

# Constitution of India

## HS13

- Supreme law of the land
  - Fundamental law
  - Three organs for the governance of the nation
- 1 Legislature – Enactment of laws.
  - 2 Executive – Implementation of laws.
  - 3 Judiciary – Interpretation of laws.
- Constitutional Supremacy

# **Evolution of Indian Constitution**

## **1. Gandhiji's Declaration - 1922.**

- Swaraj – Self- government, Total independence

## **2. Nehru's report and all parties' conference- 1928.**

- Chairman – Motilal Nehru
- Held in Lahore
- Final report - Demand of fundamental freedoms.

# Evolution of Indian Constitution

## **3 Government of India Act -1935.**

- Enacted by British legislature
- Indian political parties revolted against the document.
- Direct source of Indian Constitution

## **4. Cripps mission -1942**

- Stafford Cripps (Member of British Cabinet)
- Grand of Independence after second world war

# **Evolution of Indian Constitution**

**5. Quit India movement -1942.**

**6. Cabinet mission- 1946**

- Three members- A.V Alexander, Pentthick Lawrence and Stafford Cripps
- Directed to elect a constituent assembly

**7. Election to constituent assembly- 1946**

- 389 members
- Crisis regarding the composition of constituent assembly ( between INC and Muslim League).

# **Evolution of Indian Constitution**

## **8. Mountbatten's plan – 1947**

- Partition of the nation into two , based on communal lines.
- Division of Bengal and Punjab between the newly formed nations.
- Separate constituent assemblies for the nations
- Indian independence Act ,– official declaration of partition.

## **9. Indian independence – 15<sup>th</sup> August,1947**

# Evolution of Indian Constitution

## 10. Formation of Indian constituent assembly

Chairman of Constituent assembly- Dr. Rajendra Prasad

- 22 committees
- Drafting Committee- Dr. B. R .Ambedkar
- Committee on fundamental rights and minorities- Sardar Vallabhai Patel
- Steering Committee- Jawaharlal Nehru
- Constitutional advisor – B.N Rau

# Evolution of Indian Constitution

11. Submission of draft Constitution – February 1948.
12. Adoption of Indian Constitution by the constituent assembly – 26<sup>th</sup> November, 1949.
13. Commencement date of Indian Constitution – 26<sup>th</sup> January, 1950 (Republic day).

# Salient features of Indian Constitution

## 1. Cream of several Constitutions.

- Fundamental rights- Constitution of U.S.A
- Parliamentary system of Governance - Constitution of U.K
- Directive Principles of state Policies- Constitution of Ireland.
- Emergency Provisions- Constitution of Germany and Government of India Act 1935
- Fundamental duties- Japan, Russia and China.



# Salient features

- The lengthiest hand written Constitution  
395 Articles , 22 parts and 9 schedules  
At present – 470 Articles , 25 parts and 12  
schedules  
104 amendments
- Partly flexible and partly rigid
- Single citizenship
- Independent judiciary
- Special provisions for backward class people.

# Preamble- Introduction of Constitution

- **Soul of Indian Constitution**
- **Key to open the minds of makers of Constitution**

## **Objective**

- **Indicates the Source of Indian Constitution – Will of People**
- **Ideals of Constitution.**
- **Rights conferred by the Constitution.**

# Preamble

## **Ideals contained in Preamble.**

### **1. Sovereignty**

- Supreme authority is with the nation it self.
- Total independence
- Independent both internally and externally.
- Vassal state ( e.g. Tibet)
- Protectorate state ( e.g. Bhutan)

### **2. Socialism**

- Means of production ( land, labour, capital and organization) is under the control of government.

# preamble

## 3. **Secularism**

- No state religion
- Neutral attitude .

## 4. **Democracy**

- Power of governance of the nation is with the people
- “Democracy is the government of the people, by the people for the people” – Abraham Lincoln .
- Indirect democracy.

## 5. **Republic**

- Head of the nation is an elected person.
- Absence of special privilege.

# Rights guaranteed through the Preamble

- Justice- social, economic and political
- Liberty – of thoughts, expression, belief, faith and worship.
- Equality of status and of opportunity.
- Fraternity ( brotherhood)
- Dignity of individual.
- Unity and Integrity of nation.

# Preamble

- Preamble- An integral part of Constitution.
- Can be amended like any other provision.
- Amended only once.
- 42<sup>nd</sup> amendment, 1976 – added three new words
- Socialist, secular and integrity.

# Fundamental rights

- Part III of the Constitution
- Article 12 to 35
- Adopted from Constitution of USA ( Bill of Rights)
- Definition – “The basic , essential rights calculated to protect the dignity of individuals and create situations in which every human being can develop his personality to the fullest extend.” – By SC in Maneka Gandhi V Union of India.

# Fundamental Rights. (Article 12 – 35)

## Part -III

1. Right to equality- Article 14-18
2. Right to freedom – Article 19 -22
3. Rights against exploitation – Article 23 and 24
4. Right to freedom of religion – Article 25- 28
5. Cultural and educational rights – Article 29 and 30
6. Right to Constitutional remedy – Article 32- 35
- ❖ Right to property – Article 31( abolished through 44<sup>th</sup> amendment 1978)



# Fundamental Rights

**Article 12-** Defines the term 'state'.

- Elements of state

1. The union government and Parliament of India.

2. All the state governments and state legislatures

3. All the local authorities and other authorities within the territory of India. (e.g. Panchayats, municipalities, electricity boards, universities etc.)

- All the authorities under the control of government of India ( e. g. Indian embassies)
- A. R. Anthulay vs. S. R. Nayak – Judiciary is also part of state.

