established by Act of state govt.
- They are autonomous bodies and deal with functions allotted to them independently of urban local govts.

Impact of the act on the Urban governance

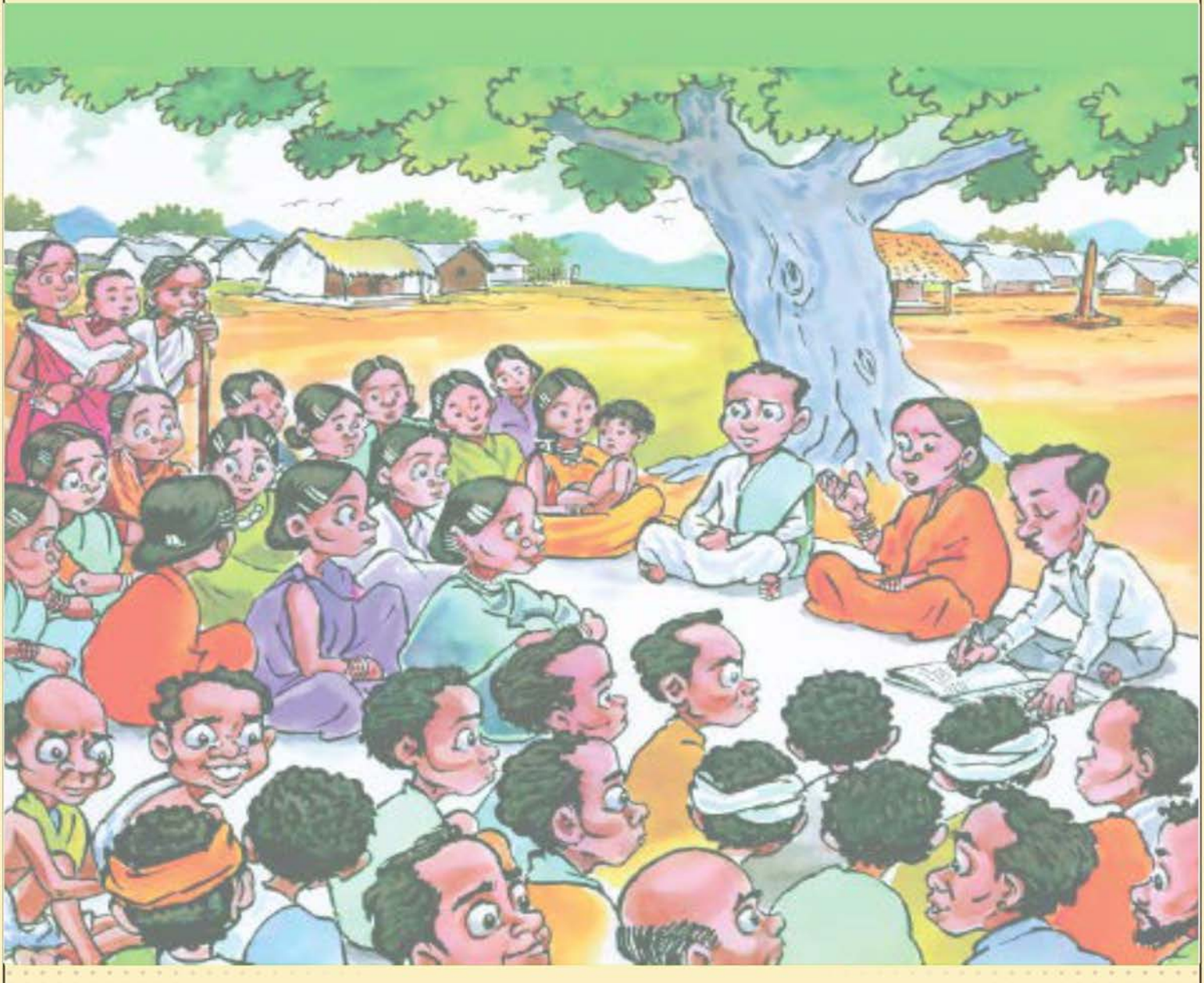
1. Recognition of ULBs as the third tier of governance.
2. Wider political representation.
3. Gender Empowerment.
4. Independent Municipal Elections.
5. Introduction of ward committees.
6. Reformation of Municipal Finances.

Challenges related to ULBs

1. Use of discretionary power by states.
2. Lack of devolution of power.
3. The recommendations of the SFCs have largely been ignored.
4. The act is silent on the status of the Mayor.
5. GST has made the financial position of ULBs even more precarious. On the one hand, GST is silent on the financial share of ULBs; on the other, it has subsumed many of the local taxes.

2nd ARC recommendation on Urban governance

1. The functions of municipal council and exercising executive should be combined in the same functionary i.e. Chairperson or Mayor.
2. The capacity of the municipalities to handle legal and financial requirements of responsible borrowing must be enhanced.
3. Land banks should be leveraged for generating resources for the municipalities
4. Citizens' charters in all Urban Local Bodies.
5. Municipal governments should have full autonomy over the functions/ activities devolved to them.
6. The manner of determination of tax should be made totally transparent and objective.



QUICK REVISION MODULE (UPSC PRELIMS 2024) POLITY

LOCAL GOVERNANCE – FIFTH AND SIXTH SCHEDULE AREAS & COOPERATIVE SOCIETIES

SCHEDULED AND TRIBAL AREAS

Article 244 in Part X of the Constitution envisages a special system of administration for certain areas designated as

SCHEDULED AREAS

5th Schedule deals with administration and control of scheduled areas and scheduled tribes in any state except ATMM*.

TRIBAL AREAS

6th Schedule deals with administration of tribal areas in states of ATMM*.

***ATMM- Assam, Tripura, Meghalaya and Mizoram.**

ADMINISTRATION OF SCHEDULED AREAS

The scheduled areas are treated differently as inhabited by **'aboriginals'** who are socially and economically backward and special efforts need to be made to improve their condition.

Declaration of Scheduled Areas:	**The President** is empowered to declare an area to be a scheduled area. He can also increase or decrease its area, alter its boundary lines, in **consultation with the Governor.**
Executive Power of State and Centre:	Executive power of a State extends to the scheduled areas therein. **Governor has to submit a report** to the President regarding the administration of such areas, annually or whenever so required by the President. **Executive power of the Centre** extends to giving directions to the states regarding the administration of such areas.
Tribes Advisory Council:	Each state having scheduled areas has to establish a tribes advisory council. It is to consist of **20 members, 3/4 th of whom** are to be the representatives of the scheduled tribes in the state legislative assembly.
Law applicable to Scheduled Area:	Governor is empowered to direct that any particular act of Parliament or the State Legislature does not apply to a scheduled area or apply with specified modifications and exceptions. He can also make regulations for the peace and good governance of a scheduled area after consulting the tribes advisory council.

ADMINISTRATION OF TRIBAL AREAS

The Constitution, under Sixth Schedule, contains special provisions for the administration of tribal areas in the four north-eastern states of Assam, Meghalaya, Tripura and Mizoram.

THE VARIOUS FEATURES OF ADMINISTRATION CONTAINED IN THE SIXTH SCHEDULE

	The tribal areas in the four states of Assam, Meghalaya, Tripura and Mizoram have been constituted as autonomous districts. **But they do not fall outside the executive authority of the State concerned.**
	Governor is empowered to organize and reorganize the autonomous districts.
	If there are different tribes in an autonomous district, the governor can divide the district into several autonomous regions.
	Each autonomous district has a district council consisting of 30 members, 4 nominated by the Governor and the remaining 26 are elected on the basis of adult franchise. Each autonomous region also has a separate regional council. **Note: The elected members hold office for term of five years and nominated members hold office during the pleasure of the Governor.**
	The district and regional councils can make laws on matters like land, forests, canal water, shifting cultivation, village administration, inheritance of property, marriage and divorce, social customs etc . **Note: But all such laws require the assent of the Governor.**
	The district and regional councils **can constitute village councils** or courts for trial of suits and cases between the tribes. They hear appeals from them. The jurisdiction of high court over these suits and cases is specified by the Governor.
	The district council can establish, construct or manage primary schools, dispensaries, markets, ferries, fisheries, roads and so on in the district.
	The district and regional councils are empowered to assess and collect land revenue and to impose certain specified taxes.
	The acts of Parliament or the state legislature do not apply to autonomous districts and autonomous regions or apply with specific modifications and exceptions.
	The Governor can appoint a commission to examine and report on any matter relating to the administration of the autonomous districts or regions.

COMPARING 5TH AND 6TH SCHEDULE

BASIS	5th Schedule	6th Schedule
Applicability	**Andhra Pradesh, Telangana, Jharkhand, Chattisgarh, Odisha, Himachal Pradesh Maharashtra, Madhya Pradesh Gujarat, Rajasthan.** **Note: Any States except Assam, Meghalaya, Tripura, Mizoram.**	**Assam, Meghalaya, Tripura, Mizoram.**
Declaration	**By President- can decrease, increase, alter its boundary lines, in consultation with the Governor.**	**By Governor- empowered to organize, reorganize autonomous districts.**
Executive Power	◇ States executive power extends to those areas. ◇ Centre extends to giving directions to the States.	◇ The tribal areas in the four states have been constituted as autonomous districts. ◇ But they do not fall outside the executive authority of the State concerned.
Applicability of Law	**Governor** is empowered to direct that any particular act of Parliament or the State Legislature does not apply to a scheduled area or apply with specified modifications and exceptions.	Acts of Parliament or the State Legislature do not apply to autonomous districts and autonomous regions or apply with specific modifications and exceptions.
Autonomy	◇ **Panchayats (Extension to Schedule Areas) act 1996.** ◇ Self- governance through Gram Sabha for people living in 5th Schedule Areas.	◇ Greater autonomy compared to 5th Schedule. ◇ Autonomous District Councils (ADC) have much wider powers vis-à-vis Tribes Advisory Councils.

COOPERATIVE SOCIETIES

The 97th Constitutional Amendment Act, 2011 gave a constitutional status and protection to co-operative societies. In this context, it made the following **three changes** in the constitution:

- It made the **right to form co-operative societies** a fundamental right (Article 19).
- It included a new **Directive Principle of State Policy** on promotion of co-operative societies (Article 43-B).
- It added a new **part IX-B** in the Constitution which is titled "The Co-operative Societies" (Articles 243-ZH to 243-ZT).

CONSTITUTIONAL PROVISIONS

Incorporation of Co-operative Societies: State legislature may make provisions for the incorporation, regulation and winding-up of co-operative societies.

Number and Term of Members of Board: Board shall consist of such number of directors as may be provided by the state legislature.
Note: The maximum number of directors of a co-operative society shall **not exceed twenty-one.**

State legislature shall provide for the **reservation of one seat** for the SCs or the STs and **two seats for women** on the board of every co-operative society.

The **term of office of elected members** of the board and its office bearers shall be **five years** from the date of election.

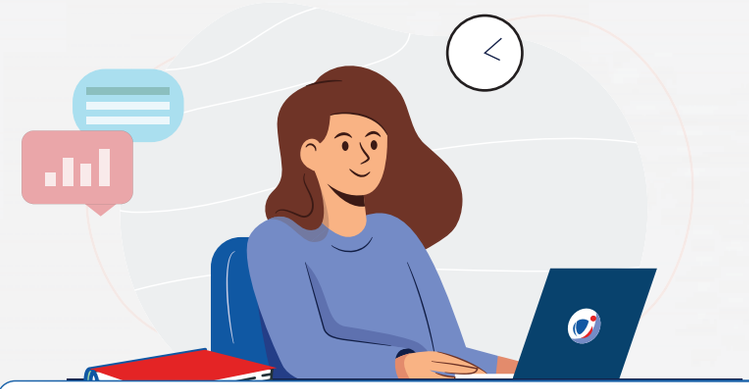
Election of members of Board: Shall be conducted before the expiry of the term of the board.
Note: Superintendence, conduct of elections shall **vest in such body** as may be provided by the State legislature.

AUDIT OF ACCOUNTS OF CO-OPERATIVE SOCIETIES

The **State legislature** may make provisions for the **maintenance of accounts** by the co-operative societies and the **auditing of such accounts** at least once in each financial year.

Every co-operative society shall be **audited by an auditor or auditing** firm, appointed by the general body of the co-operative society.

Every co-operative society shall file **returns, within six months** of the close of every financial year, to the authority designated by the State Government.



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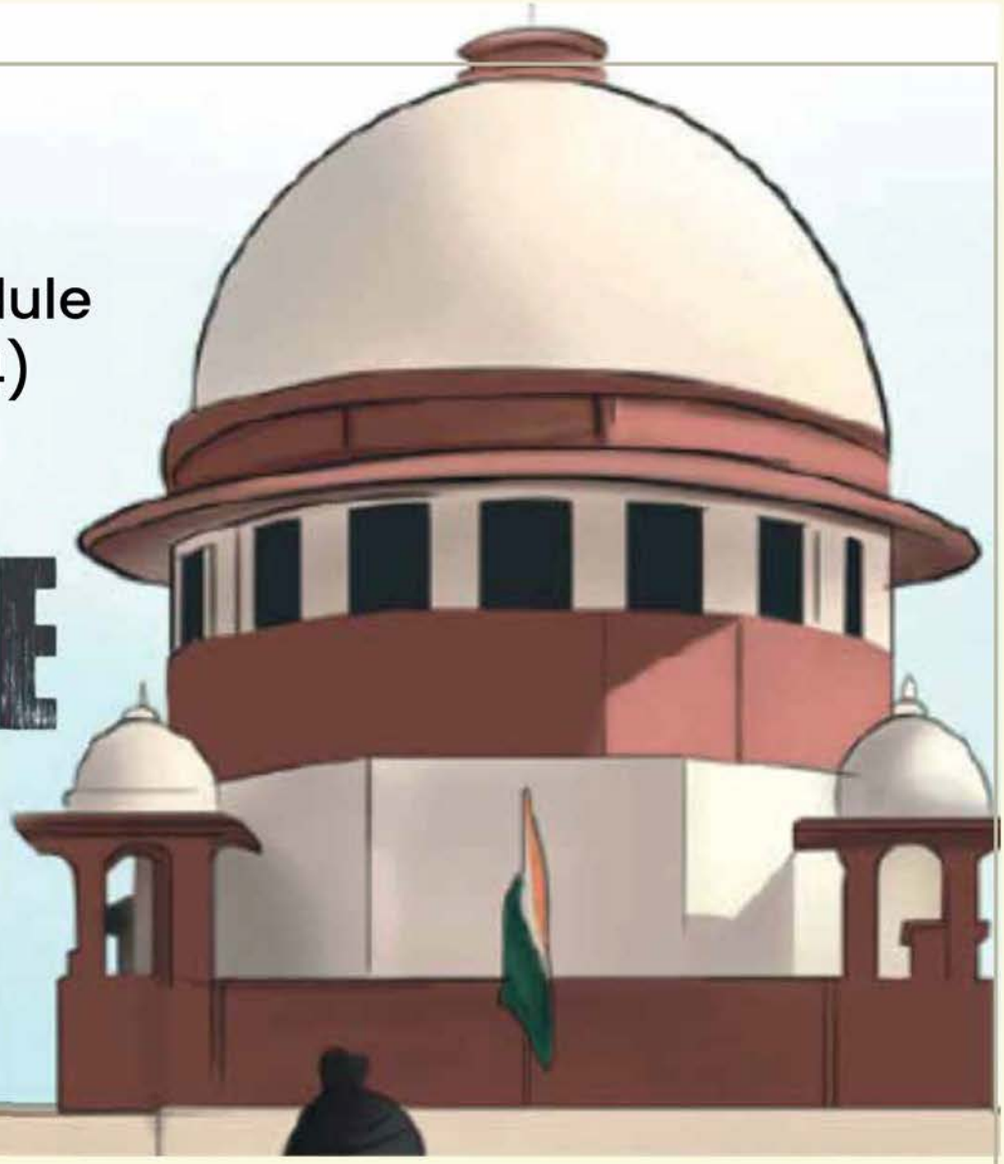
Quick Revision Module
(UPSC Prelims 2024)
POLITY

SUPREME COURT



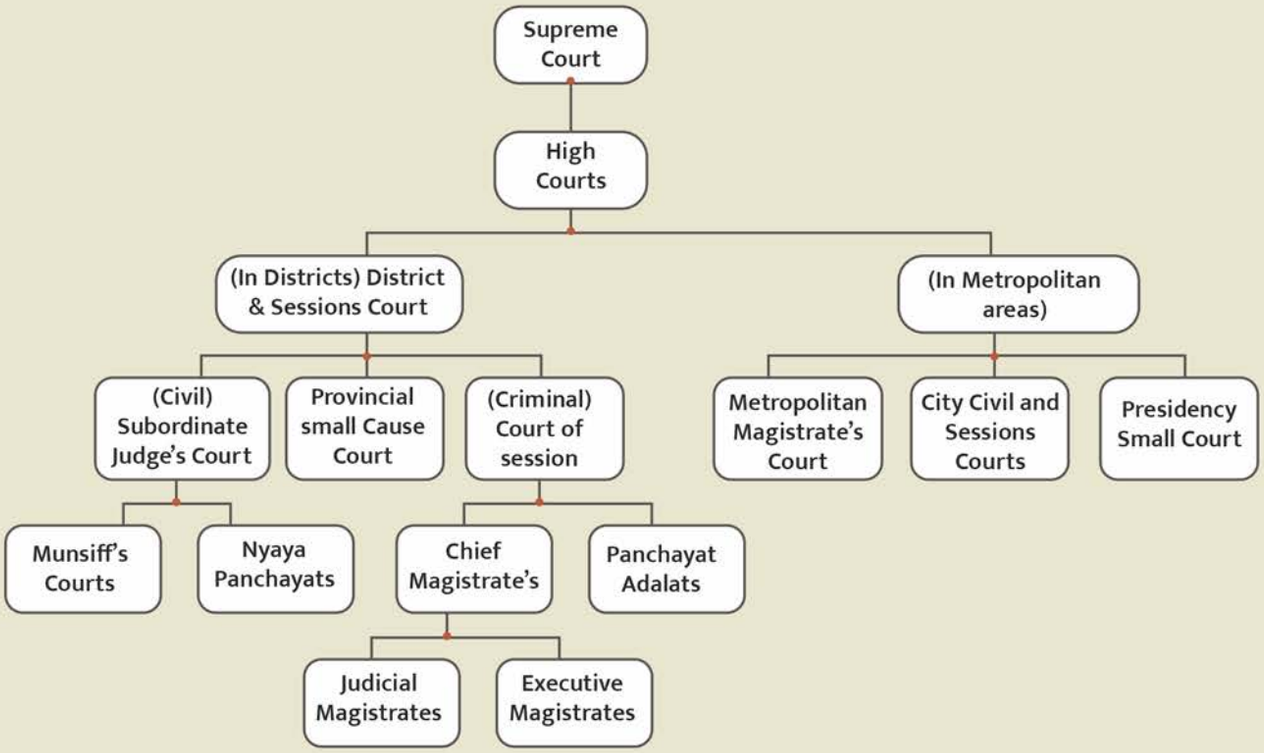
Important articles

124. Establishment and Constitution of Supreme Court
125. Salaries etc of Judges
129. Supreme Court to be a court of record
130. Seat of Supreme Court
136. Special leave to appeal by the Supreme Court
137. Review of judgments or orders by the Supreme Court
138. Enlargement of the jurisdiction of the Supreme Court
139. Conferment on the Supreme Court of powers to issue certain writs
141. Law declared by Supreme Court to be binding on all courts
143. Power of President to consult Supreme Court

Integrated Single system of courts

- Adopted from the Government of India Act of 1935
- Enforces both Central laws & state laws.
- Articles 124 to 147 in Part V of the Constitution

GENERAL STRUCTURE OF INDIAN JUDICAL SYSTEM



ORGANISATION OF SUPREME COURT

Number of Judges

- Current sanctioned strength (34) (Chief Justice of India + 33 other judges)
- Parliament by legislation can increase or decrease the number

Appointment of Judg

- **Chief Justice of India (CJI)** – by the **President after consultation** with such judges of the Supreme Court and high courts as he deems necessary.
  - o By convention – seniormost judge is appointed
  - o At times, this convention violated but SECOND JUDGES CASE curtailed this discretion and ruled seniormost judge only should be appointed.
- **Other judges - by President after consultation with the Chief Justice of India (compulsory)** and such other judges of the Supreme Court and the high courts as he deems necessary.

