

# **VISION IAS**

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## **CLASS NOTES**

### **POLITY**

**UPSC BOOK STORE**

**9007712940**

**2023**

Dr. Jayush Patel  
RB-11

M.NO-17874108271

NOT DEFINED in Constitution:

- 1) Untouchability
- 2) Office of profit
- 3) Budget
- 4) Minority

\* Judicial Primacy not to become  
Judicial exclusivity.

S.C. Cases (2022) for  
Women empowerment :

- 1) S.C recognized Marital Rape
- 2) MTP Act covers unmarried upto 24-weeks (live-in etc)
- 3) Mother has Right to decide child's Surname. (equating position of father)
- 4) 2-finger test has no scientific Base
- 5) Demanding money for house construct is dowry.

Police Reforms  $\Rightarrow$  "Prakash Singh vs U.O.I"

Religious Conversion  $\Rightarrow$  Illegal

~~Right to Privacy~~  $\Rightarrow$  K.S. Puttappa case

(visionary document on Net)

## CONSTITUTIONS OF WORLD:

- 1) France →
- 2) USA → Judicial system, F.R.
- 3) UK →

### **PAPER-III**

#### **General Studies- II: Governance, Constitution, Polity, Social Justice and International relations.**

- Indian Constitution—historical underpinnings, evolution, features, amendments, significant provisions and basic structure.
- Functions and responsibilities of the Union and the States, issues and challenges pertaining to the federal structure, devolution of powers and finances up to local levels and challenges therein.
- Separation of powers between various organs dispute redressal mechanisms and institutions.
- Comparison of the Indian constitutional scheme with that of other countries.
- Parliament and State legislatures—structure, functioning, conduct of business, powers & privileges and issues arising out of these.
- Structure, organization and functioning of the Executive and the Judiciary—Ministries and Departments of the Government; pressure groups and formal/informal associations and their role in the Polity.
- Salient features of the Representation of People's Act.
- Appointment to various Constitutional posts, powers, functions and responsibilities of various Constitutional Bodies.
- Statutory, regulatory and various quasi-judicial bodies.
- Government policies and interventions for development in various sectors and issues arising out of their design and implementation.
- Development processes and the development industry —the role of NGOs, SHGs, various groups and associations, donors, charities, institutional and other stakeholders.
- Welfare schemes for vulnerable sections of the population by the Centre and States and the performance of these schemes; mechanisms, laws, institutions and Bodies constituted for the protection and betterment of these vulnerable sections.
- Issues relating to development and management of Social Sector/Services relating to Health, Education, Human Resources.
- Issues relating to poverty and hunger.
- Important aspects of governance, transparency and accountability, e-governance-applications, models, successes, limitations, and potential; citizens charters, transparency & accountability and institutional and other measures.
- Role of civil services in a democracy.

1) Syllabus → GS2 Paper

- [ Polity  
Governance  
Social Justice  
I.R. ]

2) PYQ's

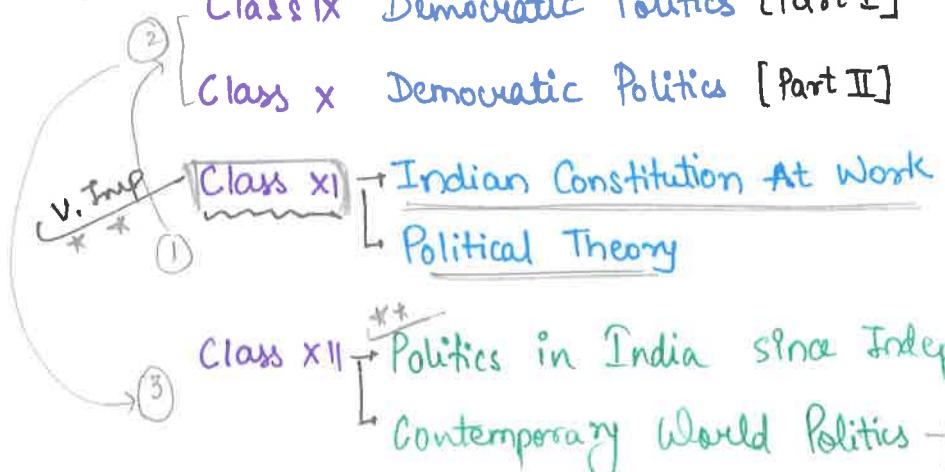
3) [ Static & C.A. integrated. ]