# The Concept of state

- The state is bound to protect the fundamental rights.
- The state cannot violate the fundamental rights guaranteed by the Constitution.
- The Constitution provides certain safe guards against the infringement of fundamental rights by the state.
- Fundamental rights are not absolute – state can impose reasonable restrictions.

# Article 13 – Judicial review

Article 13 – ***“The state shall not make any law which takes away or abridges the fundamental rights.”***

- Power of judiciary to review a law made by the legislature or an action taken by the executive.
- A law which violates the Constitution is void – ‘Ultra vires’ (beyond power or authority)
- Judiciary can strike down a legislation which is unconstitutional.

# Right to equality -Article 14-18

Article 14 – ***“The state shall not deny to any person equality before law or equal protection before law with in the territory of India.”***

**Article 14-** Applicable to everyone in India.

Equality before law – A.V. Dicey’s Rule of law

A.V Dicey – British Jurist

- All are equal before law
- Irrespective of status or position, all are subjected to the ordinary law of the land.
- Absence of any special privilege in favour of any individual

# Exceptions to Article 14

## Exceptions

President, PM, governors, ambassadors and judges enjoys special privilege in their official capacity.

Article 361 – immunity for President of India and governors ( No criminal proceedings against them during their term of office)

# Equal protection before law

- Adopted from U.S Constitution
- Equality of treatment in equal circumstances.
- People in same circumstances shall get the same treatment.
- Among equals law shall remain the same.
- Equals and un equals shall not be treated together.
- Article 14 permits classification of people for legislation.

E.g. : Juvenile delinquency Act 2016

Domestic violence Act 2005

Article 14 prohibits class legislation.

# Air India V. Nergesh Meerza

- Petitioner – Air India
- Respondent- Nergesh Meerza
- Indian air lines regulations, the by law of Air India contained three arbitrary provisions regarding the retirement of female flight attendants.
  1. Upon attaining 35 years ( as opposed to 58 for Stewards - male flight attendants)
  2. If getting married with in 4 years from the date of appointment
  3. Upon first pregnancy

# Air India V Nergesh Meerza

## Judgment

- SC held that Indian airlines regulations clearly violated Article 14
- Different terms and conditions for the retirement of female and male flight attendants were unreasonable.
- Article 14 prohibits hostile discrimination and permits reasonable classification.



# Article 15

- Article 15 (1)– ***“The state shall not discriminate against any citizen on grounds only of religion, race, caste, gender, place of birth or any of them.”***
- Prohibition of discrimination of citizens based on religion, race, caste, creed, gender etc.

## Exceptions

- 15(3)- special provisions for women and children.
- 15(4)- special provisions for socially and educationally backward classes of people and SC&ST.
- 15(6)- special provisions in favour of economically backward classes of people. (103<sup>rd</sup> amendment 2019)

# Article 16

Article 16 (1)- The state shall provide equality of opportunity for all citizens in matters related to public employment.

Article 16 does not confer any right to obtain employment. It only guarantees equal opportunity to all citizens.

## Exceptions

- 16(3)- reservation in favor of residents ( only for state service)
- 16(4)- reservation in favor of backward classes of people .
- 16(4)(A) - reservation in favor of SC&ST in promotions. – 77<sup>th</sup> amendment 1995.
- 16 (6)- reservation in favour of economically backward classes (103<sup>rd</sup> amendment 2019).

# Indra Sawhney Vs. Union of India

## Mandal commission case

- Appointment of a commission by PM Morarji Desai in 1979
- To study and identify the backward classes in India and also for providing recommendations for their advancement.
- Chairman – B.P .Mandal
- Commission identified 3743 castes as socially and educationally backward
- Recommended to provide 27% reservation in favour of backward classes in government jobs.

# Mandal Commission case

- Janatha Dal government headed by V.P Singh came into power in 1989
- Tried to implement Mandal commission report by giving 27% reservation
- Violent anti- reservation movement across the country
- Government collapsed
- Petitions against implementation of Mandal commission report in Supreme Court

# Mandal Commission case

- New government as Narasimha Rao as the PM in 1991
- Took measures for providing 27% reservation.
- SC considered the petitions

## **Judgment**

1. 27% reservation in favour of backward classes is constitutional and the ceiling limit shall be 50%.
2. While identifying backward classes, creamy layer ( socially and educationally advanced persons with in the class, people holding positions such as IAS, IPS or any other all India service ) shall be excluded.

# Mandal Commission case

- 3. No reservation during promotions ( only for initial appointment)
- 77<sup>th</sup> amendment , 1995 – added a new clause to article 16.
- Article 16(4)(A)- state can reserve seats in favour of Scheduled Caste and scheduled Tribe members in matters of promotion in public employment.

# Article 17

Article 17- Abolition of untouchability.

***Abolishes untouchability and forbids its practice in any form.***

Protection of civil rights Act ,1955

- No exceptions.

# Article 18

Article 18 (1) - Abolition of titles.

***“Prohibits the state to confer titles on anybody whether a citizen or non citizen excepting military and academic distinctions”***

E.g. Maharaja, Deewan, Raja Pramukh etc.

Exceptions

- Military titles – Captain, Major, Lieutenant
- Academic distinctions – Doctorate, M.phil etc.
- Conferment of titles like Bharat Ratna, Padma Bhushan etc are also exempted



# Article 18

- Article 18(2)- Citizens of India cannot accept titles from foreign nations.
- Article 18(3) - Non citizens who are holding office of profit under the state ,cannot accept titles from foreign countries. How ever they can accept titles with special permission from the President.