First Judges Case	Consultation does not mean concurrence and it only implies exchange of views
Second Judges Case	Consultation = concurrence - So advise of CJI binding on President - CJI will consult 2 seniormost colleagues
Third Judges Case	Consultation – consultation with collegium - sole opinion of CJI does not constitute the consultation process - CJI should consult a collegium of four seniormost judges of the Supreme Court and even if two judges give an adverse opinion, he should not send the recommendation to the government.

Qualification of Judges

Constitution prescribes following conditions

- Citizen of India
- A judge of a High Court (or high courts in succession) for at least five years
- Advocate of a High Court (or High Courts in succession) for at least ten years
- Distinguished jurist in the opinion of the president.

NO MINIMUM AGE PRESCRIBED

Oath or Affirmation

Before the President, or some person appointed by him for this purpose, Judge swears following oath

- to bear true faith and allegiance to the Constitution of India
- to uphold the sovereignty and integrity of India
- to duly and faithfully and to the best of his ability, knowledge and judgement perform the duties of the Office without fear or favour, affection or ill-will
- to uphold the Constitution and the laws.

Tenure of Judges

In constitution – NO FIXED TENURE but following 3 provisions are there

- He holds office until he attains the age of 65 years.(Any question regarding his age is to be determined by such authority and in such manner as provided by Parliament)
- He can resign his office by writing to the President.
- He can be removed from his office by the President on the recommendation of the Parliament

Removal of Judges

- In constitution - **only by the President** on ground of **'proved misbehaviour'** or **'incapacity'** only after a motion to this effect is passed by both the Houses of Parliament by special majority

- Misbehaviour or incapacity shall be proved by an impartial tibunal (composition of Tribunal is decided under Judges (Inquiry) Act, 1968.)

Impeachment Proceedings

A removal motion signed by 100 members (in case of lok sabha) or 50 members (in case of Rajya Sabha) is to be given to the Speaker/Chairman.

If the motion is admitted, then a three member committee (consisting of a Supreme court judge, a chief justice at high court and a distinguish jurist to) investigate into the charges is constituted.

If the committee finds the judge to be guilty of the charges (misbehavior or incapacity), the house in which the motion was introduced, can take consideration or the motion.

Special majority: Majority of total membership of the house & Majority of not less than two third members present and voting

Once, the House in which removal motion was introduced passes it with special majority it goes to the second house which also has to pass it with a special majority.

After the motion is passed, an address is presented to the President for removal of the judge. The President then passes an order removing the judge.

Seat of Supreme Court

- The Constitution declares Delhi as the seat of the Supreme Court.
- But, it also authorises the Chief Justice of India to appoint other place or places as seat of the Supreme Court but approval of the President required.
- This provision is only optional and not compulsory.

Other Judges of Supreme Court

Acting Chief Justice of India	
Appointment	By President
Who can be appointed?	A judge of Supreme Court
In what situation?	in case CJI's office vacant/temporarily absent/unable to perform his duties
Ad hoc Judges	
Appointment	By CJI only after consulting with the Chief Justice of the concerned High Court with the prior consent of the President
Who can be appointed?	A judge of High court (qualified for appointment as a judge of the Supreme Court)

In what situation?	lack of quorum of the permanent judges to hold or continue any session of the Supreme Court
It is the duty of the judge so appointed to attend the sitting of the Supreme Court, in priority to other duties of his office and while so attending he enjoys all the jurisdiction, powers and privileges of a judge of the Supreme Court.	

Retired Judges

- The Chief Justice of India can request a retired judge of the Supreme Court or High Court to act as a judge of the Supreme Court for a temporary period.
- The President's previous consent is necessary.
- Such a person will enjoy all the jurisdiction, powers and privileges of a Supreme Court Judge. But he will not otherwise be deemed to be a judge of the Supreme Court.

Salary and Allowances

- Parliament determine the salary, other allowances, leave of absence, pension, etc. of the Supreme Court judges.
- But Parliament cannot alter any of these privileges and rights to the judge's disadvantage after his/ her appointment.
- **Salaries, allowances and pensions** of the judges of Supreme Court are charged on the Consolidated Fund of India (so non-votable by Parliament).

Procedure of Court

- Supreme Court make rules for regulating practice and procedure of the Court (with President's approval).
- Constitutional cases or references made by the President under Article 143 - decided by a Bench consisting of at least five judges.
- As the number of the Judges has increased, they sit in smaller Benches of two and three - coming together in larger Benches of 5 and more only when required to do so or to settle a difference of opinion or controversy.
- The judgements are delivered by the open court.
- All judgements are by majority vote but judges can give dissenting opinions.
- Judgments by Supreme Court is binding on all courts within the territory of India.

CONSTITUTIONAL SAFEGUARDS FOR INDEPENDENCE OF SUPREME COURT

Appointment by President in consultation with members of judiciary itself	**Security of Tenure** - can be removed from office by the President only in the manner and on the grounds mentioned in the Constitution.	**Fixed Service Conditions** - cannot be changed to their disadvantage after their appointment except during a financial emergency
salaries, allowances and pensions of the judges and the sta ffas well as all the administrative expenses **Charged on Consolidated Fund**	**Conduct of Judges cannot be discussed** in legislature except during impeachment motion	**Its Jurisdiction cannot be curtailed** by the Parliament although it can extend the same

Ban on Practice after Retirement	Power to Punish for its Contempt	Freedom to Appoint its Staff	Separation from Executive

JURISDICTION OF SUPREME COURT

Exclusive Original Jurisdiction

- Federal Disputes **(between centre & one or more states; between centre + some state on one side & one or more states on the other; between 2 or more states)**
  - o It should involve a question of law or fact
  - o Question of political nature are excluded
- Election Disputes **(regarding the election of the President and the Vice-president)**
- This jurisdiction does not extend to
  - o Inter-State Water disputes
  - o matters referred to the Finance Commission;
  - o adjustment of expenses between the Centre and the States;
  - o ordinary dispute of commercial nature;
  - o dispute arising out of pre-Constitution treaty or agreement;
  - o any treaty or agreement, which specifically provides that that the said jurisdiction does not extend to the dispute

Writ Jurisdiction

- Power to issue directions or orders or writs (Habeas corpus, Mandamus, Prohibition, Quo Warranto and Certiorari, whichever may be appropriate for the enforcement of fundamental rights)
- It is concurrent with high courts, not exclusive in regard to enforcement of Fundamental Rights.
- The Supreme Court has original jurisdiction because citizen can directly go to the Supreme Court
- Parliament by law can confer on the Supreme Court, power to issue directions or orders or writs for other purposes (than enforcement of fundamental rights) as well.

Appellate Jurisdiction

- **Highest court of appeal**

In constitutional matters	In civil matters	In criminal matters	By special leave
High court has to certify that case involves substantial question of law needing interpretation of constitution	High court has to certify case involves a substantial question of law of general importance, and it needs to be decided by the Supreme Court	If High court - has on appeal reversed an order of acquittal of an accused person and sentenced him to death; or - has taken before itself any case from any subordinate court and convicted the accused person and sentenced him to death; or - certifies that the case is a fit one for appeal to the Supreme Court. **Parliament later enlarged jurisdiction and included life imprisonment or for 10 years as well and not just sentence of death**	- The Supreme Court has discretion to grant special leave to appeal from a judgement or order of any non-military Indian court or tribunal - May be related to any matter - Very wide power

Advisory Jurisdiction

- In matters referred by President
  1. On any question of law or fact of public importance, which has arisen or which is likely to arise. (supreme court may advise or refuse to tender its advice)
  2. On any dispute arising out of any pre-Constitution treaty, agreement, covenant, engagement, sanad or other similar instruments. (Supreme Court must give its advice)
- In both cases advice non-binding

Other Jurisdiction

As court of record	Judicial review	Revisory Jurisdiction
The judgements, proceedings and acts of the Supreme Court are recorded - These records are admitted to be of evidentiary value and are recognised as legal precedents and legal references - It has power to punish for contempt of court (simple imprisonment for a term upto six months or fine or both). - It can punish for contempt not only of itself but also of High Courts, subordinate courts and tribunals in the entire country. - There can be civil or criminal contempt.	Supreme Court can declare legislative enactments of the Centre and states and any executive orders as null and void if they violate the Constitution It can be done on the following three grounds: (a) it infringes the Fundamental Rights (Part III), (b) it is outside the competence of the authority which has framed it, and.	The Supreme Court has power to review any judgment pronounced or order made by it. Grounds for exercising this power can be restricted by Parliamentary legislation or Rules made by the Supreme Court itself. The petition filed to review its judgement is called 'Review Petition'

Civil contempt means willful disobedience to any judgment, order, writ or other process of court or willful breach of undertaking given to the court. Criminal contempt means the publication of any matter or doing any act, which scandalizes or lowers the authority of a court; prejudices or interferes with due course of judicial proceeding; obstructs or interferes the administration of justice in any manner	(c) it is repugnant to the constitutional provisions. Phrase JUDICIAL REVIEW – not mentioned in constitution	while second review petition is called 'Curative Petition'

Other powers of Supreme Court

- **Highest Court of Law-** It is the ultimate interpreter of the Constitution.
- **Its judgments are binding on all courts in India-** Its decree or order is enforceable throughout the country . All authorities (civil and judicial) in the country should act in aid of the Supreme Court.
- **Control over subordinate courts-** It is authorised to withdraw the cases pending before the high courts and dispose them by itself. It can also transfer a case or appeal pending before one high court to another high court. It has power of judicial superintendence and control over all the courts and tribunals functioning in the entire territory of the country.
- **Enquiry of Conduct-** It enquires into the conduct and behaviour of the chairman and members of the UPSC on a reference made by the president. If it finds them guilty of misbehaviour, it can recommend to the president for their removal. The advice tendered by the Supreme Court in this regard is binding on the President
- **Complete Justice-** It may pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it.

SUPREME COURT ADVOCATES

Every advocate is not allowed to practice law in the Supreme court. Only the following three categories of advocates are entitled to do so

Senior Advocates	Advocates-on-Record	Other Advocates
1. The Supreme Court of India or any High Court can designate any Advocate, with his/ her consent, as Senior Advocate if in its opinion by virtue of his ability, standing at the Bar or special knowledge or experience in law the said Advocate is deserving of such distinction. 2. A Senior Advocate is not entitled to appear without an Advocate-on-Record in the Supreme Court or without a junior in any other court or tribunal in India. 3. He is also not entitled to accept instructions to draw pleadings or affidavits, advise on evidence or do any drafting work of an analogous kind in any court or tribunal in India or undertake conveyancing work of any kind whatsoever but this prohibition shall not extend to settling any such matter as aforesaid in consultation with a junior.	1. Only these advocates are entitled to file any matter or document before the Supreme Court. 2. They can also file an appearance or act for a party in the Supreme Court.	1. These are advocates whose names are entered on the roll of any State Bar Council maintained under the Advocates Act, 1961 and 2. They can appear and argue any matter on behalf of a party in the Supreme Court but they are not entitled to file any document or matter before the Court.

COMPARISON WITH AMERICAN SUPREME COURT

	Indian Supreme Court	American Supreme Court
Original Jurisdiction	It is confined to federal cases.	It covers not only federal cases but also cases relating to naval forces, maritime activities, ambassadors, etc.
Appellate Jurisdiction	It covers constitutional, civil and criminal cases.	It is confined to constitutional cases only.
Advisory Jurisdiction	It has advisory jurisdiction.	It has no advisory jurisdiction.
Judicial Review	It defends right of the citizen according to the 'procedure established by law'. Thus, its scope of judicial review is limited.	It defends right of the citizen according to the 'due process of law' Thus, its scope of judicial review is wide.

Change in Jurisdiction	Its jurisdiction and powers can be enlarged by parliament.	its jurisdiction and powers are limited to that conferred by the constitution.
Control over subordinate courts	It has power of judicial superintendence and control over state high courts due to integrated judical system.	It has no such power due to double (or separated) judicial system.
Fundamental difference	Unified judicial system	Segregated on federal principle
Extraordinary power of special leave	Present	Absent

COMPARISON WITH OTHER COUNTRIES IN APPOINTMENT OF JUDGES

COMPARISON BETWEEN DIFFERENT COUNTRIES

HOW THE SELECTION PROCESS WORKS IN VARIOUS JURISDICTIONS

The mechanism for judicial appointments differ from country to country. A look

India	U.K	U.S	Gremany	South Africa
WHO APPOINTS				
President	The 5-member panel	President	Executive, Legislature	President
PERSONS INVOLVED IN MAKING THE DECISION				
Since 1993, a collegium, consisting of the CJI and other senior SC judges, has made recommendation for persons to be appointed as SC and HC judges, to the President	It consists of the SC President, his deputy, and one member each appointed by the JACs of England, Scotland and Northem Ireland. The JACs comprise lay persons, members of Judiciary and the bar	Justices are nominated by the President and confirmed by the U.S Senate. Senate Judiciary Committee holds hearing and votes on whether nominations should go to the full senate	It is unique as the country has an election process to appoint judges. Half the members of the Federal Consitutional Court are elected by the executive and half by the legislature.	The South African Judicial Services Commission recommends the list of candidates to be appointed as supreme court judges. All other judges are appointed on its advice

High Court & Subordinate Courts

India's single integrated judicial system (adopted from GoI Act, 1935)

Supreme Court
Articles 124 to 147 in Part V of the Constitution

↓

High Courts
Articles 214 to 231 in Part VI of the Constitution

↓

Subordinate Courts
Articles 233 to 237 in Part VI of the Constitution

At the Centre

At the State level

High Courts

- Territorial Jurisdiction: Co-terminus with territories of concerned State/UTs.
- Two or more States/UT may have a common High Court (7th CAA, 1956).
- Parliament can extend the jurisdiction of a high court to any union territory or exclude the jurisdiction of a high court from any union territory.

BASIS FOR COMPARISON	SUPREME COURT	HIGH COURT
Meaning	The Supreme Court is the primary court of justice in the country.	The High Court is the apex judiciary body of a State's administration.
Articles in the Constitution	(Articles 124-147) in Part V	(Articles 214-231) in Part VI
Headed by	It is headed by the Chief Justice of India.	It is headed by the Chief Justice of the State.
Number of Courts	There is only one Supreme Court in India.	There are total 25 High Courts in India, three of which have jurisdiction in more than one state.
Superintendence/ Territorial jurisdiction	Over all courts and tribunals of the country.	Over all courts, under its jurisdiction, which in turn is limited by the boundary in more than one state.
Writ jurisdiction	Supreme Court can issue writs only where a fundamental right has been infringed.	High Courts can issue writs for enforcement of Fundamental Rights as well as for any other purpose i.e. ordinary legal rights of the citizen.
Qualifications of Judges	**He should** » be a citizen of India. » have been a judge of a High Court (or high courts in succession) for five years; or » have been an advocate of a High Court (or High Courts in succession) for ten years; or » be a distingushed jurist in the opinion of the President.	**He should*** » be a citizen of India. » has for at least ten years held a judicial office in the territory of India; or » has for at least ten years been an advocate of a High Court ' or of two or more such courts in succession.
Appointment of Judges	By the President by warrant under his/her hand and seal after consultation with such of the Judges of the Supreme Court and of the High Court in the States.	By the President in consultation with the Cheif Justice of India and the Governor of the state in question.
Number of Judges	31 judges (Including the Cheif Justice and 30 other judges). Recently, the strenght was increased from 31 to 34.	For every High Court, there is a Cheif Justice and many other judges. The number of judges appointed is defined by the President of India.
Retirement of Judges	Judges retire at the age of 65 years.	Judges retire at the age of 62 years.
Pleading	The judge of Supreme Court cannot plead before any court during his or her tenure or after his or her retirement.	The judges of High Court cannot plead before any court during his or her tenure and after retirement cannot plead in a court below the high court.
Removal/Transfer of Judge	The President can issue the removal order only after an address by Parliament which must be supported by a special majority of each House of Parliament.	The President can issue the removal order only after an address by Parliament which must be supported by a special majority of each House of Parliament.
Salaries and Pensions	The salaries and allowances of Cheif Justice of India and Supreme Court judges are charged from Consolidated Fund of India.	The salaries and allowances of state high court judges including cheif justices are charged from Consolidated Fund of State while pension is drawn from Consolidated Fund of India.