4) [ Vision IAS Polity Printed Book ]  
OR

[ LAXMIKANTH + Monthly CA + Class Notes ]

5) NCERTs → Class IX Democratic Politics [Part I]

Class X Democratic Politics [Part II]



→ Article 14-35

→ DPSP's

+  
→ Imp. Articles which sir will teach

EXTRA TOPICS [ TO BE DONE BY MYSELF ]

↳ ACTS (7-8)

↳ Constitution of Diff countries (compare)  
vision pdf

↳ Gandhian Tools

Search google

→ Election pdf which sir will give

# # CONSTITUTION:

## ORDINARY LAW

- Formed on basis of
- ✓ simple majority
- scattered
- have SECTIONS

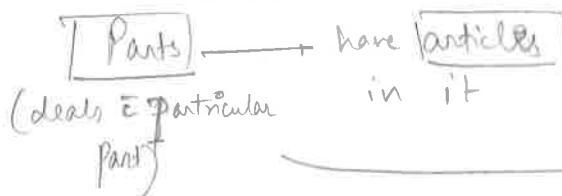
## CONSTITUTION

- ✓ Fundamental supreme law of land; one codified Law
- ✓ special majority
- more standard
- living document; not static
- has clauses & subclauses in article

[Parts → Articles] & [Schedules]

### Constitution

| divided in



Total - 7

### Schedules

(explains constitution more clearly)

(- to prevent constitution from becoming bulky)