# Article 19- The six fundamental freedoms

1. Article 19(1)(a)- Freedom of speech and expression.
  2. Article 19(1)(b)- Freedom to assemble peacefully without arms
  3. Article 19(1)(c)- Freedom to form associations and unions
  4. Article 19(1)(d)- Freedom to move freely throughout the territory of India
  5. Article 19(1)(e)- Freedom to reside and settle in any part of India.
  6. Article 19(1)(g)- Freedom to practice any profession, carry on any trade, business or occupation.
- ❖ *Article 19(1)(f)- Right to acquire, hold and dispose off property (repealed through 44<sup>th</sup> amendment 1978).*

# Reasonable restrictions on Article 19(1)(a)

## Freedom of speech and expression

### Article 19(2)

- In the interest of sovereignty and integrity of India.
- Security of the state
- Friendly relationship with a foreign state
- Public order
- Decency and morality
- Incitement of an offence,
- Contempt of court.

# Reasonable restrictions on Article 19(1)(b)

- 19(1)(b)- Freedom to assemble peacefully without arms
- Restrictions- Article 19 (3)
- In the interest of sovereignty and integrity of India
- Public order.

# Reasonable restrictions on Article 19(1)(c)

Article 19(1)(c)- Freedom to form associations

Restrictions- Article 19 (4).

- In the interest of sovereignty and integrity of India
- Public order
- Morality

# Reasonable restrictions on Article 19(1)(d) and Article 19(1)(e)

Article 19(1)(d)- Freedom to move freely throughout the territory of India

Article 19(1)(e)-Freedom to reside and settle in any part of India.

- Restrictions- Article 19 (5)
- In the interest of general public
- In the interest of scheduled tribes.

# Reasonable restrictions on Article 19(1)(g)

Article 19(1)(g)- Freedom to practice any profession, carry on any trade, business or occupation.

Restrictions- Article 19 (6)

- In the interest of general public
- Technical qualifications required for professions
- Nationalization.

# Bijoe Emmanuel V State of Kerala

## National Anthem Case

- Petitioner – Bijoe Emmanuel
- Respondent- State of Kerala

### Facts

- Bijoe Emmanuel was a follower of a religious group called 'Jehovah's witnesses' ( a small group under Christianity)
- Bijoe and two other students were expelled from their school , since they refused to sing national anthem.



# National anthem case

- Students filed a petition in Kerala High Court
- Kerala High Court upheld the expulsion.
- Appeal was filed by the students in Supreme Court.

## **Judgment of Supreme Court**

- Article 19(1)(a), freedom of speech and expression also includes freedom to remain silent.
- Cancelled the expulsion order and directed the school to provide admission to the students.

# **Article 20- The rights available to an accused person**

- 20(1)- Rights against ex-post facto law.
- 20(2)-Rights against double jeopardy.
- 20(3)-Rights against self incrimination.

Accuse person- A person against whom there is an allegation that he has committed a crime.

- The persons guilt is yet to be proved by the Court

A person found guilty is known as – Convict.

# Protection against Ex-post facto law

- Article 20(1)- *“No person shall be convicted of any offence except for the violation of law in force at the time of commission of the offence”.*
- Meaning : A person shall be punished for an offence committed by him only in accordance with the law which was prevailing at the time of commission of the offence.

- If a new criminal law is coming into force with an increased punishment, that will not be applicable to a crime committed previous to the enactment.
- E.g.: P committed a crime in 2020 (punishment 3 years imprisonment)
- Enactment of a new criminal law (punishment 6 years)
- Increased punishment is not applicable to P

- The legislature cannot make a Criminal law with retrospective effect.
- A new criminal law cannot bind a past crime.
- Application of a criminal law begins from its date of commencement.

# Protection against Double Jeopardy

- Article 20(2)- Doctrine against Double jeopardy
- *“No person shall be punished or prosecuted for the same offence more than once.”*
- Single offence, single punishment.

# Conditions for claiming the defense of double jeopardy

1. There must be an accused person
2. Prosecution must have been taken place against the person in a competent court.
3. The person must have been convicted

If all the above conditions are satisfied a second prosecution and conviction on the same offence is completely prohibited.

# Protection against self incrimination

- Article 20(3)- *“ No person accused of an offence shall be compelled to become a witness against himself”*
- Protection against compulsion or use of force.
- Exceptions – Taking the photograph, handwriting samples, finger prints etc. of an accused person will not amount to self incrimination.



# Article 21

- Article 21 - Right to life and personal liberty.
- *'No person shall be deprived of his life and personal liberty except according to the Procedure established by law'*

The state shall interfere with the life and personal liberty of a person only on two conditions:

1. There is a law permitting the same
  2. The law shall provide a procedure which is just, fair and reasonable.
- Exception- Not applicable to an alien enemy.

Doli- incapax

# Maneka Gandhi V. union of India

Petitioner – Maneka Gandhi

Respondent – Union of India

Facts

The petitioner's passport got impounded by the passport authority.

Passport was impounded using the provisions of Indian passport Act 1967

Maneka Gandhi made a request to the regional passport officer to inform her about the reason for the impoundment.

# Maneka Gandhi V union of India

- Passport authority declined her request and refused to give the reason
- She filed a petition before SC, challenging the action of passport authority being violative of article 21.

## Judgment of SC

- Held that the action of passport authority violated article 21.
- The procedure adopted by the authority for impounding the passport was unreasonable.

# Case laws connected with article 21

1. **Peoples union for democratic rights V union of India** – Non payment of minimum wages to workers is the denial of their right to live with basic human dignity.
2. **M. C .Mehta V Union of India** – Right to live in a pollution free environment is part of article 21
3. **Murali S Deora V Union of India** – Public smoking is an indirect deprivation of right to life.
4. **Common cause v union of India** – Euthanasia.