*Note:
1. Constitution has not prescribed a minimum age for appointment as a judge of a high court.
2. Constitution makes no provision for appointment of a distinguished jurist as a judge of a high court (unlike SC).

Appointment of Judges of High Courts

Chief Justice of High Court

- Appointed by the President after consultation with the chief justice of India and the governor of the state concerned.
- In case of a common high court for two or more states, the governors of all the states concerned are consulted by the President.

Other regular Judges of HC

- Appointed by the President after consultation with the chief justice of India and the governor of the state concerned, and the chief justice of the concerned high court.

Acting Chief Justice

- The President can appoint a judge of a HC as an acting chief justice of the HC when the office of chief justice of the HC is vacant; or the chief justice of the HC is temporarily absent; or the chief justice of the HC is unable to perform the duties of his office.

Additional Judges

- Appointed by the President for a temporary period of not more than two years when there is a temporary increase in the business of the HC; or there are arrears of work in the HC.

Acting Judges

- Appointed by the President when a judge of that high court (other than the chief justice) is unable to perform the duties of his office due to absence or any other reason; or appointed to act temporarily as chief justice of that HC.

Retired Judges

- The Chief Justice of a High Court can request a retired judge of that High Court or any other High Court to sit and act as a judge of High Court for that state.
- It can be done only with the previous consent of the President and also of the person to be so appointed.

Vacancy in office of the HC judge

Resignation

- He can resign from his office by writing to the President.

Transfer

- The President can transfer a judge from one high court to another after consulting the Chief Justice of India (Collegium).
- The **chief justice of the two HCs** (one from which the judge is being transferred and the other receiving him) also need to be consulted.

Tenure

- Constitution has **not fixed the tenure** of a HC judge.
- He holds office until he attains the age of 62 years.

Removal

- Removal of the HC judges can be done in a manner similar to that provided for the SC judges.
- Based upon that, along with **Judges Inquiry Act 1968,** the impeachment of judges can be done only on **2 grounds of 'proved misbehaviour' or 'incapacity'.**

Oath or Affirmation:

- Form set out in the **Third Schedule** of the Indian Constitution.
- Before the governor of the state or some person appointed by him.
- To uphold Constitution and the laws, and the sovereignty and integrity of India.

Salaries and Allowances:

- Determined by the Parliament.
- But Parliament cannot alter any of privileges and rights to judge's disadvantage after appointment.
- charged on the consolidated fund of the state.

Note: Pension of HC Judges is charged on Consolidated Fund of India.

Jurisdiction and Powers of High Court

Original Jurisdiction

- It means the power of a high court to hear disputes in the first instance, not by way of appeal, and extends to:
  - Enforcement of Fundamental Rights (under Article 226).
  - Cases ordered to be transferred from a subordinate court involving interpretation of the Constitution.
  - Matters related to will, marriage, divorce, company laws and contempt of court.
  - Disputes relating to the election of members of parliament and state legislature.
  - Regarding revenue matter or an act ordered or done in revenue collection.

Writ Jurisdiction

- Article 226 empowers High Court to issue writs, including habeas corpus, mandamus, certiorari, prohibition and quo warranto for enforcing fundamental rights as well ordinary legal rights.
- Thus, the writ jurisdiction of the High Court is wider than that of the Supreme Court.

Note: In, Chandra Kumar case, SC ruled- Writ Jurisdiction part of Basic structure.

Appellate Jurisdiction

- HC hears appeals against the judgements of subordinate courts functioning in its territorial jurisdiction.
- It has appellate jurisdiction in both civil and criminal matters.
- Any death sentence awarded by lower court should be confirmed by the High Court whether there's an appeal or not.

Power of Superintendence

- A high court has the power of superintendence over all courts and tribunals functioning in its territorial jurisdiction (except military courts or tribunals).
- It covers not only administrative superintendence but also judicial superintendence.
- HC is consulted by the governor in the matters of appointment, posting, and promotion of the district judges and in the appointments of persons to the judicial service of the state other than the district judges.

A Court of Record

- As a court of record, a high court has two powers:
  1. The judgements, proceedings and acts of the high courts are recorded for perpetual memory and testimony. They are recognised as legal precedents and legal references.
  2. It has power to punish for contempt of court, either with simple imprisonment or with fine or with both.
- As a court of record, a high court also has the power to review and correct its own judgement or order, even though no specific power of review is conferred on it by the Constitution (unlike the SC).

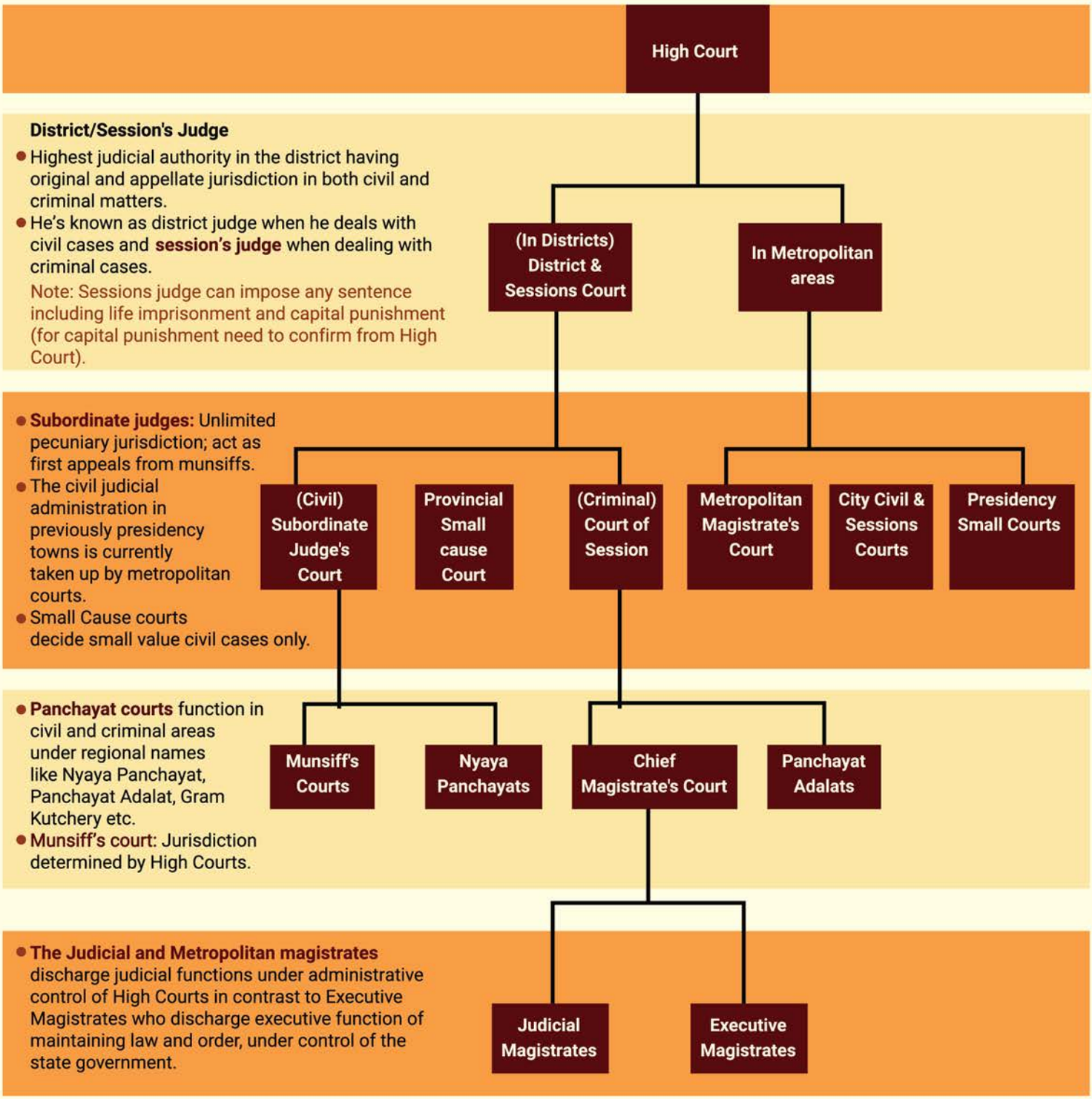
Power of Judicial Review

- The High Court has the power to examine the constitutionality of legislative and executive orders of both central and state government.
- Articles 13 and 226 provide High Courts with this power.Note: Phrase "Judicial Review" not mentioned in constitution
- The constitutional validity of a legislative/executive action can be challenged in a high court on the following three grounds:
  (a) it infringes the fundamental rights (Part III),
  (b) it is outside the competence of the authority which has framed it, and
  (c) it is repugant to the constitutional provisions.

Constitutional safeguards for independence of High Court (same as that for the Supreme Court)

Subordinate Court

Structure and Jurisdiction



Note: The architecture of subordinate judiciary varies across the states and is broadly classified as shown in figure.

Appointment of judges in the Subordinate Courts

Appointment of District Judges	Qualification for appointment as District Judge	Appointment of other Judges
• Appointment, posting and promotion of district judges in a state are made by the governor of the state in consultation with the high court.	• He should not already be in the service of the Central or the state government. • He should have been an advocate or a pleader for seven years. • He should be recommended by the high court for appointment.	• Appointment of persons (other than district judges) to the judicial service of a state are made by the governor of the state after consultation with the State Public Service Commission and the High Court.

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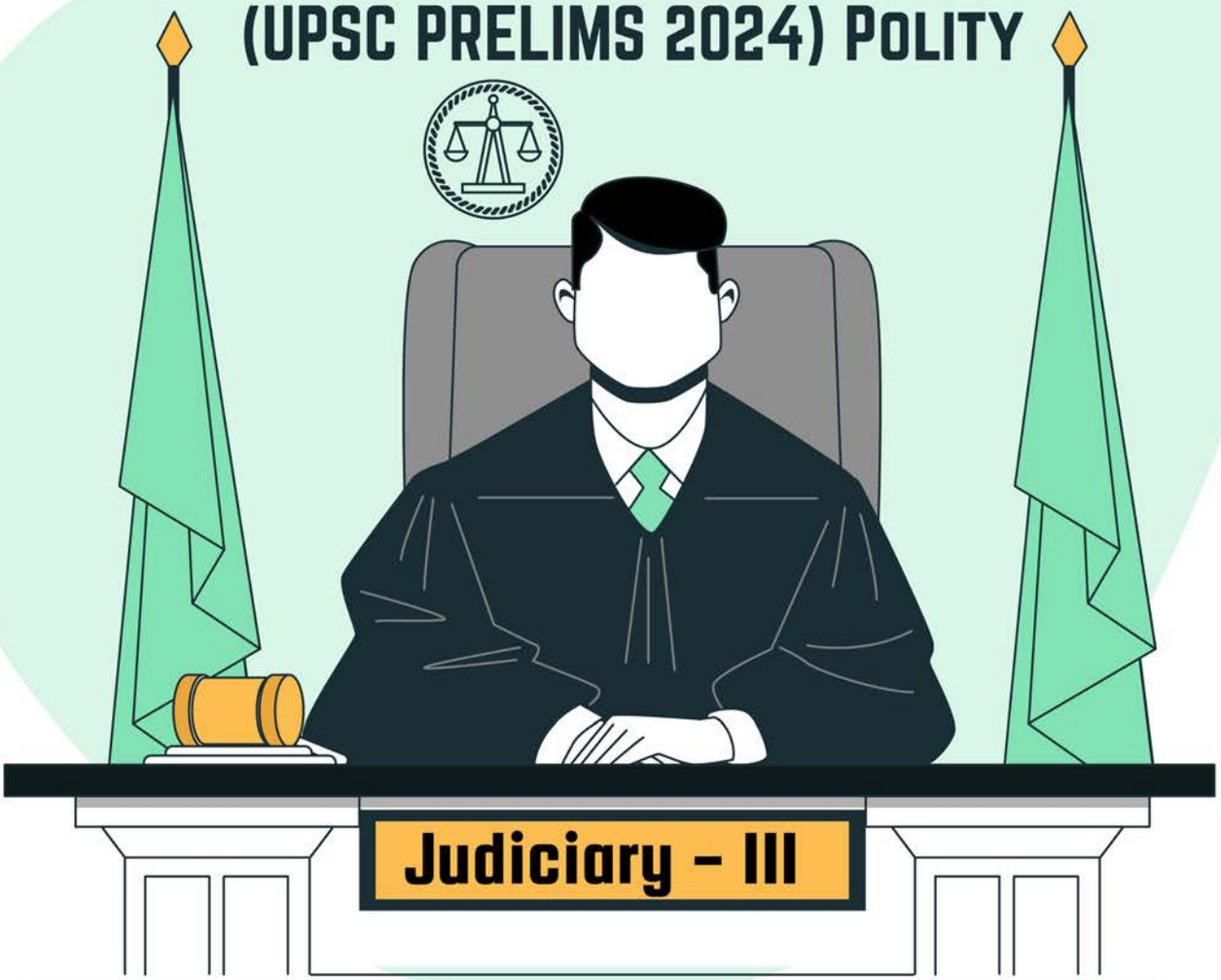
QUICK REVISION MODULE (UPSC PRELIMS 2024) POLITY



Judiciary - III

Tribunals, Gram Nayalayas, Lok Adalat and Other Alternative dispute mechanism

Two ways to resolve the dispute

- Court of Law
  E.g. High court, supreme court, Tribunals etc.
- Alternative dispute resolution (ADR)
  E.g. Mediation, Arbitration etc.

Alternative Dispute Redressal Mechanisms

ADR mechanism of settling any dispute includes **Arbitration, Conciliation, Mediation, settlement** through **Lok Adalat** and with the **intervention** of **Family Court, Judicial Settlement, Plea Bargaining, and Collective Bargaining** etc.

Under constitution, ADR can find its basis in the

- Article 14 (Equality before Law)
- Article 21 (Right to life and personal liberty)
- Article 32 (Right to Constitutional remedies) which provides for the right of people to seek justice.
- Article 39A of DPSP which provides for Equal Justice and Free legal Aid.

Further, **Section 89 of the Civil Procedure Code** provides for Settlement of disputes outside the court through the following methods:

- Arbitration
- Conciliation

→ Arbitration and Conciliation Act, 1996

- Judicial settlement through Lok Adalat → Legal Services Authority Act, 1987
- Mediation → Court shall effect a compromise b/w the parties

Various Types of ADR mechanisms

Mediation:

It involves an **unbiased, impartial and non imposing** third party mediator who tries to help the parties to reach a mutually agreeable settlement to the conflict. The Commercial Courts Act 2015 as Amended in 2018 and the "Commercial Courts (Pre-institution Mediation and Settlement) Rules, 2018" provided impetus to Mediation.

Arbitration:

It is a procedure in which a dispute is submitted, by agreement of the parties, to one or more arbitrators who make a **binding** decision on the dispute. Recently the government has passed **Arbitration and Conciliation (Amendment) Act, 2019** which aims to make India a hub of institutional arbitration for both domestic and international arbitration.

Conciliation:

It is a process by which resolution of disputes is achieved by compromise or voluntary agreement.

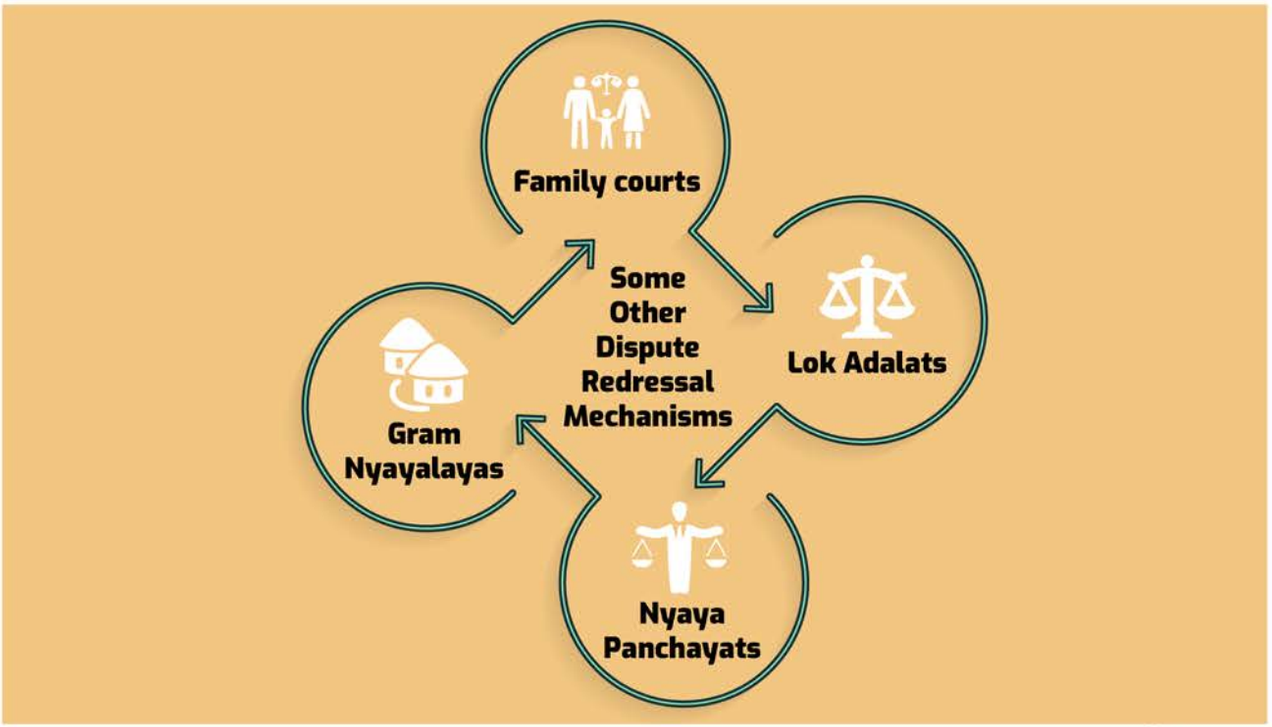
Note: The conciliator does **not** render a **binding** award. The parties are free to accept or reject its recommendations.