### Constitution

Article 1 4  
2 3

5

6

12

35

### 1 States / U.T's

2

3

Fundamental Rights

4

DPSP

5

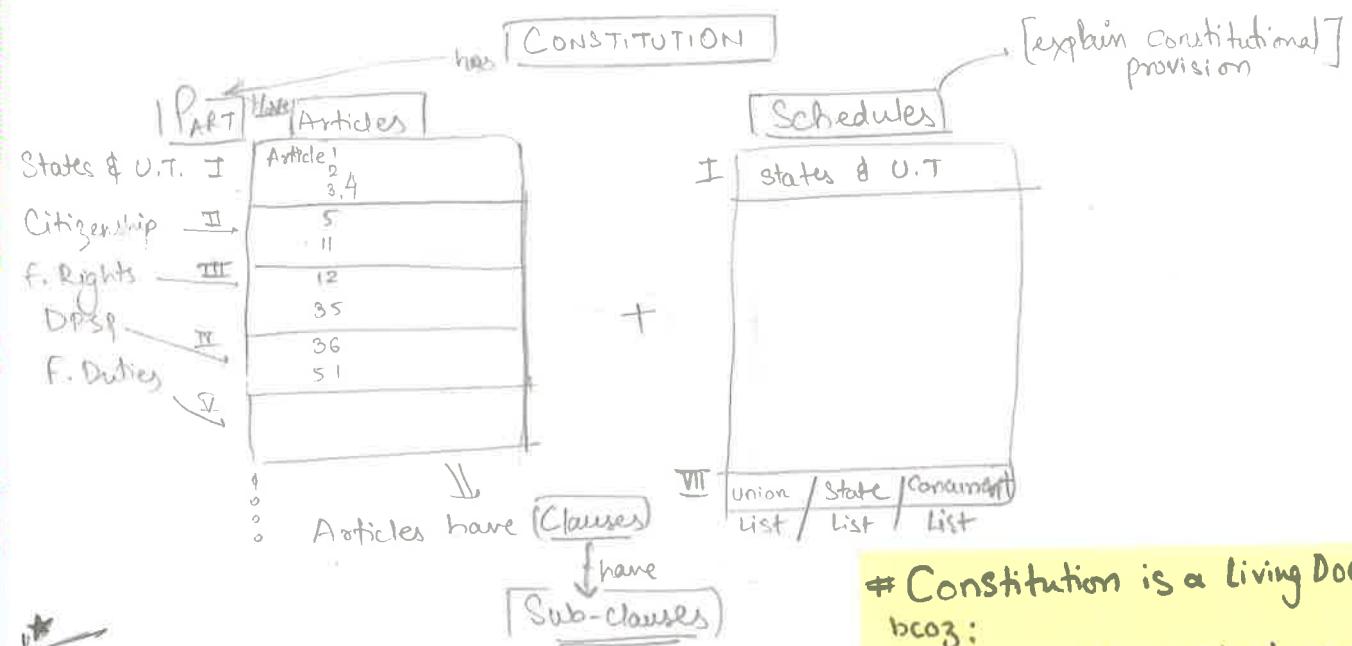
F Duties

6

7 Union List State List Concurrent List

# CONSTITUTION: is the fundamental Law of the land  
also the Supreme Law of the land

- It reflects the **IDEOLOGY** and **PHILOSOPHY** of the nation.
- It establishes the **Organs of the State** and highlights the **Governmental Structure**.



### Article 320 (A)

→ means it is most likely a Constitutional Amendment

a → it is

→ RTI Act → use this capital letter when writing an Act.

# Constitution is a Living Document  
bcz:

I) It is open to constant change  
Eg: 42<sup>nd</sup> Amendment to add socialist, secular, integrity in Preamble

II) It is open to constant interpretation by supreme court  
→ due to changing times  
→ to cater to aspiration, needs of ppl.

Eg: Right to Education (Article 21A)  
through 86<sup>th</sup> Amendment.

5

(1) → U.T have legislatures

(2) → U.T don't have legislatures

→ Countries which were ruled by Britishers.

- For Commonwealth countries → we send **HIGH COMMISSIONS**
- And to other countries → " " " Ambassadors
- Ceylon-India → for India-China

## ORDINARY LAWS

1) They are the laws which emanate on the principles of constitution but aren't the part of constitution. These laws are subservient to constitution.

Eg: RTI Act, 2005

2) are made by simple majority

3) They are scattered laws.

4) They have Sections in them.

⇒ Statutory Institutions are inside ordinary law.

Eg: National Human Rights Commission  
RBIs  
SEBI

## CONSTITUTION

1) It is fundamental & supreme law of the land.

2) are made, amended, enacted by special majority

3) It is a **Living document** in a codified form  
↓  
amended time to time

4) They have Clauses and Sub-clauses in Articles.

Parts → Articles → Clauses & Subclauses  
Schedules

→ Constitutional Bodies are inside in Constitution

So its sanctity of it is very high

Eg: Supreme Court  
Nat<sup>n</sup> Commission for Backward Classes

## WRITTEN CONSTITUTION

1) Written Document prepared by a Constituent Assembly or any Specific body which was constituted for that specific purpose.

2) It is an **Organized** document which is **Codified**

3) Parliament is **Not** a Sovereign body [has limited power] → As in India → (a) It can make laws of only Union & concurrent lists (b) due to judicial review for laws passed by it.

4) Ordinary Laws and Constitutional Laws are enacted differently.

O.L → Ordinary majority

C.L → Special majority [ $\frac{2}{3}$  some exceptions]

## UNWRITTEN CONSTITUTION

1) It is more of an evolved document rather than prepared by a specific body.

Eg: Magna Carta of U.K.  
(1215 A.D.)

oldest constitution

2) It is an **abstract set** of laws.

3) Parliament is a Sovereign body

5) Both are enacted by same Majority.

[King is Law]  $\Rightarrow$  [Law is King]  
Rex is Lex  $\Rightarrow$  Lex is Rex } ✓

✓ U.S.A Constitution  $\Rightarrow$  1<sup>st</sup> written Constitution  
in 1789.

## NATION

- more of an imagined community or the feeling of one-ness.
- It is more of an Emotional concept.  
↳ grey area / fluid concept.
- The idea of Indian Nationalism can be derived from the Constitution that promotes Unity in Diversity.
- The Strict definition of Nation having Uniformity in
  - language
  - Ethnicity
  - Religion etc.doesn't fit in diverse or Multi-Cultural Societies.