# Article 21-A - Right to education.

- Free and compulsory education to all children in India.
- Available for children in between the ages of 6-14 years.
- Added through 86<sup>th</sup> amendment 2002.
- J.P Unnikrishnan v State of A.P, 1993 – SC held that right to education is a fundamental right.

## Article 22- Rights available to an arrested person

- Ground of arrest shall be informed to the arrested person.
- Opportunity to meet the advocate.
- Arrested person shall be produced before the magistrate within 24 hours.
- Extension of custody period beyond 24 hours only with the permission of magistrate.
- Exception – Preventive Detention.

# Rights against exploitation

## Article 23 and 24

### Article 23

- Prohibits traffic in human beings, begar and all forms of forced labor.

*‘Begar’ ( bonded labor system with out remuneration)*

### Exceptions

- Rigorous imprisonment
- Compulsory service imposed by the government for military service and social service.

### Article 24

- Prohibits employment of children below the age of 14, in hazardous or dangerous industries.

# Right to freedom of religion

## Article 25-28

- **Right to freedom of religion**

- Article 25

- Freedom to profess , practise
  - and propagate the religion

- Article 26

- Freedom to manage religious affairs.

- Article 27

- Freedom from tax for the promotion of any particular religion.

- Article 28

- Total prohibition of religious instructions in educational institutions which are fully aided by Govt.
  - Permission of religious instruction in educational institutions which are partially maintained by Govt. on certain conditions.
  - Reasonable restrictions : public order, public health and morality.
  - Ananda marga case



# Cultural and educational rights

## Article 29

- Right of minorities to establish and manage educational institutions.
- Applicable to minorities with distinct language, script or culture.
- Citizens belonging to minority communities who are residing in India.

## Article 30

- Right of religious and linguistic minorities to establish educational institutions.

# Right to constitutional remedies

## Article 32-35

### **Article 32 – “*Heart and Soul of Indian Constitution*”**

- Section 1
- Freedom to approach Supreme Court in case of violation of fundamental rights.
- Section 2
- Power of SC to issue writs, namely habeas corpus, mandamus, certiorari, prohibition and quo-warranto.
- Section 3
- Empowers the Parliament to confer power of issuing writs on any other court .
- Section 4
- Conditions under which this right can be suspended.
- Ubi jus ibi remedium

# WRITS

- Can be filed only against state in case of violation of fundamental rights.
- Five types of WRITS  
Habeas Corpus, Mandamus, Certiorari, Prohibition and Quo- Warranto.
- Article 32- Writ jurisdiction of Supreme Court
- Article 226- Writ jurisdiction of High Courts
- Concurrent jurisdiction for Sc and HCs
- Principle of 'Res –Judicata' is applicable.

# WRIT of Habeas corpus

- Habeas Corpus ( *Produce the body*)
- Writ issued against illegal detention
- To release the '*Detenu*' from illegal detention.
- A keeps B under illegal custody or with out any lawful justification. Here B is known as the detenu.
- Only writ that can be issues against a government authority as well as a private person.
- Can be filed for any number of times.

# WRIT of Mandamus

- Mandamus ( A command)
- Can be issued only against a govt. authority

## Conditions

- There should be a government authority with a compulsory public duty.
- Negligence on the part of the authority.
- Mandamus can be issues to compel the authority to do its duty.