This process has been given **statutory recognition** by Arbitration and Conciliation Act, 1996.

Negotiation:

It is the simplest means for redressal by which self counseling is chosen between the parties to resolve their dispute. It has no fixed rules & the parties begin their talk **without** interference of any **third person.** Particularly handful when there is prevalence of understanding and patience between the parties . However, in India, **Negotiation doesn't have any statutory recognition** i.e through way of legislation.

Some Other Dispute Redressal Forums



LOK Adalats

It is based on Gandhian principles and is one of the components of ADR systems. It involves people who are directly or indirectly affected by dispute resolution.

Origin of Lok Adalats

The first Lok Adalat was held on March 14, 1982 at Junagarh in Gujarat. The advent of **Legal Services Authorities Act, 1987 gave a statutory status to Lok Adalats.**

Composition :

Generally Lok Adalat is presided by a sitting or a retired judicial officer as Chairman with two other members (a lawyer and a social worker).

Features of Lok Adalats-

- The **award** passed by the Lok Adalat can be **executed as a civil court decree.**
- The parties don't have to be represented by the lawyers.
- **No fee** is paid by the parties.
- Strict rule of **Civil Procedural Court and Evidence is not applied**. Principles of **natural justice** and other legal principles are also applied.
- Decision is by informal sitting and **binding** on the parties and **no appeal** lies against the order of the Lok Adalat except in certain situations.

Jurisdiction of Lok Adalats

A Lok Adalat shall have jurisdiction to a dispute in respect of:

i. **any case pending** before; or

ii. any matter which is **falling within the jurisdiction of**, and is not brought before (Pre litigation stage), **any court** for which the Lok Adalat is organised.

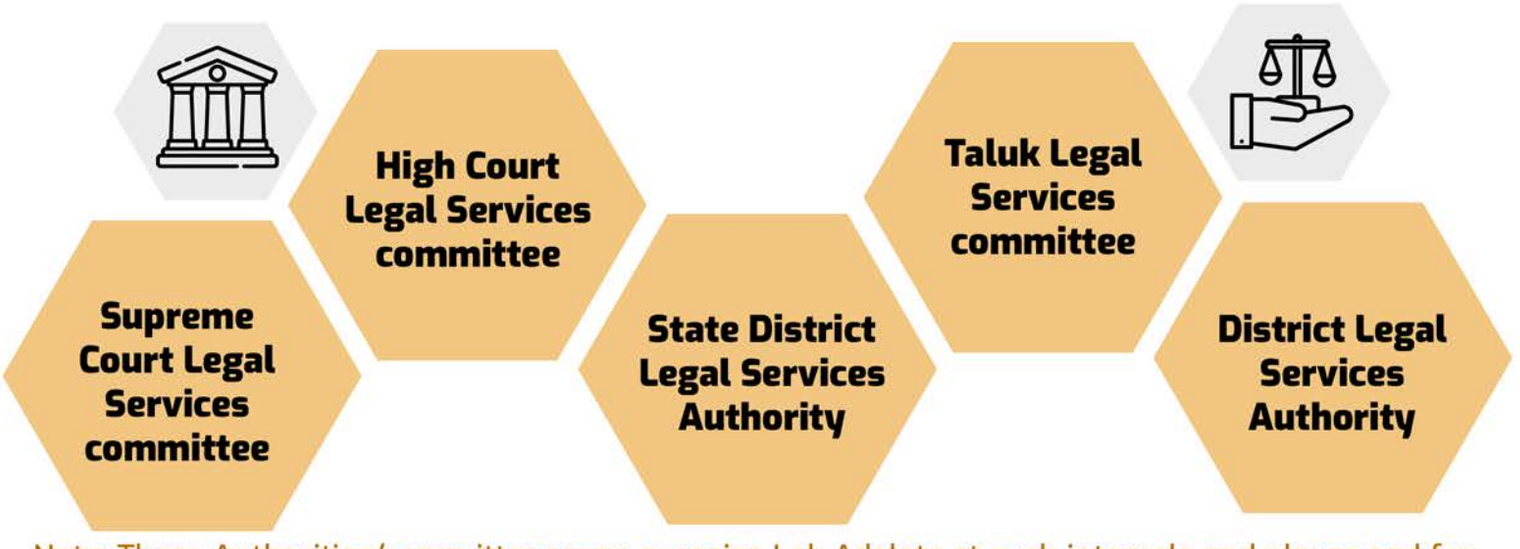
The Lok Adalat can compromise and **settle even criminal cases which are compoundable,** under the relevant laws.

Matters such as matrimonial/family disputes, criminal (compoundable offences) cases, land acquisition cases, labour disputes, workmen's compensation cases, bank recovery cases, etc. are being taken up in Lok Adalats. Lok Adalats have **no jurisdiction in respect of matters** relating to **divorce** or matters relating to **offence not compoundable under any law**.

Powers of Lok Adalats

- It shall have the **powers of a civil court** under the Code of Civil Procedure,1908.
- It shall have the power **to specify its own procedure** for the determination of any dispute coming before it.
- Every Lok Adalat shall be **deemed to be a Civil Court** for the purpose of Sec 195 and Chapter XXVI of **CrPC.**

Levels of Lok Adalats:



Note: These Authorities/committees may organise Lok Adalats at such intervals and places and for exercising such jurisdiction and for such areas as it thinks fit.

Permanent Lok Adalats

Made in 2002 through amendments to the Legal Services Authorities Act, 1987 to settle the disputes related to public utility services such as transport, postal etc.

- The **jurisdiction** of the Permanent **Lok Adalats is upto Rs. Ten Lakhs.**
- NOTE: Permanent Lok Adalats have jurisdiction over **pre-litigation matters only,** while Lok Adalat have jurisdiction over pending and pre-litigation matters.

Nyaya Panchayat

Nyaya Panchayats

It forms the lowest rung of our judiciary.
Rationale : - Democratic decentralization; Easy, speedy and Inexpensive access to justice; Revival of traditional village community life etc.

- The procedure followed in nyaya panchayats is very **simple and informal.**

Jurisdiction

- It has judicial functions both in **civil as well as in criminal fields** (minor criminal offences like simple hurt, theft etc., and civil matters of low pecuniary limit.)

Gram Nyayalayas

- **The Gram Nyayalaya Act, 2008** aims to improve access to justice in rural India.
- Established **for every Panchayat or a group** of contiguous Panchayats **at intermediate level** in a district.
- Act **does not** make setting up of Gram Nyayalayas **mandatory.**

Composition:

- The Gram Nyayalayas are presided over by a **Nyayadhikari** (equivalent to a **Judicial Magistrate** of **First Class** and is appointed by the **State Government in consultation with the respective High Court (HC).**

Jurisdiction:

- Its **jurisdiction over an area specified by a notification by the State Government** in consultation with the respective **HC.**
- They have **both civil and criminal jurisdiction** over the offences.
- Their pecuniary jurisdictions are fixed by the respective High Courts.

Features:

- The Court can function **as a mobile court within** its jurisdiction area.
- It has been given power to accept certain evidences outside the ambit of Indian Evidence Act.
- Appeal in criminal cases and civil cases shall lie to the Court of Session and District court respectively (to be heard and disposed within six months from the date of the appeal)
- The Court shall try to settle disputes via conciliation.
- The gram nyayalaya is mandated to decide **cases within a period of six months** from the date of its institution.
- It directs to conduct proceedings in the official language of the state.

Note: In 2019, in response to the writ filed in the Supreme Court, it is noted that the Gram Nyayalayas were not operational in most of the states.

Family courts

Family courts

- The Family Courts Act, 1984 provides for establishment of Family Courts **by the State Governments** in **consultation with the High Courts .**

Aim: To promote conciliation and secure speedy settlement of disputes relating to marriage and family affairs and for matters connected therewith.

Features: The Family Courts are **free to evolve their own rules of procedure,** and the rules so framed override the rules contemplated under the Code of Civil Procedure. Special emphasis is put on **settling the disputes by mediation and conciliation**

Comparison between Judicial Process and various ADR process:

Judicial Process	Arbitration	Mediation
An adjudicatory process where a third party (judge/other authority) decides the outcome	A quasi-judicial adjudicatory process where the arbitrator(s) appointed by the Court or by the parties decide the dispute between the parties	A negotiation process and not an adjudicatory process. The mediator facilitates the process. Parties participate directly in the resolution of their dispute and decide the terms of settlement.
Procedure and decision are governed, restricted and controlled by the provisions of the relevant statutes.	Procedure and decision are governed, restricted and controlled by the provisions of the Arbitration & Conciliation, 1996.	Procedure and settlement are not controlled, governed or restricted by statutory provisions thereby allowing freedom and flexibility.
The decision is binding on the parties.	The award in an arbitration is binding on the parties.	A binding settlement is reached only if parties arrive at a mutually acceptable agreement.
Personal appearance or active participation of parties is not always required.	Personal appearance or active participation of parties is not always required.	Personal appearance and active participation of the parties are required.

A formal proceeding held in public and follows strict procedural stages.	A formal proceeding held in private following strict procedural stages.	A non-judicial and informal proceeding held in private with flexible procedural stages.
Decision is appealable	Award is subject to challenge on specified grounds.	Decree/Order in terms of the settlement is final and is not appealable

Mediation	Conciliation	Lok Adalat
Voluntary process	Voluntary process	Voluntary process
Mediator is a neutral third party.	Conciliator is a neutral third party. Presiding officer is a neutral third party.	Conciliator is a neutral third party. Presiding officer is a neutral third party.
Service of lawyer is available	Service of lawyer is available	Service of lawyer is available
The function of the Mediator is mainly facilitative	The function of the conciliator is more active than the facilitative function of the mediator.	The function of the Presiding Officer is persuasive.
The consent of the parties is not mandatory for referring a case to mediation.	The consent of the parties is mandatory for referring a case to conciliation Act,1996	The consent of the parties is not mandatory for referring a case to Lok Adalat.
Regulated by Code of Civil Procedure, 1908	Regulated by Arbitration and Conciliation Act, 1996	Regulated by Legal Services Authorities Act, 1987
Not appealable.	Decree/order not appealable.	Award not appealable
parties are actively and directly involved.	parties are actively and directly involved.	Parties are not actively and directly involved so much
Confidentiality is the essence	Confidentiality is the essence	Confidentiality is not observed

Commercial Courts

The commercial courts attempts to cover a broad range of disputes within the scope of a **'commercial dispute'** e.g. disputes relating to mercantile documents, export and import of merchandise or service, IPR, agreements of franchising / distribution / consultancy / JV etc.

The Commercial Courts, Commercial Division and Commercial Appellate Division of the High Courts Act, 2015 introduces setting up of a Commercial Court (at District level) / a Commercial Division (in High Courts having ordinary original civil jurisdiction) and the Commercial Appellate Divisions as shown below.

The Commercial Appellate Division is constituted by the Chief Justice of each of the High Courts and is presided by bench of two Judges to hear appeals from Commercial Court or Commercial Division.

Establishment of commercial courts

2015 Act

Where high courts have ordinary original civil jurisdiction (5 High Courts)

Commercial Appellate Division of the High Court

↑ Appeals

Commercial Divisions of High Courts with original jurisdiction (minimum value: Rs 3 Lakh and above)

Where high courts do not have ordinary original civil jurisdiction

Commercial Appellate Division of the High Court

↑ Appeals

Commercial Courts at the district level (minimum value: Rs 3 lakh and above)

India's first Commercial Court and Commercial Disputes Resolution Centre was inaugurated at Raipur, Chhattisgarh.

Plea Bargaining

It refers to a person charged with a criminal offence (accused) negotiating (Primarily at pretrial stage) with the prosecution for a lesser punishment than what is provided in law by pleading guilty to a less serious offence.

In India, Plea bargaining was **introduced in 2006** as part of a set of amendments to the **CrPC** as **Chapter XXI-A,** containing **Sections 265A to 265L.** However, cases for which the plea bargaining is allowed are **limited.**

Collective bargaining

The Supreme Court of India has defined the process of collective bargaining as a technique by which, dispute as to conditions of employment is resolved **amicably** by agreement rather than coercion.

Workers, who are generally represented by a trade union, use this medium to express their grievance about various issues such as wages and working conditions.

TRIBUNALS

Tribunals are agencies created by specific enactments which perform quasi-judicial functions.

EVOLUTION OF TRIBUNAL IN INDIA

- (1966-mid 197os') 1st ARC
- ADDED 42nd CAA 1976 → PART XIV → 323A, 323B

- JC SHAH COMMITTEE (1969)
- SWARAN SINGH COMMITTEE (1976)
- (1985) ADMINISTRATIVE TRIBUNALS ACT, 1985 ENABLED SET UP OF *CAT & EMPOWERS CENTRAL GOV. TO SET UP *SATs.

- THE COMMITTEE RECOMMENDED FOR ESTABLISHMENT OF ADMINISTRATIVE TRIBUNALS

*CAT → CENTRAL ADMINISTRATIVE TRIBUNALS

*SAT → STATE ADMINISTRATIVE TRIBUNALS

Note:

- **Article 323-A** deals with Administrative Tribunals.
- **Article 323-B** deals with tribunals for other matters.

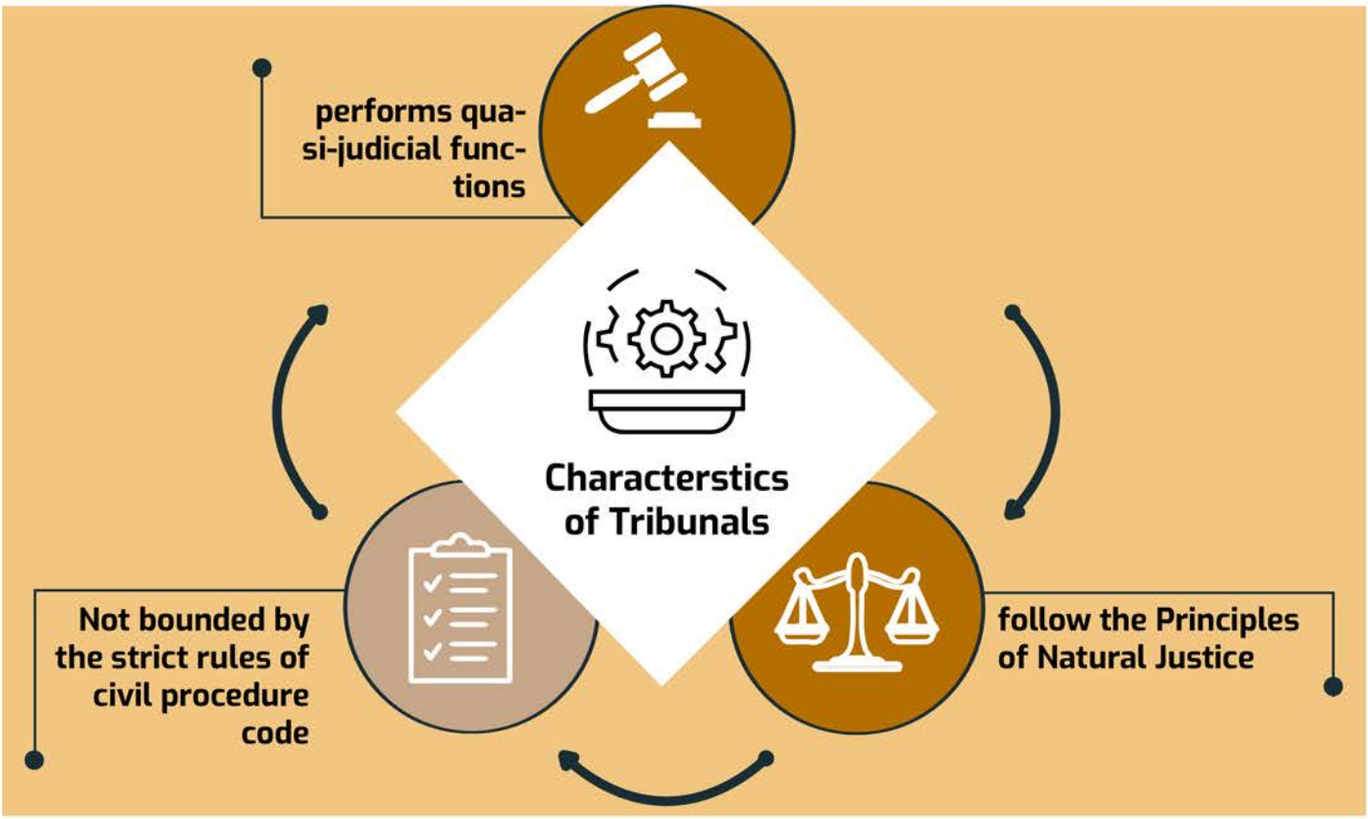
Differences between Article 323A and 323B

- While Article 323 A contemplates establishment of tribunals for public service matters only, Article 323 B contemplates establishment of tribunals for certain other matters such as taxation, foreign exchange, industrial and labour, land reforms etc.
- While tribunals under Article 323 A can be established only by Parliament, tribunals under Article 323 B can be established both by Parliament and state legislatures with respect to matters falling within their legislative competence.
- Under Article 323 A, only one tribunal for the Centre and one for each state or two or more states may be established. There is no question of hierarchy of tribunals, whereas under Article 323 B a hierarchy of tribunals may be created.