## STATE

UPSC Prelims 2021

[more of a formal Term]

- In it, there is a :
  - a) Fixed Population
  - b) Fixed Territory
  - c) Sovereignty
  - d) Organized Govt. recognized by International community

Nationalism → By Rabindranath Tagore → [Read]



~~Unwritten~~ Can Exist without a WRITTEN CONSTITUTION; ie in Unwritten constitution

## # CONSTITUTIONALISM:

With constitution +nt, constitutionalism may be -nt or -nt.

[=ideology] / Supremacy of Constitution; ie Constitution & govt → govt Constitution for supremacy to

Eg: In U.K there is no written Constit; but a set of rules govern the country.

① It is a LIMITED GOVERNMENT. [=Constitutional Government]

② It leads to limitation of General governmental powers to prevent the exercise of arbitrary decisions.

③ Constitutionalism promotes the Supremacy of Constitution and safeguards Democracy.

④ [PRE-REQUISITES]

Tools to promote Constitutionalism: Sovereignty divided amongst ppl.

A) Fundamental Rights

F) Popular Sovereignty

[Authority of govt is created and sustained by its Ppl thru elected representatives]

B) Judicial Review

G) Separation of Power

Judiciary  
Executive  
Legislature

C) Rule of Law

[C & AG]

D) Free Press

E) Office of Comptroller and Auditor General

⑤ It is a pre-requisite to the establishment of a LIBERAL DEMOCRATIC STATE.

(By Part 3 + F.R.)

⑥ It, by limiting the Government, secures the Liberty & Democracy & promotes diversity of ideas, critical thinking & accountability of the government.

9

(Elites) (Rule)

Aristocracy → Rule of group of Elites

Democracy → Rule of people (people) (Rule)

## # [CONSTITUTIONAL MORALITY]:

- ① This term was used by Dr. B.R.Ambedkar in his address in the Constituent assembly. In "Grammar of Anarchy Speech".  
He credited George Grote for this term.
- ② As per Dr. Ambedkar ; Constitutional Morality is effective co-ordination between conflicting interests of different people and to resolve them amicably through constitutional means.
- ③ It is having PARAMOUNT REVERENCE for the Constitution
- ④ It is also a principled understanding for Unfolding the (effective delivery) work of Governance
- ⑤ Constitutional Morality is following the Constitution  
Not only in letter but in its TRUE SPIRIT.  
→ The values of constitution must be respected & upheld ; it consists of not only of the Explicitly mentioned provisions but also implied ones. / Indirect / Implicit
- ⑥ In Conflict b/w Social Morality and Constitutional Morality :  
"C.M." is uphold

to prevent concentration of power.

# **SEPARATION OF POWERS**): Horizontal Division of Power  
at Union & State level diffy.

GOVT.	Judiciary	Executive	Legislature
Union Govt. →	Apex court	- Council of Ministers - President	- Parliament - President
State Govt. →	High Court	- Council of Ministers	- State Legislative Assembly - Governor

DIVISION OF POWER  
[VERTICAL DIVISION OF POWER] [FEDERALISM]

→ This theory was given by **MONTESQUIEU** in his **Seminal work** <sup>(proposed)</sup> SPIRIT OF LAW (BOOK) in 1748.

→ SOP refers to :-

- Ⓐ Establish 3 ORGANS OF STATE
- Ⓑ Define their Powers & Function
- Ⓒ No person can be a <sup>Member of</sup>  $> 1$  ORGAN

TRIPARTITE SOP  
WaterTight  
SOP

→ The framers of USA Constitution strictly adhered to Water-Tight Separation of powers.  
↓ i.e.

→ In USA one can't be a member of  $> 1$  ORGAN.



- In a Parliamentary Democracy like INDIA; there is No Water-Tight SOP. and the entire Executive is drawn from Legislature.
- "Power corrupts and Absolute Power corrupts absolutely." - LORD ACTON.