# Writ of Prohibition and Certiorari

- Judicial writs
- Issued against subordinate courts

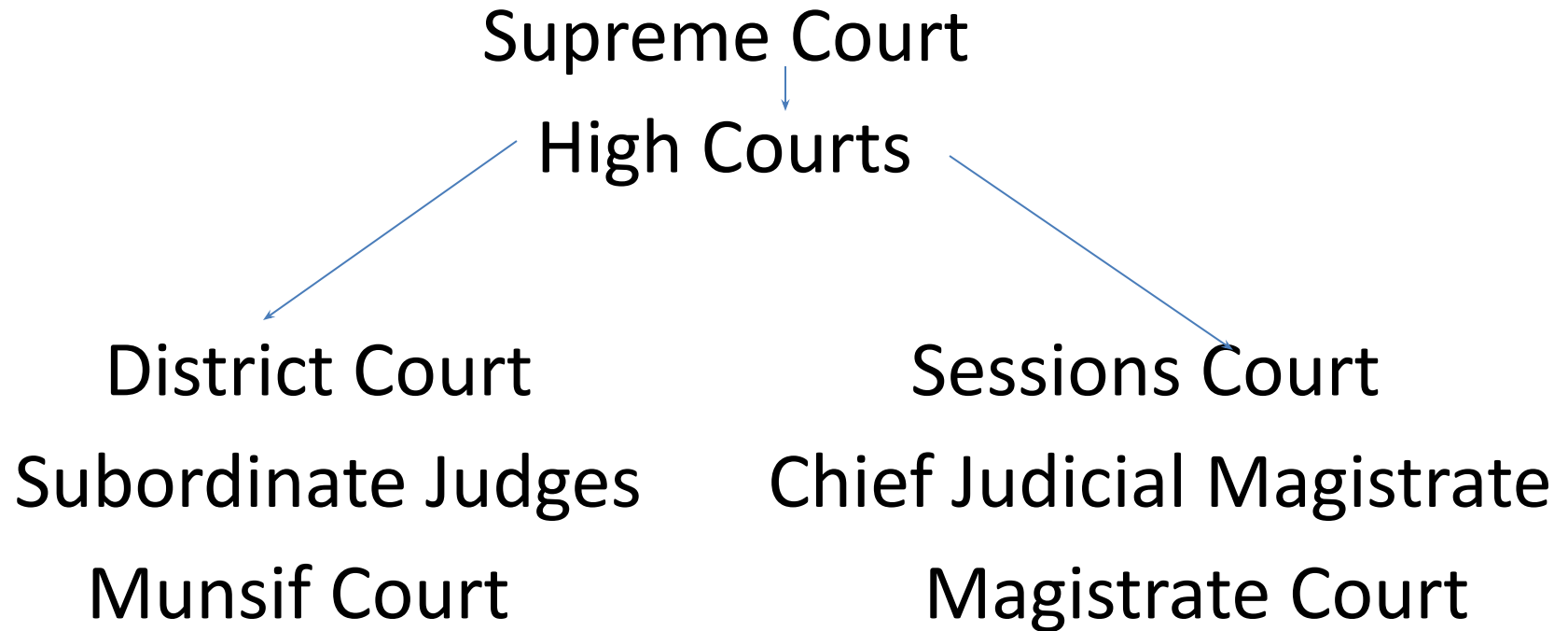
## **Prohibition**

- To prevent a subordinate court from making a wrong judgment.

## **Certiorari** ( We wish to be informed)

- To quash or nullify an erroneous or wrong judgment made by a subordinate court.

# Hierarchy of Indian Judiciary



# Writ of Quo Warranto

## **Quo Warranto** ( what is your authority)

- Issued against a person holding a Public Office with out authority or necessary qualifications.
- Lakhan pal V. A. N Ray



# **Directive Principles of State Policy**

## **DPSPs**

### **Directive Principles of State Policy – Part IV ( Article 36 to 51)**

- Fundamental Principles for the governance of the country.
- Directions or guidelines to the state.
- Adopted from Constitution of Ireland.
- Objective : Establishment of a welfare state.
- The provisions contained in DPSP shall not be enforceable by any court ( Non Justiciable).

# DPSPs

- 36- Definition of state.
  - 37-Application of DPSP.
  - 38-Social order.
  - 39
    - a. Equality between men and women regarding adequate means of livelihood,
    - b. Prevention of concentration of wealth.
    - c. Equal pay for equal work for both men and women,
    - d. Provisions to maintain the health and strength of workers , youth, children etc.
  - 39 A- Equal justice and free legal aid.
- Legal service Authorities Act 1987

# DPSPs

- 40- Organization of village panchayats.
- 41- Right to work, to education and to public assistance.
- 42- Just and humane conditions of work and maternity relief.

Maternity benefit Act 1961

- 43- Living wages for workers.
- 44- Uniform civil code for the citizens.
- 45- Early childhood care and education to children upto the age of six.

# DPSPs

- 46- Promotion of educational and economic interests of SC & ST and other weaker sections.
- 47- To raise the level of nutrition, standard of living and public health.
  - Integrated Child Development Scheme
  - National Rural Health Mission
  - Mid day meal scheme.
- 48- Organization of agriculture and animal husbandry.
  - Partial ban on slaughter of cattle.
- 48 A- Protection and improvement of environment, forest and wild life.
- Environment Protection Act 1987

# DPSPs

- 49- Protection of monuments, places and objects of national importance.
- 50- Separation of judiciary from executive.
- 51- Promotion of international peace and security.  
Maintain just and honorable relation with other nations  
Respect international law and treaty obligations.  
Settle international disputes through arbitration and conciliation.

# Fundamental Duties (Article 51A)

- **Fundamental Duties (Article 51A) – Part IV A.**
- There are 11 fundamental duties
- Applicable to the citizens of India.
- First 10 duties- 42<sup>nd</sup> amendment 1976
- 11<sup>th</sup> duty- 86<sup>th</sup> amendment 1986.
- Voluntary duties.
- No enforceability before court of law.
- Drafted by Swaran Singh Committee.

# List of fundamental duties

- Article 51 (A) (a) -To abide by the Constitution, respect its ideals, institutions, national flag and national anthem
- Article 51 (A) (b) – To cherish and follow the noble ideals which inspired our national struggle for freedom.
- Article 51 (A) (c) – To uphold and protect the sovereignty, unity and integrity of nation.
- Article 51 (A) (d) – To defend the country and render national service when called upon to do so.
- Article 51 (A) (e) – To promote harmony and spirit of common brotherhood. Citizens have to refrain themselves from practices which are derogatory to the dignity of women.
- Article 51 (A) (f) – To value and preserve the rich heritage of our composite culture.

# List of fundamental duties

- Article 51 (A) (g) – To protect the natural environment including forests, lakes and rivers and to have compassion for living creatures.
- Article 51 (A) (h) - To promote scientific temper, humanism, spirit of enquiry and reforms.
- Article 51 (A) (I) – To protect public property and abjure violence.
- Article 51 (A) (j) – To strive towards excellence in all spheres of individual or collective activity so that the nation constantly rises to higher levels of endeavor and achievements.
- Article 51 (A) (k) – Citizens who are parents or guardians shall provide all educational opportunities to their children or wards in between the ages of 6 to 14.