Some other Tribunals for settling various administrative and tax-related disputes:

E.g.

- Income Tax Appellate Tribunal (ITAT),
- Customs, Excise and Service Tax Appellate Tribunal (CESTAT),
- National Green Tribunal (NGT),
- Competition Appellate Tribunal (COMPAT) ,
- Securities Appellate Tribunal (SAT),
- Water Disputes Tribunal,
- Armed Forces Tribunal (AFT) etc.



Central Administrative Tribunal (CAT)

The Central Administrative Tribunal (CAT) was set **up in 1985** with the principal bench at Delhi and additional benches in different states .

Benches : At present, it has 19 benches.

Jurisdiction: The CAT exercises original jurisdiction in relation to recruitment and all service matters of public servants covered by it.

Composition: The CAT is a multi-member body consisting of a **chairman and members** There are **69 Members** in various Benches of the Tribunal out of which **34 are Judicial Members** and **35 are Administrative Members.** A **Chairman** is a **sitting or retired Judge of a High Court.** They are **appointed by the President.**

Appeals against CAT orders: The appeals against the orders of an **Administrative Tribunal** shall lie before the **Division Bench** of the concerned High Court (Chandra Kumar Case 1997).

State Administrative Tribunal (SAT)

- The **Administrative Tribunals Act of 1985** empowers the **Central government to establish the State Administrative Tribunals (SATs)** on specific request of the concerned state governments.
- The **chairman and members** of the SATs are appointed by the **President** after consultation with the Governor of the state concerned about Joint Administrative Tribunal.

National Green tribunal

- It was established 2010 under the **National Green Tribunal Act 2010** for effective and expeditious **disposal of cases relating to environmental protection and conservation of forests** and other natural resources.
- India became the **third** country in the world to set up a specialised environmental tribunal, only after Australia and New Zealand.
- New Delhi is NGT's Principal Bench with Bhopal, Pune, Kolkata and Chennai being other benches.

Composition:

The Tribunal comprises of the **Chairperson** (appointed by the Central Government in consultation with Chief Justice of India), the **Judicial Members** (only an existing or retired judge of a High Court or Supreme Court) and **Expert Members** (related to Environment field with at least 15 Years of administrative experience Including of 5 (five) years in dealing with environment matters in the Central or a State.)

Note: Chairperson, the Judicial Members and Expert Members shall hold office for **term of five years** and are **not eligible for reappointment.**

Jurisdiction

The NGT adjudicates matters relating to following legislations:

- Water (Prevention and Control of Pollution) Act, 1974,
- Water (Prevention and Control of Pollution) Cess Act, 1977,
- Forest (Conservation) Act, 1980,
- Air (Prevention and Control of Pollution) Act, 1981,
- Environment (Protection) Act, 1986,
- The Public Liability Insurance Act, 1991 and
- Biological Diversity Act, 2002

Note: NGT has **not** been vested with powers to hear any matter relating to the Wildlife (Protection) Act, 1972, the Indian Forest Act, 1927

Powers and Functions:

1) Not bounded by procedure under the Code of Civil Procedure, 1908 or the Indian Evidence Act, 1872 and is guided by principles of **natural justice.**

2) Mandated to make disposal of applications or appeals finally **within 6 months** of filing of the same.

3) **Appeals** from NGT lie directly to the Supreme Court.

4) While passing any order/decision/ award, it shall apply the principles of sustainable development, the precautionary principle and the **polluter pays principle.**

5) NGT have the power to take suo motu cognisance.

6) It is vested with the powers of a **civil court** under the Code of Civil Procedure.

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VISIONIAS
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QUICK REVISION MODULE (UPSC PRELIMS 2024) POLITY

CONSTITUTIONAL BODIES (Part – 1)

Articles 315 to 323	Union Public Service Commission (UPSC) State Public Service Commission (SPSC)
Article 280	Finance Commission (FC)
Article 148	Comptroller and Auditor General of India (CAG)
Article 279-A	Goods and Services Tax (GST) Council

Union Public Service Commission & State Public Service Commission

	UPSC	SPSCs
About	Central recruiting agency in India & watchdog of merit system	Recruiting agency of the state.
Appointment	By **President** of India.	By **Governor** of the state.
Composition	1. Chairman and other members Note: Constitution has not specified the strength of the Commission and left it to the discretion of the **President.**	1.Chairman and other members Note: Constitution has not specified the strength of the Commission and left it to the discretion of the **Governor** of the state.
Qualification	No qualification specified, except one half of the members should be such persons who have held office for at least 10 years under the GoI or state government.	Same as UPSC.
Condition of Service	Determined by **President**.	Determined by **Governor**.
Term of Office	**6 years** or until they attain age of **65 years**, whichever is earlier.	**6 years** or until they attain age of **62 years**, whichever is earlier.
Salaries, allowances and pensions	Charged on **Consolidated Fund of India (CFI)**	Entire expense of SPSC is charged on the **Consolidated Fund of State**

Re-Appointment

Chairman of UPSC (Not Eligible)	Members of UPSC (Eligible only for appointment as Chairman of UPSC or SPSC)	Chairman of SPSC (Eligible only for appointment as Chairman of UPSC and other SPSCs)	Members of SPSC (Eligible only for appointment as Chairman of UPSC and SPSCs & member of UPSC)

REMOVAL of member/Chairman of UPSC or SPSC (by the President)

Manner and on grounds **mentioned in Constitution:** 1) If he is **adjudged insolvent or bankrupt,** or 2) If he occupies any other **office of profit,** or 3) If he is unfit to continue in office by reason of **infirmity of mind or body.**	On the **grounds of misbehaviour:** 1) In this case the President has to refer the matter to the Supreme Court for an enquiry and the advice tended by Supreme Court is binding on the President

NOTE: The Chairman and members of the SPSC can be removed only by the President.

Roles & Responsibilties (UPSC + SPSC)

Recruitment 1) UPSC - (All India Services & Central Services) 2) SPSC (State Services)	**Advisory Function** Advises center and state government in promotion and disciplinary matters	**Joint Recruitment** UPSC assists states (if requested by two or more states to do so) in framing and operating schemes of **joint recruitment** for any service.	**Annual Report** President and Governor present annual report in the Parliament and State legislature respectively.	Jurisdiction of UPSC and SPSC can also be extended by the Parliament and the state legislature respectively.

FINANCE COMMISSION

Article 280

Constituted by the **President** of India **every fifth year** or at such earlier time, as he considers necessary.

Composition

Chairperson and four other members to be appointed by the President.

Qualification

The Constitution authorizes the **Parliament to determine the qualifications**. Parliament enacted Finance Commission act 1951accordingly, the Parliament has specified following qualifications:
(i) Chairman - should be a person having experience in public affairs
(ii) Other four members should be selected from amongst the following:
1. A judge of high court or one qualified to be appointed as one.
2. A person who has specialized knowledge of finance and accounts of the government.
3. A person who has wide experience in financial matters and in administration.
4. A person who has special knowledge of economics.

Term

They hold office for such period **as specified by the President.**

Reappointment

They are also **eligible** for reappointment.

Functions

Finance commission is required to make recommendations to the President on following matters:
1.**Distribution of the net proceeds of taxes** to be shared between the Centre and the states, and the allocation between the states of the respective shares of taxes.
2.Principles that should govern the **grants-in-aid (Article 275)** to the states by Centre out of Consolidated Fund of India (CFI).
3.Measures needed to augment the Consolidated Fund of a state to supplement the resources of the **Panchayats and the municipalities** in the state on the basis of recommendations made by the State Finance Commissions.
4.**Any other matter referred to it by the President** in the interests of sound finance.

Other Function

The Commission **submits its report to the President** which is laid before both the Houses of the Parliament along with an **explanatory memorandum** as to the action taken on its recommendations.

NOTE: Recommendations made by the Finance Commission are only of **advisory nature** and hence are not binding on the government. However, as a convention, its recommendations are accepted by the government.

Comptroller and Auditor General of India (CAG)

Article 148

There shall be an independent office of CAG **appointed by the President** by warrant under his hand and seal.

Facts

1) Head of **Indian Audit and Accounts** department.
2) Guardian of public purse.
3) One of the bulwarks of the democratic system in India (others Supreme Court, Election Commission and UPSC).

Term

Six years or up to age of **65 years**, whichever is earlier.

Removal

Same manner and grounds as a judge of the **Supreme Court of India**:

- **Manner**: He can be removed by the President on the basis of a resolution passed to that effect by both the Houses of Parliament with special majority.
- **Grounds**: Either of proved misbehaviour or incapacity.

NOTE: He doesn't hold office during the pleasure of the President, though he is appointed by the President

Service Conditions

Determined by **Parliament.**

Reappointment

Not eligible for further office under both central as well as state government after he ceases to hold his office.

Expense

Entire expense including the salaries, allowances and pensions of the CAG and persons serving in that office is charged on the Consolidated Fund of India.

Power and functions (Article 149)

Constitution empowers Parliament to prescribe the duties and powers. Accordingly, the Parliament enacted the **CAG's (Duties, Powers and conditions of service) Act, 1971**:

1) **AUDITING**:
   a) Accounts related to all expenditure from the consolidated fund, contingency fund and public accounts of Union, State and UT Governments.
   b) Receipts and expenditure of the centre and each state.
   c) Accounts of any authority when requested by President or Governor.
   d) Receipts and expenditure of the following:

   I. All bodies and authorities substantially financed from the Central or state revenues;
   ii. Government companies; and
   iii. Other corporations and bodies, when so required by related laws.
2) Advises the President regarding standards in which the account shall be kept.
3) Ascertains and certifies net proceeds of any tax or duty and his certificate is final.
4) Compiles and maintains the account of state government.
5) He acts as friend, philosopher, and guide to the Public Accounts Committee.
6) The CAG submits three audit reports to the President on:
   a. Appropriation accounts,
   b. Audit report on finance account, and
   c. Audit report on public undertakings.
   Similarly, CAG submits his audit reports of state accounts to the Governor, who place them before the State legislature.

Note

Accounts of the Government of India are compiled and maintained by the Controller General of Accounts.

Limitations

1) In practice CAG is fulfilling only the role of an Auditor General and not of a Comptroller.
2) It is just recommendatory in nature.
3) When CAG asks for information from various departments, there is a considerable delay and there is no mechanism for CAG to enforce its fiat.
4) Due to the lack of clarity in the CAG Act, there are no boundaries defined for a CAG audit.
5) No power with respect to secret service expenditure

GST Council

Mission

Evolving by a process of wider consultation a good & service tax structure with is information technology driven & uses friendly

Vision

To establish highest standard of cooperative federalism in the functioning of GST council, which is the first constitutional federal body vested with powers to take all major decision relating to GST

Article 279-A

It is a **constitutional body** for making recommendations to Union & State Govt. on issues related to GST. Constituted by the Presidential order within 60 days from the date of commencement of the Constitution (One Hundred and First Amendment) Act, 2016.

Composition

Chairperson - Union Finance Minister
Members:
1) Union Minister of State in charge of Revenue or Finance as vice-chairpersons
2) Minister in charge of Finance or Taxation or any other Minister nominated by each State Government

Quorum

One-half of total number of Members of GST Council.

Decision Making

Every decision of the council has to be taken by **a majority of not less than three-fourth of the weighted votes of the members present & voting**.
Weightage of Votes of:
1) Central government - **one-third of the total votes cast**.
2) All the state governments together - **two-thirds of the total votes cast**.

Functions:

The GST Council shall **make recommendations** to the Union and the States on:

1) The **taxes, cesses and surcharges** levied by the Union, the States and the local bodies **which may be subsumed** in the GST.
2) The **goods and services that may be subjected to, or exempted** from the goods and services tax.
3) Model GST Laws, principles of levy, apportionment of GST levied on supplies in the course of **inter-state trade or commerce** under Article 269A and the principles that govern the place of supply.
4) **Threshold limit of turnover** below which goods and services may be **exempted** from GST.
5) The rates including **floor rates with bands of GST.**
6) Any **special rate or rates for a specified period**, to raise additional resources during any natural calamity or disaster.
7) **Special provision with respect to the some States** like Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, etc.
8) Any other matter relating to GST as the Council may decide.
9) GST Council shall recommend the **date on which the GST will be levied on crude petroleum, high speed diesel, motor spirit, natural gas and aviation turbine fuel.**

GST
GOODS AND SERVICES
TAX COUNCIL

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INSPIRING INNOVATION

QUICK REVISION MODULE
(UPSC PRELIMS 2024) POLITY

CONSTITUTIONAL BODIES PART II

(NCSC,NCST, NCBC, SPECIAL OFFICER FOR LINGUISTIC MINORITIES)

Background

1950
Original Constitution: **Special officer** for scheduled Castes (SCs) and Scheduled Tribes (STs)

1978
A non-statutory multi-member **Commission for SCs and STs** through a resolution

1987
Renamed the non-statutory commission as the **National Commission for SCs and STs** through another Resolution

1990
65th Constitutional Amendment Act of 1990: A multi-member **National Commission for SCs and STs (Constitutional Body)**

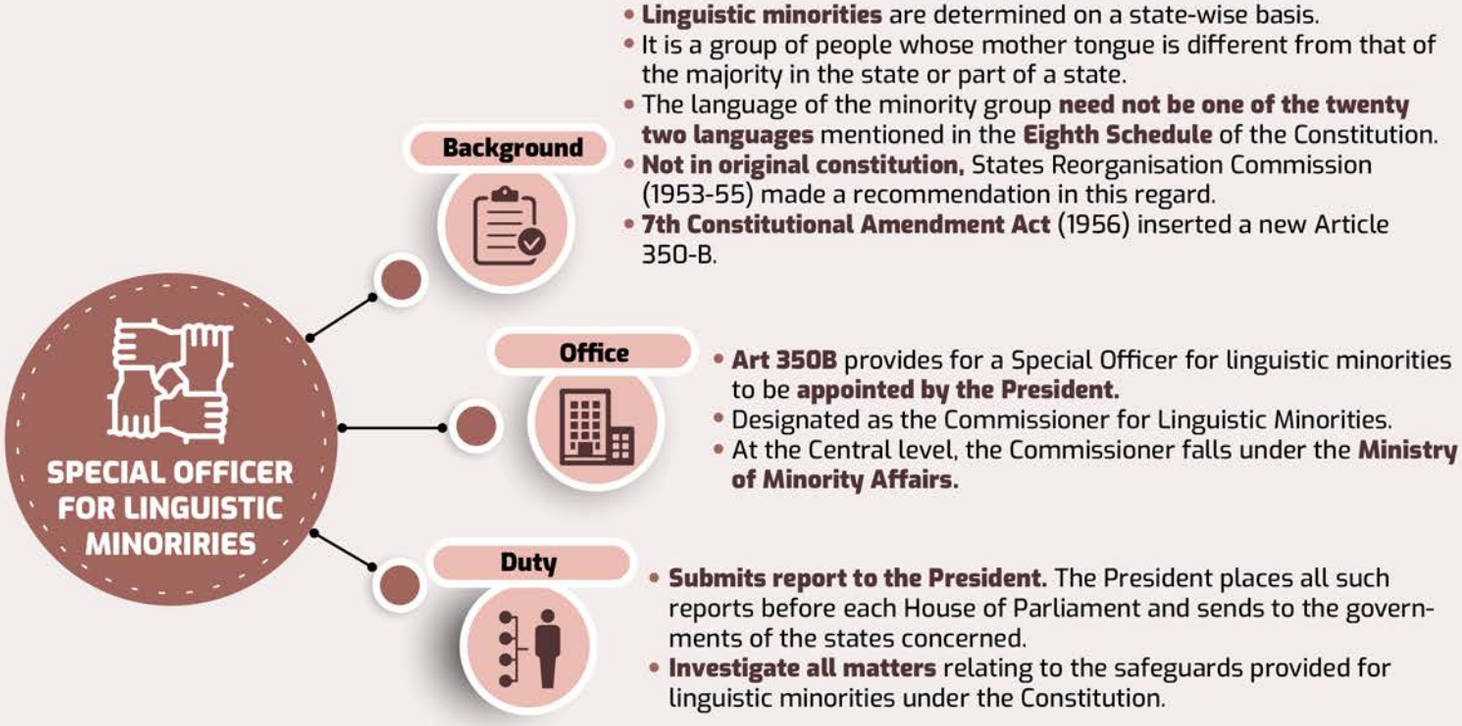
1993
National Commission for Backward Classes was constituted as a **statutory body** by The National Commission for Backward classes Act, 1993

2003
89th Constitutional Amendment Act: Bifurcated the combined National Commission for SCs and STs into two separate bodies = **NCSC under Article 338 and NCST under Article 338A**

2018
102nd Constitutional Amendment Act: conferred constitutional status to the National Commission for Backward Classes

Constitutional Bodies	NCSC	NCST	NCBC
Article in the Constitution	Art 338	Art 338A	Art 338B
Composition	Chairperson + vice-chairperson + 3 other members	Chairperson + vice-chairperson + 3 other members	Chairperson + vice-chairperson + 3 other members**
Chairperson/members appointed by	President	President	President
Conditions of service and tenure of office	As the President may by rule determine		
Tenure under the present rules	3 years Note: Not eligible for appointment for more than two terms.		
Qualifications	• **Chairperson-** Appointed from amongst eminent Socio-Political workers belonging to the **respective target group (STs/SCs/Socially & Educationally backward classes).** • **Vice-Chairpersons and other members** out of whom **at least** two shall be appointed amongst persons belonging to the respective target group. • **At least one other member** shall be appointed from **amongst women.**		
Salary & Allowances	Every Member shall be entitled to such salaries, allowances and other facilities **as admissible to a Secretary to the Government of India.**		
Nodal Ministry	Ministry of Social Justice and Empowerment	Ministry of Tribal Affairs	Ministry of Social Justice and Empowerment
Safeguards the interests of*	SCs + Anglo-Indian Community	STs	Socially and educationally backward classes
Submission of reports	They present an **annual report to the President** (and any other report as and when they may deem fit). President places all such reports before the Parliament along with memorandum that contains reasons for non-acceptance of any recommendations.		
Powers	While investigating any matter, they have all the **powers of a civil** court trying a suit - summoning and enforcing the attendance of any person, requiring production of any document, requisitioning any public record from any court or office etc.		
Functions (w.r.t. their respective target groups as mentioned above*)	**a)** To investigate and monitor all matters relating to their constitutional and other legal safeguards. **b)** To enquire into specific complaints with respect to deprivation of their rights and safeguards. **c)** To participate and advice on their socio-economic development and to evaluate their development under the union or a state. **d)** To make recommendations as to the measures that should be taken by the Union or a state for the effective implementation of those safeguards and other measures for their protection, welfare and socio-economic development. Some additional functions entrusted **specifically to NCST** w.r.t. **measures to be taken to:** **a)** confer ownership rights in respect of minor forest produce to STs living in forest areas. **b)** safeguard rights of the tribal communities over mineral resources, water resources etc. as per law. **c)** improve the efficacy of relief and rehabilitation measures for tribal groups displaced by development projects.		

	d) elicit maximum cooperation and involvement of tribal communities for protecting forests and undertaking social afforestation. **e)** to ensure full implementation of the Provisions of Panchayats (Extension to the Scheduled Areas) Act, 1996. **f)** to reduce and ultimately eliminate the practice of shifting cultivation.
Resignation and Removal	• The Chairperson and Vice-Chairperson and any other Member **(of all 3 bodies),** may, by notice in writing under his hand **addressed to President,** resign his post. • The **Chairperson** shall be removed by order of President **on the ground of misbehaviour,** after the Supreme Court, has on inquiry reported that the Chairperson ought on any such ground to be removed. • **President** may by order remove from office the Chairperson, Vice-Chairperson or Member, if that person: **(a)** becomes an **un-discharged insolvent;** **(b)** gets convicted and sentenced to **imprisonment** for an offence which in the opinion of the President involves **moral turpitude;** **(c)** is, in the opinion of the President, unfit to continue in office by reason of **infirmity of mind or body;** **(d)** in the opinion of the President, has so **abused his/her position** as to render that persons continuance in office is detrimental to the interest respective target group.