### PROVISIONS OF SOP IN CONSTITUTION OF INDIA:

- 1) In Article 50 ⇒ Judiciary shall be separated from Executive in the Public Services of state.
- 2) The Parliamentary proceedings can't be called into Question in Court of Law. UPSC  
2022 Prelims
- 3) Anything said or Vote given on the floor of the House is not liable for any proceedings in the court [ARTICLE 105]
- 4) The conduct of H.C & S.C judges shall not be discussed in Legislature. [except in Removal motion of judges] (ARTICLE 121)

## DOCTRINE OF CHECKS AND BALANCES

In India, while performing its duties, each Branch of Govt. doesn't interfere in sphere of another Branch

### 1) JUDICIAL REVIEW

To check Upon

Executive  
Legislature

### 2) POWER OF CONTEMPT - [ ]

### 3) Removal of Judiciary

But at the same time it seeks to ensure that other Branch is not misusing its power or crossing its Boundary

## → Judicial Pronouncements :

1) Supreme Court in Golaknath Case stated that Constitution of India demarcates the jurisdiction of <sup>the</sup> Organs of State minutely and they are expected to exercise their jurisdiction without overstepping limits.

2) In Bandhua Mukti Morcha Case the apex Court stated that A Healthy balanced is envisaged between ORGANS OF the State.

# [PREAMBLE]: People's sovereignty is mentioned in preamble part of constitution.

① Preamble is the identity card of the constitution. [Mr. Palkiwala]

② Preamble reflects the Ideals & Inspirations of the Constitution [S.C. in Golak Nath Case].  
in making

③ The preamble is the Charter of Ideas & Principles (objectives) that the constitution strives to achieve.

④ In order to understand the Minds of Makers of the Constitution one must refer to the preamble as it is the synopsis of the constitution.

⑤ Concept of Preamble is inspired from Constitution of USA.  
Content of preamble is from the OBJECTIVES RESOLUTION a speech delivered on 13/12/1946 by Jawaharlal Nehru.

S<sup>3</sup>DR → Socialist, sovereign, Secular, Democratic Republic

JLEF → Justice, Liberty, Equality, Fraternity

UPSC  
Notes

[CLASS - 4] [24/6/22]

⑥ Preamble is Non-justiciable and not a source of Power independently (of other provisions of the constitution)

RA

It is reference; in this we use  
opined word.

- ⑦ The Supreme Court initially in **RE BERUBARI CASE** opined that the preamble is not part of constitution.

Later

Apex Court ruled in **Keshvananda Bharti Vs State of Kerala** and **LIC India Case** that preamble is PART of the constitution.

So, preamble can be amended.

→ Preamble only Amended once → 42<sup>nd</sup> Amendment, 1976 to add **Socialist, secular & integrity** words.

- ⑧ Source of Power :- Final sovereignty lies with people to Constitution ; called as **Popular / Divided Sovereignty**.

The constitution derives its Authority from the "PEOPLE OF INDIA."

- ⑨ Constitution was :

[ Adopted → on 26 November 1949 ]

[ Came into force → on 26 January 1950 ]

→ Some provisions of the Constitution mentioned in [ Article 394 ] came into force on 26 November 1949.

Article - 395) → [repealed India Independence Act] to prevent any threat to our sovereignty

↓  
→ as our Independence didn't come out of this Act passed by British parliament; so no external factor can impose anything on us.

# SOVEREIGNTY : it refers to Independent Authority of a State.

① Sovereignty has both Internal & External Dimensions.

As a sovereign state, India is free to decide its external relations and legislate any subject in its territory.

② Our membership of United Nations & Commonwealth is out of Free will. and can be disassociated at our will.

J. Nehru said "It is an agreement by free will, to be terminated by free will."

③ As sovereign state, we can incorporate Territory and cede territory at our free will

④ New Concept → Digital sovereignty

S R Bommai  
S S  
I  
- D.S. Nakara  
- G.B. Pant

Communism → extreme form of Socialism by Carl Marx [in Communist Manifesto]

## # SOCIALIST :

- ① The term Socialist was added through 42<sup>nd</sup> Constitutional amendment Act.
- ② Socialism is "community ownership of resources".

The kind of socialism that we practice promotes  
MIXED ECONOMY rather than insistence on State ownership

- ③ Our socialism is termed as

- a) Democratic Socialism /
- b) Fabian Socialism /
- c) Nehruvian Socialism /
- d) Evolutionary socialism etc.

→ Democratic Secularism in gradual reformist way rather than revolutionary overthrow  
[peaceful gradual Transformation of Society in participation in State & not against state]

USSR → Socialism was achieved by revolutionary way

## ④ CASES :

- (A) Supreme Court in D.S. Nakara Case ruled that the principle aim of Socialism in India is to provide a decent standard of life and to provide security from cradle to grave.