# Special constitutional provisions for SC & ST.

- **A. Special constitutional provisions for SC & ST.**
- Art 340-Appointment of commission by the President of India for investigating about socially and educationally backward classes of people.
- Scheduled Caste Order 1950
- Scheduled Tribes Order 1950
- Art 330- reservation of seats in Lok Sabha.
- Art 332- reservation of seats in State Legislative Assemblies.
- Art 243(D) and 243(T), reservation of seats in panchayats and municipalities respectively.
- Article 338 – National Commission for SC
- Article 338 A – National Commission for ST
- Article 275 – Grants in aid for ST

# Special constitutional provisions for SC & ST

- Art 15(4)- special provisions for the advancement of socially and educationally backward classes of people.
- Art 16(4)- reservation of appointments in public employment in favour of backward classes and SC&ST.
- Art 16(4-A)- reservation of appointments in promotions related to public employment in favour SC&ST. (enabling provision)
- Art 17 along with Protection of Civil Rights Act 1955 abolishes untouchability.
- Art 19(5) imposes reasonable restrictions upon the freedom of movement and freedom of residence to safe guard the interests of Scheduled Tribes.
- Art 46- direct the state to take special care to safe guard the educational and economic interests of SC&ST and OBC.

# Special provisions for women

- *“The day a woman can walk freely on the roads at night, that day we can say that India has achieved independence” – Mahatma Gandhi*
- Art 15(3) - empowers the state to take special measures for the protection and upliftment of women.
- Art 23- prevents traffic in human being which implies immoral traffic of women.
- Art 39-advocates equal pay for equal work for both men and women.
- Art 42- directs the state to provide maternity relief to workers .
- Art 51(A)(e)- imposes a duty upon the citizens to renounce practices which are derogatory to the dignity of women.
- Art 243(D) and 243(T), reservation of seats in panchayats and municipalities respectively.

# Special constitutional Provisions in favour of children.

- Art 21-A- state that right to education is a fundamental right. It also confers right to free and compulsory education to all children in between the age of 6 to 14 years.
- 
- Art 51(A)(k)- imposes a duty upon the citizens who are parents or guardians to provide educational opportunities to their children or wards.
- Art 45- early childhood care and free and compulsory education to children upto the age of 6.
- Art 24- prevents employment of children in hazardous industries.

# The three organs of state

- Legislature
  - a) Union Legislature
  - b) State legislature
- Executive
  - a) Union Executive
  - b) State executive
- Judiciary

# The Union Executive

- The President of India.
- The Vice President.
- The Prime Minister and Council of ministers.

# The President of India

- Article 52- There shall be a President of India.  
The first citizen  
The Constitutional head of the nation.
- **Qualifications:**
  - 1. Shall be a citizen of India
  - 2. Shall have completed 35 years of age.
  - 3. Shall be qualified to be elected as a member of Lok Sabha.
  - 4. Shall not hold any office of profit.

# Election of President of India

- The President of India is elected through an electoral college
- **Composition of electoral college:**  
Elected members of parliament and all the elected members of the state legislative assemblies.
- **The term of office:**  
5 years
- **Oath of office :** Administered by the Chief Justice of India.
- If a vacancy occurs in the President's office, Vice –President will become the acting president.
- **Filling of vacancy:** Within 6 month from the date of occurrence of vacancy.



# Powers of President

- **Executive power:**
- The first citizen
- The executive power of the Union Government is vested with the President.
- The nominal executive head ( de – Jure)
- PM and Council of ministers – real executive
- Appointment of PM, council of ministers, governors ambassadors, High Commissioners, Attorney General, Comptroller and Auditor General, members of Election Commission of India etc are appointed by the President.
- Commander –in- chief of armed forces
- War declaration
- All the executive actions of union govt. shall be In the name of President.

# President of India

- **Legislative power:**
- Parliament can enact a new law only with the consent of the President.
- **The legislative procedure :**
  1. Introduction of a 'bill' in Rajya Sabha or in Lok Sabha.
  2. Putting the bill to vote and adoption in the house.
  3. Putting the bill to vote and adoption in the other house.
  4. Consent of the President.
  5. Bill turns into a law.
- Can address the houses either jointly or separately.

# Ordinance making power

- **Ordinance making power:**
- Article 123 .
- When the Parliament is not in session President can promulgate ordinance.
- An ordinance has the same force of an Act made by the parliament.
- Adoption - Within 6 weeks from the date of re assembly by both the houses.

# Veto power

- **President's power to veto a bill:**

President withholding his assent on a bill adopted by the parliament.

- **Judicial powers:**

Appointment of judges of SC and HCs

Transfer of HC Judges

Pardoning power - Article 72

**Pardon** – completely absolves a convict from the sentence and punishment.

**Reprieve** – Temporary suspension of death sentence during the pendency of mercy petition.

**Remission** – Reducing the duration of punishment without changing its character

**Commutation** - Substituting one form of punishment with a lighter form.

- **Financial powers:** Introduction of Money bill in Lok Sabha.
- Union Budget (Annual financial statement)
- **Emergency powers:**  
President can proclaim emergency for the whole nation or any part there of.

# Impeachment of President of India

- **Impeachment:** The process of removal of President of India from his post.
- **Ground of impeachment:**
  - Violation of Constitution.
- **The procedure:**
  1. Introduction of a resolution in Rajya Sabha or in Lok Sabha.
  2. Conducting an enquiry
  3. Putting the resolution to vote in both houses.
  4. On adoption of resolution by 2/3 majority in both houses President stands impeached.

# Vice President of India

- **Vice president of India – Article 63**
- He is the Ex- officio chairman of the Rajya Sabha.
- Election of VP: Through an electoral college consisting of all the members of parliament.
- The term is 5 years
- Resignation: By submitting letter of resignation to the President.
- **Qualifications:**
  - 1. Shall be a citizen of India
  - 2. Shall have completed 35 years of age.
  - 3. Shall be qualified to be elected as a member of Rajya Sabha.
  - 4. Shall not hold any office of profit.