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INSPIRING INNOVATION

Non-Constitutional Bodies Part-1:

(CBI,CVC,CIC,SIC,Niti Aayog)

Basic Information

	Central Information Commission	Central Vigilance Commission	Central Bureau of Investigation
Established in	• 2005	• 1964 • By an executive resolution of Central Government of Santhanam Committee	• 1963 • By a resolution of Ministry of Home Affairs on the recommendation of Santhanam Committee. Later, it was preferred to Ministry of Personal as an attached office
Statutory Body	✔	✔ (in 2003)	✖ [derives its powers from the Delhi Special Police Establishment Act, 1964]

Functions	• A high powered independent body which looks into the complaints and appeals pertaining to offices, financial institutions, public sector under taking etc. under the Central Government and union Territories.	• An apex vigilance institution who acts on complaints or disclosure on any allegation of corruption or misuse of office from whistle blowers.	• Main investigating agency to prevent corruption and to maintain integrity in administration. • It provides assistance to the Central vigilance commission and Lokpal.
Composition	Chief Information Commission (CIC) + Not more than ten Information Commission (1C)	Central Vigilance Commission (CVC) + Not more than two Vigilance Commission (VC)	Headed by a Director and + assisted by a special director or an additional director.
Appointment	**By the President** ↓ on the recommendation of a committee consisting of ↓ Prime Minister as Chairperson ↓ The leader of opposition in the Lok Sabha ↓ A union Cabinet Minister nominated by the Prime Minister	**By the President** ↓ On the recommendation of a committee consisting of ↓ Prime Minister as Head ↓ The leader of opposition in the Lok Sabha ↓ The Union Minister of Home Affairs	**By the Central Government** ↓ On the recommendation of a committee consisting of ↓ Prime Minister as Chairperson ↓ The leader of opposition in the Lok Sabha ↓ The Chief Justice of India or Judge of the Supreme Court nominates by him.
Tenure and Service Condition	• Tenure of the CIC is 3 years or 65 years whichver is earlier. • Not eligible for Reappointment. The Information Commission is eligible for appointment as Chief Commissioner	• 4 years or 65 years of age whichever is earlier. • Not eligible for further employment under central or state government.	• The Director of CBI has been provided security of 2 years in office by the CVC Act, 2003.
Removal	• By The President ↓ under following circumstance. • If he is adjudged an insolvent or, • If he has been convicted of an offence which involves a moral turpitude.	• Same as CIC	• CBI Director can be removed on the grounds of misbehaviour only by an

	• If he engages during his term of office in any paid employment outside the duties of his office. • Unfit due to infirmity of mind or body. • acquired such financial or other interest as is likely to affect prejudicially his official function. • Proved misbehaviour or incapacity ↓ • President refer this matter to SC ↓ • SC, if upholds the cause of removal ↓ • Removed by the President		
Salary and Allowances	• 'As per the 2019 RTI rules on (Term of Office, Salaries, Allowance of CIC (at Central level) and SIC (at State level)'	• CVC-Similar to those of chairman of UPSC. • VC- Similar to those of UPSC. • Salary & Allowances not to be varied to his disadvantage during service.	• To be decided by the Central Government
Annul Reports & Functions	• Submits an annual report to the **Central Government.**	• Presents its report to the **PRESIDENT.**	
Important Powers & Functions	• A high powered independent body which looks into the **complaints and appeals pertaining to offices, financial institutions public sector under taking etc** under the Central Government and union Territories. To receive and inquire into a **complaint** from any person related to **refusal of information incomplete or misleading information.**	• An **apex vigilance** institution who acts on complaints or disclosure on any allegation of corruption or misuse of office from whistle blowers. • To inquire or to investigate an offence under **Prevention of Corruption Act, 1988** on a reference made by Central government. • Superintendence over CBI in respect of investigation of Prevention of Corruption Act	• Main investigating agency to **prevent corruption** and to maintain integrity in administration. It provides **assistance** to the **Central vigilance commission and Lokpal.** • Investigating cases of corruption, bribery and misconduct of Central Government employees, economic offences, taking up cases on a request made by State Government. • **Note:** It acts as the **"National Central Bureau"** of Interpol in India.

CBI has following Divisions

- 1. Anti-Corruption division
- 2.Directorate of Prosecution
  - Headed by Director of Prosecution, which shall be appointed by Govt. on recommendation of CVC.
  - Hold office for period of 2 years
- 3. Special Crimes Division
- 4. Economic Offences Division
- 5.Administration Division
- Central Forensic Science Laboratory
- Policy and International Police Cooperation Division

Note: Central Government shall appoint officers of the rank of SP and above in the CBI on the recommendation of a committee consisting

- Central Vigilance Commissioner as Chairperson
- Vigilance Commissioners
- Secretary of the Home Ministry & Dept. of Personnel

State Information Commotions – Same as CIC.

- The President and the Prime Minister wherever used in CIC should be replaced with The Governor & The Chief Minister respectively.

NITI Aayog (National Institution for Transforming India)

- 1st January, 2015 – NITI Aayog was **established by replacing erstwhile planning commission.**
- **Neither a constitutional body nor a statutory body.** It was created by an executive resolution of the Government of India.
- **Premier 'Think Tank' of GoI, working on bottom-up approach** rather than a 'Top-down' model.
- Principle of **cooperative federalism** is at the **core** of NITI Aayog.

Composition :

- **(a) Chairperson :** The Prime Minister of India
- **(b) Governing Council :** CMs of all the states, CMs of UT with legislature and Lt Governor of other UT.
- **(c) Regional council :** To address specific issues & contingencies impacting more than one state or a region. Convened by the PM and comprises of The CMs of states & Lt. Governor of UTs in the region.
- **(d) Special invitee :** Experts, Specialist and Practitioners with relevant domain knowledge nominated by PM.
- **(e) Full time organisational framework.**

- Chairman ↓ PM
- Vice Chairman ↓ appointed by The PM. He enjoys the rank of Minister & State
- Members full time ↓ enjoys the rank of Minister & State
- Part time members ↓ Maximum 2 from leading universities research organisation etc.
- Ex-officer members ↓ 4 members of the union CoM to ve nominated by the PM.
- Chief Executive officer ↓ Appointed by the PM in the rank of Secretary to the GoI
- secretariat

Specialised wings of NITI Aayog :

- Research wings - In house sectoral expertise
- Consultancy wing – from private and public, national & International as per the requirement.
- Team India wing – comprises of the representatives form every state and Ministry.

Subordinate office of NITI Aayog (Attached/Autonomous Bodies)

1. National Institute of labour Economics Research & Development (NILERD)
2. Development Monitoring and Evaluation office (DMEO)

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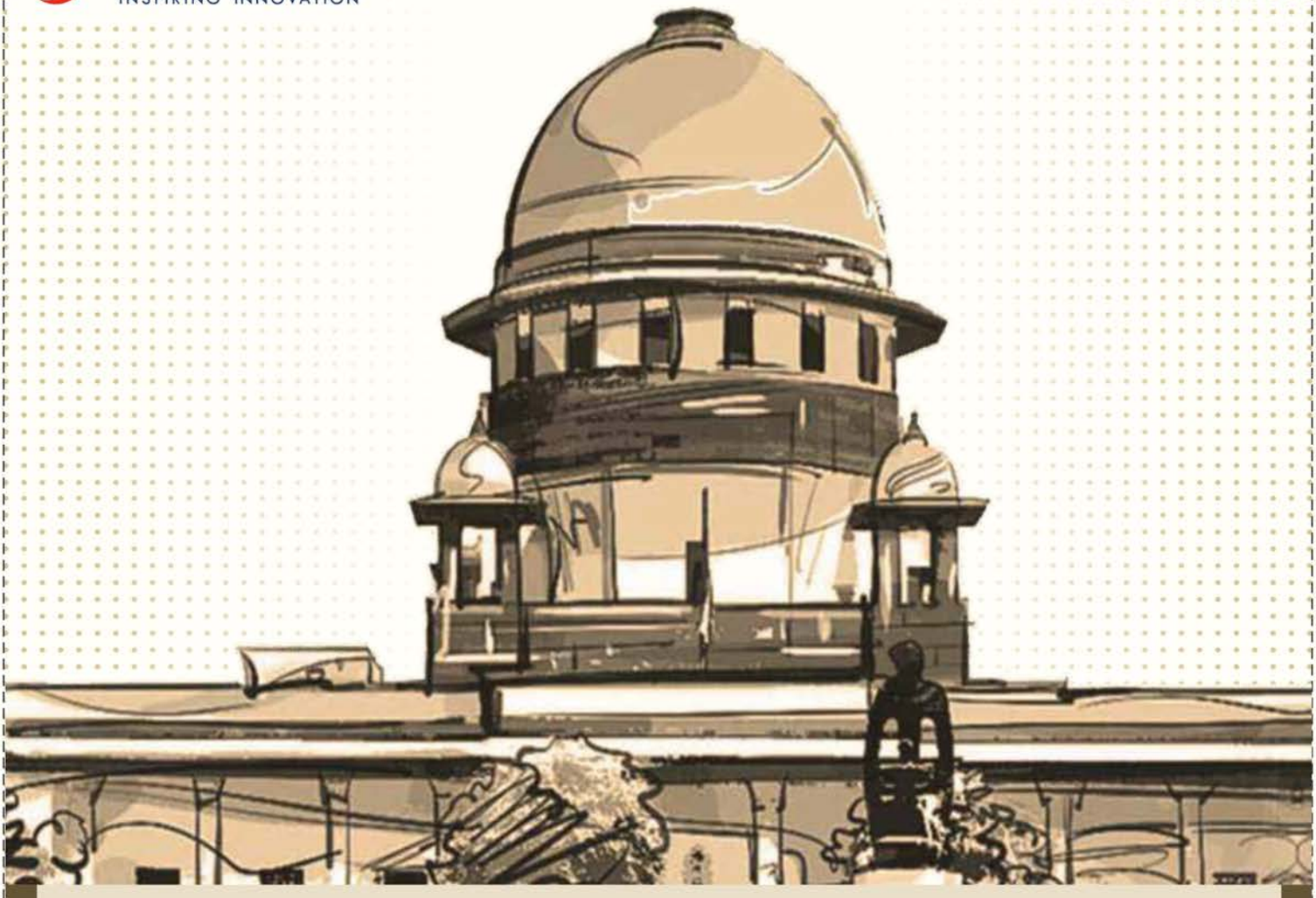

QUICK REVISION MODULE (UPSC PRELIMS 2024) POLITY

NON-CONSTITUTIONAL BODIES (Part – II)

National Human Rights Commission & State Human Rights Commission

Protection of Human Rights Act, 1993

- **NHRC (Central Level)**
- **SHRC (State Level)**

NOTE

- Till date, not every Indian state has created a SHRC.
- Protection of Human Rights (Amendment) Act 2019 was enacted in order to make NHRC more inclusive and efficient in its functioning.

	NHRC	SHRC
Appointment	Appointed by the President based on the recommendation of a Committee consisting of: • Chairperson - The Prime Minister • The Home Minister • The Leader of Opposition (L.S.) • The Leader of Opposition (R.S.) • The Speaker (L.S.) • The Deputy Chairman (R.S.)	By **Governor** of the state based on **the recommendations of a committee** consisting of the • Chief Minister as its head, • Speaker of the Legislative Assembly (LA), • State Home Minister and • Leader of Opposition in LA. **NOTE:** For states having **Legislative Council,** chairman and leader of opposition in the Council would also be the members.
Composition	1. **Chairperson** (Chief Justice of India, or a Judge of Supreme Court) 2. **One member** who is, or has been, a Judge of the Supreme Court of India or Chief Justice of a High Court. 3. **Three Members** (having knowledge of, or practical experience in, matters relating to human rights) of which one must be woman. 4. **Ex-officio members,** who are Chairpersons of NCSC, NCST, NCBC, NCW, NCPCR, and Chief Commissioner for Persons with Disabilities NC for minorities	1. **Chairperson** (retired Chief Justice or Judge of High Court) 2. **Members** should be a serving or retired judge of a High Court or a District Judge (minimum 7 years experience) and a person having knowledge or practical experience with respect to human rights.
Salaries, allowances and pensions	Determined by the **Central Government.**	Determined by the **State Government.**
Term of Office	Members of both NHRC and SHRC are appointed for a term of **3 years or till the age of 70 years, whichever** is earlier	Members of both NHRC and SHRC are appointed for a term of **3 years or till the age of 70 years, whichever** is earlier

Reappointment	Members of both NHRC and SHRC are eligible for reappointment	Members of both NHRC and SHRC are eligible for reappointment

Functions of NHRC and SHRC

Inquire into any violation of human rights (HR) or negligence in the prevention of such violation by a public servant, either **suo moto or on a petition.**

Intervene in proceeding w.r.t. allegation on violation of HRs pending before a court.

Visit jails and detention places to study living conditions & make recommendation.

Review constitutional and legal safeguards for protection of HRs.

Review the factors including acts of terrorism that inhibit the enjoyment of HRs.

Study treaties and other international instruments on HRs to recommend government on policy matters.

Undertake and promote research in the field of HRs.

Spread HRs literacy among the people and **promote awareness.**

Encourage efforts of NGOs working in the field of human rights.

Undertake such other functions as it may consider necessary for promotion of HRs.

NHRC submits annual and special reports to central government or state government concern, whereas SHRC submit to state.

Resignation chairperson & members of NHRC & SHRC submit resignation to president & Governor respectively

NOTE

A SHRC can inquire into violation of HRs only on subjects mentioned in the **State List (List-II) and the Concurrent List (List-III)**. However, if any such case is already being inquired into by the NHRC or any other Statutory Commission, then the SHRC does not inquires into that case.

REMOVAL (chairperson and members of NHRC and SHRC) by the President

- Is adjudged an insolvent; or
- Engages during his term of office in any paid employment outside the duties of his office; or
- Is unfit to continue in office by reason of infirmity of mind or body; or
- Is of unsound mind and stands so declared by a competent court; or
- Is convicted & sentenced to imprisonment for an offence, which in opinion of the President involves moral turpitude.

On the ground of proved misbehaviour/incapacity: President has to refer the matter to the Supreme Court (SC) for an inquiry. If SC, after the inquiry, upholds the cause of removal and advises so, then the President can remove the Chairman or a member.

LOKPAL & LOKAYUKT

The Lokpal and Lokayutas Act, 2013
(To deal with **complaints relating to corruption** against certain public functionaries)

- **Lokpal (Central Level)**
- **Lokayuktas (State Level)**

NOTE

1. The act **extends to the whole of India.**
2. It applies to public servants **in and outside India**
3. **Lokayukta** shall be established, constituted or appointed, as per a **law made by the State Legislature,** within a period of one year from the date of start of the Lokpal and Lokayutas Act, 2013.

LOKPAL

Composition:

1. Chairperson (CJI or is or has been a Judge of Supreme Court or an eminent person)
2. Maximum of 8 members(50% - judicial members and 50% - from SC/ST/OBCs, minorities and women)

Appointment: Two-stage process:

1. **Search committee** recommends a panel of names to the selection committee.
2. **Selection committee** (Prime Minister, Speaker of Lok Sabha, Leader of the Opposition, Chief Justice of India (or his nominee) and an eminent jurist (nominated by President based on recommendation of other members of panel).
3. **President appoints from recommended names by warrant under his hand and seal.**

Term:

5 years or until the age of 70 years, whichever is earlier.

Reappointment: Not Allowed.

Exception: A member is eligible to be appointed as a Chairperson, if his total tenure as Member and Chairperson does not exceed five years.

Restriction on employment after ceasing to hold office:

1. Any diplomatic assignment, appointment as administrator of UTs, etc.
2. Further employment to any other office of profit.
3. Contesting any election (President, Vice-President, MP, MLA, Municipality, Panchayat) within a period of five years from the date of relinquishing the post.