- (B) In G.B Pant Case the apex court ruled that democratic socialism aims to end poverty, ignorance, inequality of opportunity and disease.

\* Every Welfare State isn't a Socialist state; as direct money is given to people for their welfare

# **[SECULAR]**: Secularism means "Separation"  $\Rightarrow$  Separation of Religion from Political/Economic/Social/Cultural aspects of life i.e. Religion is purely personal matter.

① The Supreme Court in S.R. BOMMAI Case ruled that Secularism is the Basic Structure of the Constitution.

② The term Secular was added in the preamble through 42<sup>nd</sup> Constitutional Amendment act; but the Unity & Fraternity of Ppl. of India, professing numerous faith had been already dreamt & provisioned in constitution to achieve ideal of "SECULAR STATE".

③ Secularism promotes

- Rationality
- Logic
- Scientific Thought

④ The term Secular has its inception from the term SECULUM → meaning worldly.

⑤ The idea of secularism promotes that:

a) Non-Theocratic State  $\rightarrow$  There shall be no official religion of the State

[nation by Divine guidance]

b) Religion is immaterial while enjoying fundamental/other rights.

c) No public office shall be denied on Basis of Religion.

⑥ Reasons for including SECULARISM IN INDIA & PREAMBLE:

a) India is a heterogeneous society

b) The idea of India as Secular state <sup>has</sup> been challenged by States like Pakistan.

c) We may be subjected to International propaganda; Eg: Terrorism & Extremism if we are inclined to a particular Religion

No civilization can afford to rest on the glories of past.

⑦ Dr B.R. Ambedkar stated that the Religious conception in this country are so vast that they cover every aspect from birth to death.

⑧ Secularism in India differs from West :-

In West → Religion and State are separated and are parallel lines which never meet. (Negative Secularism)  
(WaterTight separation)

In Our secularism → State maintains an EQUIDISTANCE and patronizes all religions equally.  
(positive secularism)

⑨ Constitutional Provisions regarding Secularism:

- India has No official Religion.
- All Citizens are equal in Eyes of Law.  
Article 14, 15, 27 → establish Secular State
- Fundamental Rights in Article 25-28 guarantee Freedom to profess, practice and propagate their religion & impartiality by state towards all religions.
- Religion is sub-ordinate to State; implying State can interfere in religious affairs for social reforms.
- Special protection granted to minorities to protect their cultural & religious practices.

1 people  
(cracy)= Rule

# **DEMOCRATIC**: in India is Representative Democracy

① The term **Democracy** means → People's Rule / or Supreme power to pp

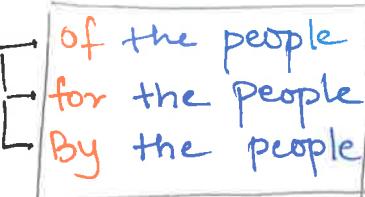
The final power rests with the **PEOPLE** = an **accountable government**

(It is one way of expression)

② **RIGHT TO VOTE** is a constitutional right under **ARTICLE 326**.

③ The idea of democracy doesn't solely rest. on the Elections, but even beyond that with an **accountable government**.

The Elections though periodically held, are vital elements of democracy [Without elections there is NO DEMOCRACY]

④ THE GOVERNMENT should be   
**of the people**  
**for the people**  
**By the people**

⑤ **Political, Social & Economic Democracy** go hand in hand.

Without S & E Democracy → Political Democracy is futile.

→ Justice Chandrachud in **AADHAR CASE**:

- **Dissent is the Safety Valve of Democracy.**

→ Dr. B.R. Ambedkar:

→ Political Democracy is the top Dressing on Indian soil which is undemocratic.

# REPUBLIC → goes hand in hand w. Democracy

- ① Head of state is an Elected person
- ② No privileged class
- ③ Divided Sovereignty and public offices are open for all.  
(= Popular )

In U.K. → there is Democracy but ~~not~~ Republican Character  
as the head of state is not an elected person.  
(Hereditary)

## # JUSTICE

- a) SOCIAL → distribution of wealth, opportunities, privileges in a society
- b) ECONOMIC → minimize Income inequality
- c) POLITICAL → Universal Adult suffrage and political Representation

→ They must be complementing each other and they must work in harmony.