# Prime Minister of India and council of ministers

- **Article 74-** There shall be a council of ministers headed by Prime Minister to aid and advise the President *who shall, in the exercise of his functions, act in accordance with such advice.*
- The real executive power of union government - The PM and the council of ministers.

## **Powers of PM – Article 75**

The PM is appointed by the President.

( Leader of the single largest party or the leader of the largest pre –poll alliance).

- Other ministers shall be appointed by the President on the advice of PM.
- PM is the leader of the ministry;
- PM decide the size of the cabinet.
- Can reshuffle and also allot departments to the ministers.
- If the PM resigns council also dissolves.



# Other powers of PM

- Nuclear command authority
- R.A.W ( Research and Analysis Wing)
- Department of space
- Department of atomic energy.

# The council of ministers

## **Collective responsibility: 75 (3)**

- The council of ministers is collectively responsible to Lok Sabha.
- For the lapse of an individual minister the entire ministry will be answerable to Lok Sabha.
- The number of ministers in the council including PM shall not exceed 15% of the total number of members in Lok Sabha.
- Appointment of ministers -Article 75(5)
- Must be member of Rajya Sabha or Lok Sabha.
- Appointment of a non member as a minister  
Within 6 months from the date of appointment the person shall become a member of Parliament.

# Duties of PM and Council of ministers.

## **Prime minister**

- Communicate to the President all the administrative and legislative decisions of council of ministers .
- Bridge of communication
- Head of the cabinet
- Cabinet meetings – once in a week.

## **Council of Ministers**

- Ensuring smooth functioning of the administration of nation.
- Framing policies for the government
- Drafting Bills
- Preparing union budget
- Formulating foreign policies of the nation
- Suggesting amendments to the Constitution

# Categories of Ministers

- Cabinet ministers – Highest rank  
National emergency – written communication from cabinet ministers
- Minister of state with independent charge – independent charge over a ministry
- Minister of state without independent charge.
- Deputy ministers.
- Parliamentary secretaries – Appointed by PM.

# Division of power between Central Government and state governments

## Article 1 - Name and the territory of the union

*“India , that is Bharat shall be a union of states”*

- **Schedule VII**
- Divides the power of governance of the nation between central government and state governments- **federal feature**.
- Contains 3 main lists.
- **Union list**- 100 subject matters (Atomic energy, defense of the nation)
- Only Parliament of India can enact laws.
- **State list**- 61 subject matters (agriculture, public health)
- Only state legislatures can enact laws.
- **Concurrent list**- Concurrent list is regarded as a common pool for both central and state legislatures.
- Parliament of India and state legislatures can enact laws
- . 52 items are there in this list( education, forest)

# The union legislature (Parliament of India)

- Article 79- *“There shall be a Parliament for the union which shall consist of the President and two houses to be known respectively as the council of states and the House of people “*
  - President of India and two houses
  - Bicameral Legislature
1. The council of states (Rajya sabha)
  2. The house of people (Lok sabha)
- Rajya Sabha- upper house
  - Lok Sabha- lower house

# Composition of Rajya Sabha

- Article - 80
- Total strength – 250
- Number of representatives from states and union territories- 238
- Nominated by the President- 12 (science, literature, arts and social service)
- **The present strength – 245** ( 233 from states and Union territories, 12 nominated)
- Election - by an electoral college comprising of MLAs

# Term of office of Rajya Sabha members

- Rajya Sabha – a permanent house. Not subject to dissolution or abolition.

Date of formation – 3<sup>rd</sup> April 1952.

- Term of office of a Rajya Sabha member- 6 years
- $\frac{1}{3}$ <sup>rd</sup> of total membership retire in every 2 years.



# Qualifications of Rajya Sabha members

- Must be a citizen of India.
- Not less than 30 years
- Shall possess all other qualifications prescribed by the Parliament.

# Composition of Lok Sabha – Article 81

- Total strength of Lok Sabha- 552 (530 from states, 20 from union territories, 2 from Anglo- Indian community)
- **Present strength - 543**
- Number of members from states- 530
- Number of members from union territories- 13
- Number of members nominated by the President from Anglo- Indian community- 2 (abolished through 104<sup>th</sup> amendment 2020).
- The most democratic chamber.

# Duration of Lok Sabha

- Period of Lok Sabha – 5 years
- Exception- during emergency proclamation  
President can extend the term by 1 year at a time.
- Term of office of a Lok Sabha member- 5 years

## Qualifications

- Must be a citizen of India.
- Not less than 25 years
- Shall possess all other qualifications prescribed by the Parliament by law.

# Disqualifications of MPs

## Article 102

- Holding an office of profit under the govt.
- Unsoundness of mind ( declared so by a competent court)
- Un discharged insolvent
- Voluntary acquisition of citizenship from a foreign country.
- Disqualified under any other law made by the Parliament.

# Disqualifications under Representation of Peoples Act ,1951

- Having an interest in a govt. Contract
- Dismissal from govt. service
- Conviction in an offence resulting in imprisonment for 2 years or more
- Corrupt practices in an election
- Absence from the sessions of Parliament for a continuous period of 60 days or more
- Failure to lodge election expenditure

# Some terminologies connected with Parliament.

- **Sessions:** 3 sessions - budget session, monsoon session and winter session
- **Adjournment**  
The presiding officer suspending the work of either Rajya Sabha or Lok Sabha.
- **Prorogation**  
The President of India putting an end to the sessions of Rajya Sabha or Lok Sabha.
- **Quorum**  
The minimum number of members to constitute a meeting of Rajya Sabha or Lok Sabha.
- 1/10<sup>th</sup> of the total membership.
- **Joint session**  
A joint session of Parliament can be summoned by president of India  
A joint session will be presided over by the speaker of Lok Sabha.