Removal (By President on grounds that the member or chairperson)

1. Is adjudged an insolvent; or
2. Engages, during his term of office, in any paid employment outside the duties of his office; or
3. Is, in opinion of President, unfit to continue by reason of infirmity of mind or body.
4. On grounds of misbehaviour (after Supreme Court report). For that a petition has to be signed by at least one hundred MPs.

Jurisdiction of Lokpal

1. Prime Minister, or a Minister in the Union government, or a Member of Parliament, as well as officials of the Union government under Groups A, B, C and D.
2. Chairpersons, members, officers and directors of any board, corporation, society, trust or autonomous body either established by an Act of Parliament or wholly or partly funded by Centre.
3. Any society or trust or body that receives foreign contribution above 10 lakh.

Exceptions for Prime Minister

1. No Lokpal inquiry, if the allegation is regarding international relations, external and internal security, public order, atomic energy and space.
2. Complaints are not to be probed unless full Lokpal bench considers the initiation of inquiry and at least 2/3rds of the members approve it.
3. Inquiry (if conducted) is to be held in camera .
4. If Lokpal believes that the complaint deserves to be dismissed, then records of the inquiry are not to be published or made available to anyone.

Salaries, allowances and service conditions

1. Chairperson - Same as those for the CJI;
2. Other members - Same as those for a judge of SC.

Expenditure:

Charged upon Consolidated Fund of India

Functions:

1) **Cases referred to CBI by Lokpal:**
   - Power of superintendence and direction.
   - Transfer of officers of CBI investigating these cases would need approval of the Lokpal.
2) It has **two wings:**
   - **Inquiry Wing** for conducting preliminary inquiry.
   - **Prosecution Wing** for prosecution of public servant.
3) **Time Limit for CBI** to complete:
   - Inquiry - 60 days
   - Investigation - 6 months. (Can be extended by the Lokpal on a written request from CBI)
4) Lokpal has power to attach and **confiscate property.**
5) Establish **Special Court** for cases referred by Lokpal.
6) Submits annual reports to President to be presented before Parliament.

Issues:

1) **No power of prior sanction** for enquiry and investigation.
2) Not to inquire into any complaint made **after seven years from the date on which the offence was committed.**
3) Does not have authority of taking **suo moto cognizance.**

Nation Commission on Minorities (NCM)

1978

Minorities Commission was created Based on Ministry of Home Affairs Resolution (MHA)

1978

Minorities Commission detached from **MHA** and placed under newly created **Ministry of Welfare**

1988

Ministry of Welfare resolution excluded linguistic minorities from Commission's jurisdiction

1993

- Via. **National Commission of Minorities Act 1992**, NCM was created.
- Currently under **Ministry of Minorities Affairs**

Religious Communities:

Muslims, Christians, Sikhs, Buddhists, Jains and Zoroastrians (Parsis).

Composition:

7 persons (Chairperson, Vice- Chairperson and 5 Members) - **nominated** by the Central Government from amongst persons of eminence, ability and integrity.

Term:

3 Years

Salaries and allowances:

Paid out of the **grants by central government.**

Reports:

Submits report to the central government to be presented before the Parliament.

Removal:

Central Government shall remove Chairperson or member if that person:

1. Is declared undischarged insolvent; or
2. Is convicted and sentenced to imprisonment for an offence which involves moral turpitude; or
3. Is of unsound mind and stands so declared by a competent court; or
4. Refuses to act or becomes incapable of acting; or
5. Is absent from three consecutive meetings of the Commission; or
6. Has abused the position of Chairperson or Member.

Functions:

1) Evaluation of progress of the development of minorities under Union and States.
2) Monitoring of the working of the safeguards for minorities.
3) Making recommendations for the effective implementation of safeguards.
4) Looking into specific complaints regarding deprivation of rights and safeguards
5) Getting studies to be undertaken into the problems arising out of any discrimination against minorities and recommending measures for their removal.
6) Conducting studies, research and analysis on the issues relating to socio-economic and educational development of minorities.
7) Suggesting appropriate measures in respect of any minority.
8) Making periodical or special reports to the Central Government.
9) Any other matter which may be reffered by centre.

Nation Commission for Protection of Child Rights (NCPCR)

Composition:

1. **Chairperson** (person of eminence and has done outstanding work for promoting the welfare of children).
2. **Six Members** (at least **two shall be women**), having experience in education; child health, care, welfare or child development; juvenile justice or care of neglected or marginalized children or children's with disabilities; elimination of child labour or children in distress; child psychology or sociology, and laws relating to children.

Appointment:

By the **Central Government.**
NOTE: Chairperson shall be appointed on the **recommendation of a three member Selection Committee** constituted by the Central Government under the Chairmanship of the Minister in-charge of the **Ministry of Human Resource Development.**

Term:

1. Chairperson – **3 years or 65 years of age**, whichever is earlier.
2. Members - **3 years or 60 years of age**, whichever is earlier.

NOTE:

1. No Chairperson or a Member shall hold the office for more than two terms
2. In case of vacancy by death or resignation, central govt appoints persons only for remaining term

Salary and Allowances:

Determined by Central Government

Reports:

Submits report to central government to be presented before the parliament.

Removal:

Central Government shall remove Chairperson or member if that person:

1. Is declared undischarged insolvent; or
2. Is convicted and sentenced to imprisonment for an offence which involves moral turpitude; or
3. Is of unsound mind and stands so declared by a competent court; or
4. Refuses to act or becomes incapable of acting; or
5. Is absent from three consecutive meetings of the Commission; or
6. Has abused the position of Chairperson or Member.
7. On the ground of proved misbehaviour or incapacity.

Functions:

1. Examine and review the safeguards provided for the protection of child proceedings.
2. Inquire into violation of child rights and recommend initiation of
3. Examine all factors that inhibit the enjoyment of rights of children affected by terrorism, communal violence, riots, natural disaster, etc.
4. Look into the matters relating to children in need of special care and protection
5. Study treaties and other international instruments and make in the best interest of children.
6. Undertake and promote research in the field of child rights.
7. Spread child rights literacy.
8. Inspect juvenile custodial home, or any other place of residence or institution meant for children.

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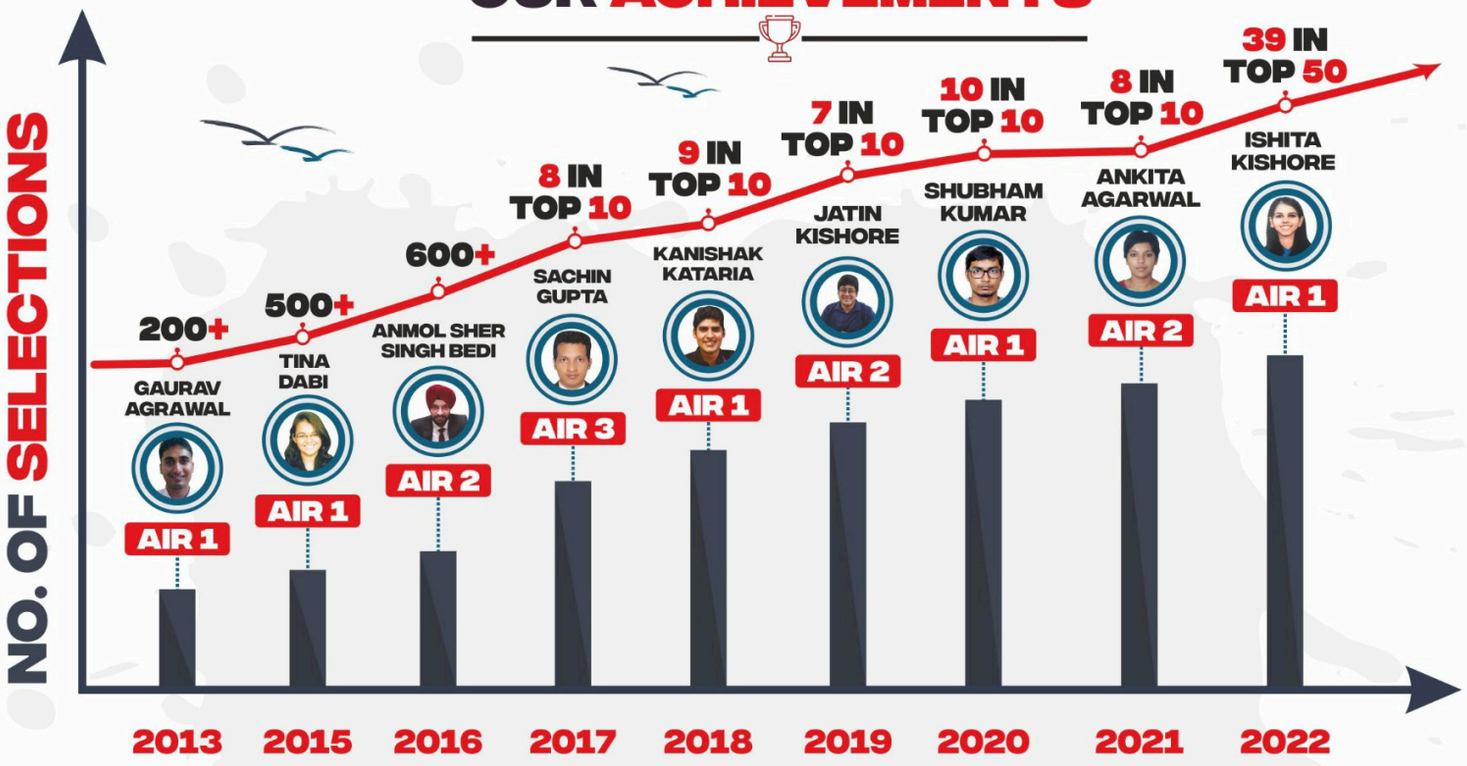

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Quick Revision Module (UPSC Prelims 2024) Polity

The Electoral Process

Provisions related to Elections in the Indian Constitution

- **Article 327** enables Parliament to enact provisions for elections. Accordingly, the Parliament enacted
  - Representation of People Act, 1950.
  - Representation of People Act, 1951.
  - Delimitation Commission Acts enacted in 1952, 1962, 1972, and 2002
  - The Presidential and Vice-Presidential Election Act 1952 (provides for the conduct of Presidential and Vice- Presidential election and mechanism for the settlement of any dispute arising out of such elections).

- **Article 82** mandates readjustment of territorial constituencies after each census.
  - However, 84th Constitution Amendment (2001) frozen the readjustment until first census after 2026.

- **Article 328** provides that states can enact provisions for House or Houses of the State Legislature, if the Parliament has not provided for the same.

- **Article 329,** courts are barred from questioning the Delimitation Act brought by the Parliament and it also mentions that disputes related to elections can be called in question only by an election petition in a manner and to the authority as decided by the appropriate legislature.

Representation of People Act 1950

Salient Features

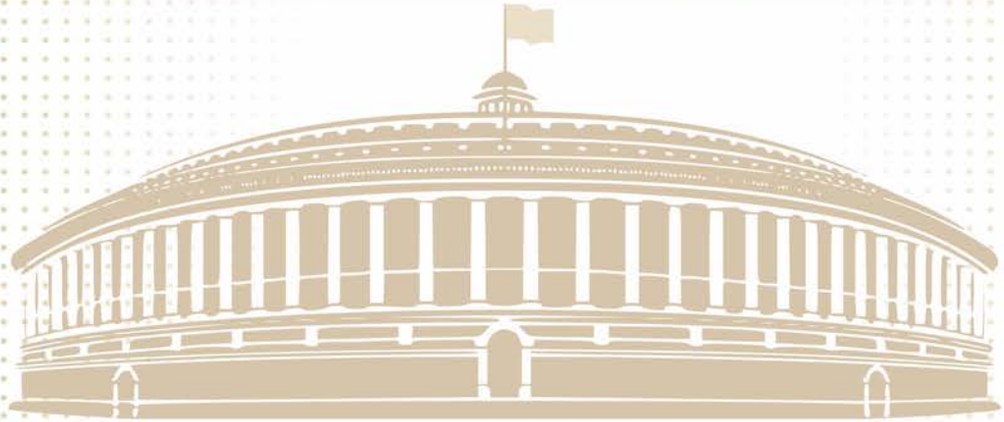
- **Allocation of Seats**
  - To Lok Sabha, Legislative Assemblies, Legislative Councils.

- **Officers related to conduct of elections**
  - It provides for appointment of CEO, DEO and ERO (see Election machinery section).

- **Electoral Rolls for Assembly & Parliamentary Constituencies**
  - Prepared and revised before each general election and each bye-election or on direction of ECI
  - No amendment can be made to an electoral roll:
    - o after the last date for making nominations for an election
    - o before the completion of that election.

- **Provisions regarding preparation of Electoral Rolls for elections to Council Constituencies**

- **Manner of filling seats in Rajya Sabha to be filled by representatives of UTs**



Representation of People Act 1951

Salient Features

• Qualifications for Membership of Rajya Sabha

- elector for any parliamentary constituency in India (not necessary of that particular state where he is contesting).

• Qualifications for Membership of Lok Sabha

- elector for any Parliamentary constituency in India

However

- to contest a seat reserved for the SC/ST (other than autonomous districts of Assam(ADA)), he must be a member of any of the SC/ST of that State or UT or of any other State or UT (excluding the tribal areas of Assam). But a member of SC/ST can also contest unreserved seats.
- to contest a seat reserved for the STs in the ADA, he must be a member of any of those STs and must be an elector for the Parliamentary constituency in which such seat is reserved or for any other Parliamentary constituency comprising any such autonomous district.

The protective mechanism in case of Assam also applies to Lakshadweep and Sikkim.

• Qualifications for Membership of Legislative Assembly

- **To contest reserved seat for SC/ST** - must be a member of any of those castes or of those tribes & elector for any Assembly constituency in that State or UT.
- **To contest a seat reserved for ADA** - must be a member of a ST of any autonomous district and must be an elector for the Assembly constituency in which such seat or any other seat is reserved for that district.
- **To contest any other seat** – must be elector for any Assembly constituency in that State or UT.
- To be qualified to be chosen to fill any seat allocated to the Tuensang district in the Legislative Assembly of Nagaland for the period referred to in clause (2) of Article 371A, he must be a member of the regional council referred to in that article.

• Qualifications for Membership of Legislative Council

- Must be an elector for any Assembly constituency in that State.
- To be qualified for a seat to be filled by nomination by the Governor, he must be an ordinarily resident in the State or UT.

Disqualification for Membership of Parliament and State Legislatures

SECTION 8 :

- **Conviction for certain offences**
- Some of the offences are untouchability, terrorist activities, involvement in drugs, corruption, conversion of a place of worship, sati etc.
- Some crimes under IPC bribery, rape etc.
- Some under other sections of RPA, 1951 - enmity between classes, removal of ballot papers from polling stations, booth capturing, fraudulently destroying any nomination paper.

SECTION 8(2) :

- **Imprisonment for not < 6 months for hoarding or profiteering, adulteration of food or drugs or Dowry.**

SECTION 8(3) :

- **Imprisonment for any offence other than Section 8(1) or 8(2) for not < two years. Disqualification continues for 6 years after release.**

SECTION 8(A) :

- **Corrupt practices.**

SECTION 9 :

- **Dismissal for corruption or disloyalty.**

SECTION 9 A :

- **When there is subsisting contract between the person and the government.**

SECTION 10 :

- **Disqualification for office under government company.**

SECTION 10 A :

- **Failure to lodge account of election expenses.**

Other important provisions

Section 75A

- For declaration of assets and liabilities within ninety days from the date of subscribing an oath for taking a seat in Parliament.
- Any willful contravention considered a Breach of Privilege of house.

Section 77

- Regarding keeping a separate and correct account of all expenditure & submitting to DEO within 30 days of getting elected.
- An incorrect account or expenditure beyond the cap can lead to disqualification by ECI for up to 3 years.

• Settlement of disputes

- Only through election petition presented to the High Court having jurisdiction of the state involved.
- Need to file within 45 days from, the date of election of the elected candidate.

• Corrupt Practices

- Section 123 defines the corrupt practices like bribery, undue influence, inciting religious sentiments, booth capturing etc.

	CORRUPT PRACTICES	ELECTORAL OFFENCES
SOURCE	Corrupt pratices at elections are present in specified section123 of the1951 Act.	Electoral offences are laid down both in the IPC and in the RPA, 1951.
NET RESULT/EFFECT	When a corrupt practice is committed by a candidate or by someone else with his consent, it has the effect of vitiating the whole election and will result in the election of the candidate being declared void.	The commission of an electoral offence may not necessarily have such fatal bearing on the election result.
EFFECT ON THE CONSTITUENCY	The whole constituency suffers in as much as the candidate loses his seat and the constituency goes without representation in the legislature.	Only the persons committing the electoral offences suffers for their criminal liability.
MANNER OF REPORTING AND REDRESSAL	Any grrievance relating to the comission of a corrupt practice can be initiated only after the election is over and only in an election petition in accordance with the provision of Art 329 and the RPA 1951.	Cognisance of an electoral offence can be taken as soon as it is committed and the process of law set in motion immediately thereafter, in the same manner in which any other criminal activity is investigated and tried under the provisions of the CrPC.
PUNISHEMENT	Committing a corrupt practice entails only certain civil disabilities, like, disqualification for voting and for contesting elections for certain period.	Any electoral offence if committed will be visited with criminal liability and may result in imprisonment or with fine or with both apart from attracting the civil disabilities of voting and constesting elections in the case of certain specific electoral offences.

Example of electoral offences include false affidavit, disturbances at election meeting, disorderly conduct in or near polling stations, booth capturing etc.

Section 33(7)

- A person cannot contest from more than two constituencies for a Lok Sabha/Vidhan Sabha election.

Section 34(1)(A)

- Every candidate is required to make a security deposit.
  NOTE - It is refunded if the candidate is elected or has obtained more than one sixth of the total number of valid votes polled in the constituency.

Election Process

Delimitation of constitutencies (whole country in Lok Sabha elections & state in Assembly elections).