# State executive

- **Governor**
- **Article 153** – There shall be a governor for each state.
- The executive power of a state is vested with the Governor who is appointed by the President.
- **Qualifications:**
  - Must be a citizen of India
  - Must have completed 35 years of age
  - Must not be a Member of Parliament or state legislatures.
  - Shall not hold an office of profit.
- **Term of office:** The governor shall hold office during the pleasure of President.
  - 5 years.
- A person can act as the governor of two or more states at a time.

# Powers of Governor

- 1. Appoints the CM of a state and other ministers.
- 2. Governor has the right to know about all the administrative actions taken by the state ministry.
- 3. Can review, assent or dissent the bills passed by the state legislature
- 4. During state emergency, the administration of the state will be with the governor.
- 5. Promulgation of ordinance when the state legislature is not in session(article 213).
- 6. Power to pardon, reprieve, remit, suspend etc. – Art.161.
- 7. Appointment of Advocate General, Vice- Chancellors of universities etc.
- Discretionary powers



# Chief Minister and Council of ministers

- Article 163- *“There shall be a council of ministers with CM as the head to aid and advise the Governor”.*
- Chief Minister is the head of the state ministry
- CM is appointed by the governor of the state
- Other ministers will be selected by the CM and appointed by the Governor.
- CM is the leader of the state ministry.
- Can decide the size of the cabinet, reshuffle and also allot departments to the ministers
- Responsible to maintain good relationship with the central government.

# Council of ministers in a state.

- The number of ministers in the council including CM shall not exceed 15% of the total number of members in Legislative Assembly.
- Not less than 12.
- Council of ministers shall be collectively responsible to the state legislative assembly
- Oath of office – by the Governor

# The state legislature

- Art.168- There shall be a legislature for every state.
- Can enact laws regarding items given in state list and also concurrent list in schedule VII.
- Composition: Governor and the State Legislative Assembly.
- In some states there will be an additional house called Legislative council

# Legislative Assembly

- Legislative Assembly (Vidhan Sabha)
- In a bi-cameral state legislature, legislative assembly is the lower house.
- It shall consist of not more than 500 and not less than 60 member.
- Members of legislative assemblies will be directly elected by the people.
- Governor can nominate 1 person from Anglo-Indian community. ( repealed through 104<sup>th</sup> amendment, 2020)
- Tenure of an MLA is 5 years.

# Legislative Council

- Legislative Council (Vidhan Parishad)
- Upper house.
- Karnataka, Andhra Pradesh, Telangana, Maharashtra, Uttar Pradesh, Bihar.
- The membership shall not exceed 1/3rd of the total strength of the Legislative Assembly.
- The membership shall not be below 40.
- Legislative Council is not subject to dissolution but can be abolished through an Act of Parliament.
- 1/3<sup>rd</sup> retire in every 2 years.
- The tenure of legislative council members is 6 years.

# Composition of Legislative Council

- 1/3rd of the total members in a legislative council will be elected by the MLAs in the state.
- 1/3rd will be elected by the members of local bodies such as municipalities, district boards etc.
- 1/6th will be elected from the registered graduates and teachers.
- 1/6th can be nominated by the Governor.

# The Supreme Court of India

- Article 124- Provisions related to the Supreme Court of India.
- **The ultimate interpreter of Indian Constitution”.**
- The guardian of Constitution.
- SC contains Chief Justice of India and such other judges appointed by the President.

## **Qualifications of SC judges**

- 1. A person having 5 years of experience as a High Court judge
- 2. A person with 10 years of experience as a High Court advocate
- 3. A person who is a distinguished jurist in the opinion of President of India.
- 4. The person should be a citizen of India.

# Judges of SC

- **Tenure:** A SC judge can hold his office till he attains 65 years.
- **Removal of SC judges (impeachment)**
- Conditions
  - 1. Proved misbehavior
  - 2. Incapacity.



# Supreme Court

- **Jurisdictions of Supreme Court of India**
- **Court of record**- Power to punish for contempt of itself.
- **Original jurisdiction**- Article 131
  - The SC's power to hear a case in the first instance.
    - Dispute between Govt. of India and one or more states
    - Dispute between two or more states
- **Appellate jurisdiction** – Article 132 - 134
  - Supreme court can hear appeals.
- **Special leave appeal** – Article 136
  - Discretionary power of SC to grant special permission to file an appeal against any judgment or decree.
- **WRIT jurisdiction**- Article 32

# Jurisdictions of SC

- **Advisory jurisdiction** – Article 143  
Can be invoked by the President of India in case of an ambiguity regarding a question of law or question of facts.
- **Power to review judgments** – Article 137
- Using this jurisdiction SC can review its own judgment
- **Power to transfer cases – Article 139A**  
Power to withdraw cases from HCS and dispose off.
- **Over-ruling power** – SC can change its own decision.
- **Judicial review** – SC is empowered to review the laws made by legislature
- Judicial activism – Vishaka Guidelines.

# Jurisdictions of High Courts

- Article 214- Provisions of High Courts.

## **Jurisdictions:**

- original jurisdiction ( election petition, admiralty jurisdiction)
- Appellate jurisdiction,
- WRIT jurisdiction (article 226)
- Power of review
- Power to transfer cases
- Power to punish for contempt of court
- Power of superintendence.
- Advisory jurisdiction (state government and governor)
- Power to supervise.

# Qualifications of HC judges:

1. A person having 10 years of experience as a judicial officer in India.
  2. A person with 10 years of experience as a High Court advocate
  3. The person should be a citizen of India.
- **Tenure:** A HC judge can hold his office till he attains 62 years.