Preparing/revising & publishing electoral roll i.e. voters' list for each constituency.

Announcement of schedule of elections (a few weeks before the formal process is set in motion).

Model Code of Conduct comes immediately into effect after such announcement.

Formal process for elections starts with Presidential notification calling electorate to elect Members.

After notification, candidates can **start filing their nominations** in the constituencies.

Nominations scrutinized by the Returning Officer of the constituency concerned.

Next **campaign by all the candidates** and the parties starts.

Campaign ends 48 hours before the polling.

Last stage - counting of votes and **declaration of result.**

Model code of conduct

MCC does **not a have a statutory backing** and it is more a consensus driven code

Some Implications of applying MCC :

Grants, new schemes / projects cannot be announced.

Issue of advertisements at the cost of public exchequer is prohibited.

Ministers and those holding public offices are not allowed to combine official visits with electioneering tours etc.

Criticism of political parties must be limited to their policies and programmes, past record and work.

Parties must inform the local police authorities of the venue and time of any meeting to ensure adequate security arrangements.

If two or more candidates plan processions along the same route, organisers must establish contact in advance to ensure that the processions do not clash.

Carrying and burning effigies representing members of other political parties is not allowed.

All authorised party workers at polling booths should be given identity badges not containing the party name, symbol or name of the candidate.

Only voters, and those with a valid pass from the Election Commission, will be allowed to enter polling booths.

Election Machinery

Election Commission of India(ECI)

Chief Electoral Officer (CEO) (supervise election work in the state/UT)

District Election Officer (DEO) (supervises the election work of a district)

Returning Officer (RO) (responsible for the conduct of elections in the Parliamentary or assembly constituency)
ECI may appoint one or more Assistant RO to assist the RO

Presiding Officer with the assistance of polling officers conducts the poll at a polling station. The District Election Officer appoints the Presiding Officers and the Polling Officers. In the case of Union Territories, such appointments are made by the Returning Officers

Other officers

Observers:

The Election Commission of India nominates officers of Government as Observers (General Observers and Election Expenditure Observers) for Parliamentary and assembly constituencies. They perform such functions as are entrusted to them by the Commission. They report directly to the Commission.

Electoral Registration Officer (ERO)

ERO is responsible for the preparation of electoral rolls for a Parliamentary / assembly constituency.

NOTE: CEO, DEO, RO – all are designated by ECI in consultation with concerned State Government / UT Administration.

Types of election methods

First Past the Post (FPTP)

- Each voter votes to one candidate only.
- Also known as **"plurality"** voting system i.e. the candidate with highest votes is elected.
- Winner takes all approach - winning candidate need not secure a majority of the votes.

Proportional Representation (PR)

- **Principle** - All voters and all political groups deserve to be represented in proportion to their strength in the electorate.

Party list system

- Most common form of PR.
- Voters indicate their preference for a particular party.
- Parties receive seats in proportion to vote share.
- Independent candidates are listed separately as if they are their own party.

Two types

- Closed list – voter simply votes for the party, not indicate preference for any candidate on the list by party.
- Open list - voters express a preference for particular candidates, not just parties. Vote counts for the specific candidate as well as for the party.

Mixed-Member Proportional system

- Also known as "the additional member system," "compensatory PR," the "two vote system," and "the German system."
- Some seats elected using FPTP and some using PR.
- PR seats allocated after FPTP to account for proportionality.

Alternative Vote System

- Also known as "Preferential Voting System", "Single Transferrable Voting System".
- Candidates are ranked in order of choice.
- Candidates whose number of first choice votes exceed a threshold wins.
- Surplus votes distributed based on second-choice votes and so on.

Voter Registration

Eligibility

- Article 326 - adult suffrage fixed the age of eligibility to vote for elections to the Lok Sabha and Vidhan Sabhas, at 21 years (61st Amendment reduced it to 18 years).
- Eligible citizens are required to register themselves as voters and get a voter ID card.
- The voter ID card or EPIC (Electors Photo Identity Card) - issued by the Election Commission to all eligible voters.
- One Registration: entitled to be registered in the electoral roll for only one Constituency.

Disqualification from registration in electoral roll (RPA Act, 1950)

- Not citizen of India, or
- Unsound mind and stand so declared by a competent court, or
- Who for the time being are disqualified from voting under the provisions of any law relating to corrupt practices and other offences in connection with elections.

The name of a person is struck off the electoral roll on disqualification.

Categories

General/Resident Electors	Service Electors	Overseas Electors
Residents of India who can vote in a polling booth.	Residents of India who work for the Indian Government away from their home or are in the Armed Forces.	NRIs who have not taken citizenship of any other country.
Eligible to be registered in the electoral roll of the constituency where he is ordinarily resident.	These persons (and their wives if they reside with them) have the right to be registered in the electoral rolls of the constituencies in which they would be residing.	Eligible to be registered as a voter in the address mentioned in their passport.

Election Campaign

Electoral Reforms

• Some important committees associated with Electoral reforms

- The Goswami Committee on Electoral Reforms (1990).
- The Vohra Committee Report (1993).
- The Indrajit Gupta Committee on State Funding of Elections (1998).
- The Law Commission Report on Reform of the Electoral Laws (1999).
- The National Commission to Review the Working of the Constitution (2002).
- The ECI – Proposed Electoral Reforms (2004).
- The Second Administrative Reforms Commission (2008).
- The ECI Proposed Electoral Reforms (2016).

• Time line of some important reforms

1982 - First EVM

1985 - Anti-Defection Law

1988 - Voting Age

1960s - MCC was first introduced in Kerala

2012 - Full Disclosure Norms

2010 - Restriction on exit polls

NOTA

2013 - NOTA Allowed

2014 - Disposal of Criminal cases involving MPs and MLAs/ MLCs within 1 year

2017 - Unlimited Corporate Donations on Parties

2017 - Electoral Bonds were introduced

2018 - Declaration on Income Sources

Anti-Defection Law

- **Tenth Schedule** to the Constitution - introduced by **52nd Constitution Amendment** - further amended by **91st Constitution Amendment**.
- Lays down conditions regarding disqualification on ground of defection.
- Main provisions for disqualification

Voluntarily gives up the mambership of the political party	Votes or refuses to vote in the House against his party's will	Independently elected member joins any political party	Nominated member joins a joins a political party after expiration of 6 months of nomination.

NOTE : Disqualification on grounds of Defection is finally **decided by presiding officer of the house** (By Speaker in cases of LS and by Chairman in case of RS).

This decision can be challenged in the court - Open for judicial review.

- No disqualification under 10th schedule if
  - Merger of political party happens with 2/3rd membership support.
  - Speaker, deputy speaker, chairman or deputy chairman severe connections to party on election to these offices.
  - Although these are constitutional posts, those elected to these office don't necessarily severe connection to their political parties.

Some important terms

Exit poll	Opinion poll
• Post-election survey conducted immediately after people have voted.	• Pre-election survey to gather voters' views on a range of election-related issues.
• EC bans exit polls from the time the poll begins till half-an-hour after the polling ends.	• Results of such polls is prohibited during the period 48 hours, including the hour fixed for conclusion of voting in each of the phases in connection with the elections.
• Exit poll results cannot be published till the last round of elections is over.	
• If elections in multiple states, then published after voting ends in all the states.	

Election Commision of India (ECI)

Article 324 –superintendence, direction and control of elections to parliament, state legislatures, the office of President of India and the office of vice-President of India by ECI.

• Composition

- Chief election commissioner (chairman) and other election commissioners (President fix from time to time).
- Appointment of all by President.
- President may appoint regional commissioners to assist ECI (after consultation with ECI).
- Conditions of service and tenure of election commissioners and regional commissioners determined by president.
- CEC and other election commissioners have equal powers and receive equal salary, allowances and other perquisites, which are similar to those of a judge of the Supreme Court.
- Matter decided by majority.
- Hold office for six years or until age of 65 years, whichever is earlier.
- Can resign or can be removed before the expiry of their term.
- Recent law on appointment of CEC and EC can be mentioned.

• Independence

- CEC's security of tenure (removal grounds same as a judge of the Supreme Court).
- CEC's service conditions cannot be varied to his disadvantage after appointment.
- Removal of Election commissioner or regional commissioner only on recommendation of CEC.

• Some issues

- No qualifications prescribed of the members of ECI.
- No term specification of the members of ECI.
- No bar on retiring election commissioners from further appointment by government.

• Power and Functions

- Delimits constituencies for election to the Parliament and the State Legislatures.
- Preparation revision, maintenance and update of the list of voters.
- Notify the dates and schedules of elections and scrutinise nomination papers.
- Grant recognition to political parties and allot election symbols to them and settling disputes related to them.
- Appoint officers for inquiring into disputes relating to electoral arrangements.
- Determine the code of conduct for parties and the candidates.
- Prepare a roster for publicity of policies of political parties on radio and TV.

- Advise President on disqualification matters of Mps.
- Advise Governor on disqualification matters of MLAs.
- Cancel polls in the event of rigging, booth capturing, violence etc.
- Request President or the Governor for requisitioning the staff necessary for conducting elections.
- Supervise the machinery of elections throughout the country.
- Advise President whether elections can be held in a state under President's rule.
- Register political parties and grant them the status of national or state parties.

- **For State Party Status:**

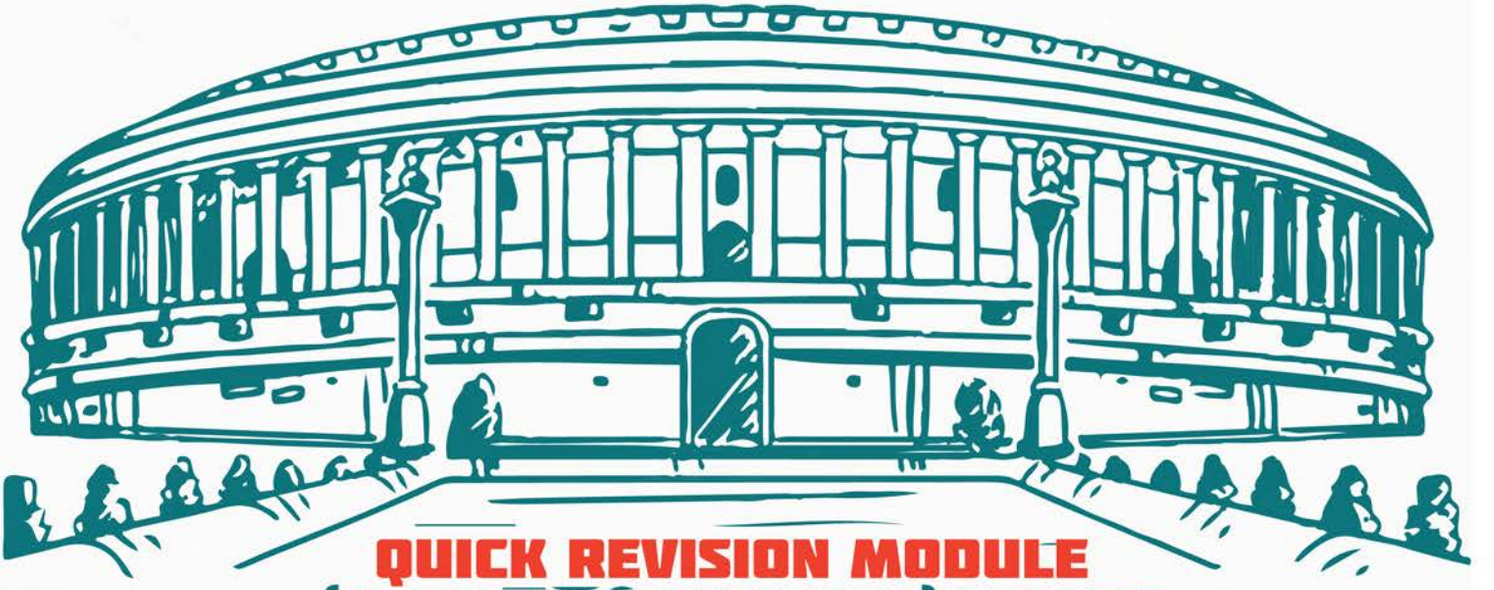
- At General Elections or Legislative Assembly elections, the party has won 3% of seats in the legislative assembly of the State (subject to a minimum of 3 seats).
- At a Lok Sabha General Elections, the party has won 1 Lok sabha seat for every 25 Lok Sabha seat allotted for the State.
- At a General Election to Lok Sabha or Legislative Assembly, the party has polled minimum of 6% of votes in a State and in addition it has won 1 Lok Sabha or 2 Legislative Assembly seats.
- At a General Election to Lok Sabha or Legislative Assembly, the party has polled 8% of votes in a State.

- **For National Party Status:**

- The party wins 2% of seats in the Lok Sabha (11 seats) from at least 3 different States.
- At a General Election to Lok Sabha or Legislative Assembly, the party polls 6% of votes in four States and in addition it wins 4 Lok Sabha seats.
- A party gets recognition as State Party in four or more States.

- **Both national and state parties have to fulfill these conditions for all subsequent Lok Sabha or State Assembly elections. Else, they lose their status:**

- Every national party is allotted a symbol exclusively reserved for its use throughout the country.
- Similarly, every state party is allotted a symbol exclusively reserved for its use in the state or states in which it is so recognised.
- A registered-unrecognised party select a symbol from a list of free symbols.



QUICK REVISION MODULE
(UPSC PRELIMS 2024) POLITY

ADMINISTRATIVE SYSTEM

(PMO, CABINET SECRETARIAT, CENTRAL SECRETARIAT AND DISTRICT ADMINISTRATION)

CABINET SECRETARIAT

The cabinet is headed by the PM , who is responsible for administration of GOI. In this task, cabinet is assisted by the Cabinet Secretariat.

The Cabinet Secretariat **enjoys the status of a department** of the Government of India under the **Allocation of Business Rules, 1961.**

Note: It is headed politically, by the Prime Minister and administratively, by the Cabinet Secretary.

BACKGROUND

1.This procedure was legalized by the **Indian Councils Act,** 1861 during the time of Lord Canning.

2.The constitution of the **Interim Government** in September 1946 brought a change in the name.

3.The cabinet secretariat came into existence in 1947 by **replacing Secretariat of the Governor General executive Council.**

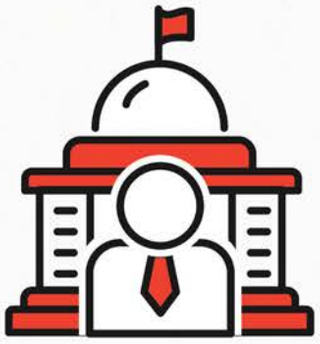
STRUCTURE

It has 3 wings – Civil Wing, Military wing and Intelligence Wing.

Civil Wing	❍ Provides aid and advice to the Union Cabinet.
Intelligence wing	❍ Deals matters pertaining to Joint Intelligence committee of the Union Cabinet.
Military Wing	❍ Provides Secretarial assistance to the Defence committee of the cabinet, Military Affairs committee and National Defence Council.

FUNCTIONS

- Prepares **agenda for meetings** of the cabinet .
- Keeps records of the **discussions** and **decisions** of the cabinet and the cabinet committees.
- It handles works related to **appointment** and **resignation** of ministers , allotment of portfolios to the ministers.
- The Cabinet Secretariat ensures that the President, the Vice President and Ministers are kept **informed of the major activities.**



PRIME MINISTERS OFFICE

- **PMO is staff agency meant for providing** secretarial assistance and crucial advice to the Prime Minister .
- **It enjoys the** status of a department of the GOI **under the Allocation of Business Rules, 1961. It** has no **atatched or subordinate offcie under it.**

BACKGROUND

- PMO **came into existence in 1947** by replacing the secretary to the Governor General.Till 1977 it was called **Prime Minister's secretariat.**

COMPOSITION

- It is **politically headed by PM** and **administratively headed by Principal secretary.**
- **PMO** = Principal secretary + one or two additional secretaries + 3 to 5 Joint secretaries + Directors +Deputy secretaries + Under secretaries.

FUNCTIONS OF PMO

- Assisting the PM in his overall responsibilities.
- Aiding him in his responsibilities as chairman of Niti Aayog.
- Maintaining liason with President, Governors and Foreign Representatives in the country.

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CENTRAL SECRETARIART

- It comprises of all the members of all the ministers and departments of the central Government.

- **Article 77:** The President shall make rules for the more convenient transaction of the business of the Government of India, and for the allocation among Ministers of the said business.

Note: Ministries/departments of central government are governed by GOI (Allocation of Business) Rules, 1961.

EVOLUTION

1. **In 1843,** Governor General of India separated the secretariat of the Government of India from that of the Government of Bengal.
2. **In 1859, Portfolio system** was introduced by Lord canning.
3. **In 1905, the tenure system of secretariat staffing was introduced** by Lord Curzon.
4. **In 1947,** the departments of the GOI were renamed ministries.

STRUCTURE

Units	**Office in-Charge**
Department	**Secretary or Additional Secretary or Special Secretary**
Wing	**Additional Secretary or Joint Secretary**
Division	**Director or Deputy Secretary**
Branch	**Under Secretary**
Section	**Section Officer**

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DISTRICT ADMINISTRATION

District collector is the head of the district administration.

STRUCTURE

State Government	Chief Minister
↓	↓
State Secretariat	Chief Secretary
↓	↓
Division	Divisional Commissioner
↓	↓
District	District Collector

EVOLUTION

1. District collector came into **existence** under the British east India company.
2. The office was created by **Warren Hasting in 1772.**
3. In 1787 collector was made responsible for **civil justice and magistracy** in addition to Revenue collection.
4. After **73rd** and **74th Amendment acts of the 1992** included the term in the constitution .

FUNCTIONS

- As head of Revenue administration he is responsible to collect land revenue, Government dues, maintain land records etc.
- Maintaining Law and order in the district is principal duty of DC.
- DC collector is pivotal figure in implementation of development programmes.
- DC acts as returning officer for elections .
- DC acts as Chief protocol officer in the district.
- DC is responsible for civil supplies, food and other essential commodities .

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