Freedom → Independence from something

VS

## # LIBERTY of

Thought,  
Expression,  
Faith &  
Worship.

T  
E  
F  
W

→ it is absence of unnecessary restraints at the same time, providing opportunities for development of an individual.

Negative

- 1) It is inviolable / non-interferable by govt. in those basic tenets of human survival; unless necessary.
- 2) Here, Govt. is asked not to do something.
- 3) More freedom when state isn't interfering.
- 4) more of individual aspect

Positive

- 1) the expansion of choices to ppl. for their welfare.  
→ Here Govt. is asked to do something.  
→ State gives more freedom.
- 2) More freedom when State is tnt.
- 3) more of social aspect

# **EQUALITY**: of Status and of Opportunity  
and to promote among them all

# **FRATERNITY**: assuring the Dignity of individual  
and the Unity & Integrity of the Nation.

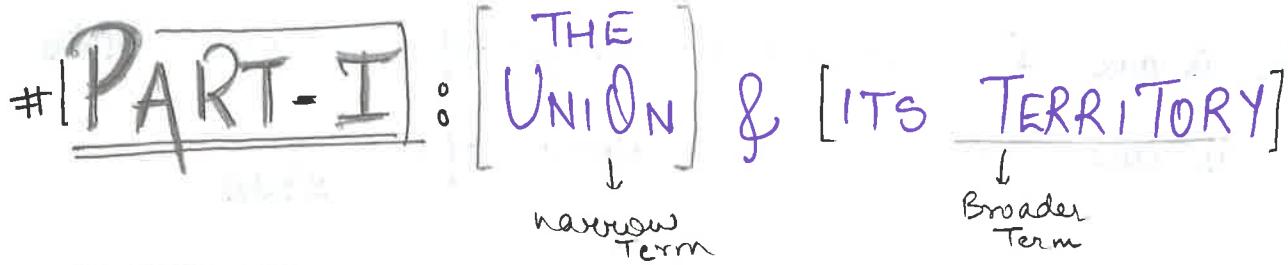
- ① Common bond assuring dignity to a person.
- ② The constitution of India promotes Fraternity through provisions like:
  - a) Single Citizenship
  - b) Right to Travel throughout the Country Article 19(1)(d)
  - c) Right to Reside and Settle etc. Article 19(1)(e)
- ③ The Apex Court in Indra Sawhney Case stated that : (Reservation will promote fraternity)  
Fraternity is too Important to be promoted as there is social Backwardness. Reducing Poverty also leads to Fraternity.
- ④ Unity & Integrity of Nation : Fraternity promotes psychological Unity and territorial sanctity must be preserved.



THE  
UNION  
AND ITS  
TERRITORY

ARTICLE 1-4

# PART - I

ARTICLE 1 - 4**ARTICLE 1**: Name and Territory of Union

- (1) India, that is Bharat, shall be a Union of States.
- (2) The names of States & Territories are specified in 1<sup>st</sup> Schedule<sup>UNION</sup>.
- (3) The territory of India shall comprise of .
  - a) States
  - b) Union Territories
  - c) Such other territories which may be acquired.

① The Term Territory of India is a broader Term than the term Union of States.

② The Term Union was preferred over the term Federal due to following reasons given by Dr. B.R. Ambedkar:

- a) The term Federal comes from Latin Term → Fœdus, which means agreement.  
But, India is not a result of agreement among the states.
- b) No state of India has the right secede from the Union.

# In present times ⇒ India acts in federal manner but in Emergency, it acts in Unitary manner

### ③ INDIA VS USA:

Boundaries of states  
can be altered

- India is an **INDESTRUCTABLE UNION** of **Destructable States**.
- USA is an **INDESTRUCTABLE UNION** of **INDESTRUCTABLE States**

Boundaries of states  
can't be altered

### ARTICE 2

:- Eg: French settlements of Pondicherry, Karaikal were admitted by this article.

→ Parliament may by Law admit into the Union such States as it thinks fit (or even establish New State.)

→ Article 2 deals with those **States** which are not a part of India. (deals with territories outside our country)

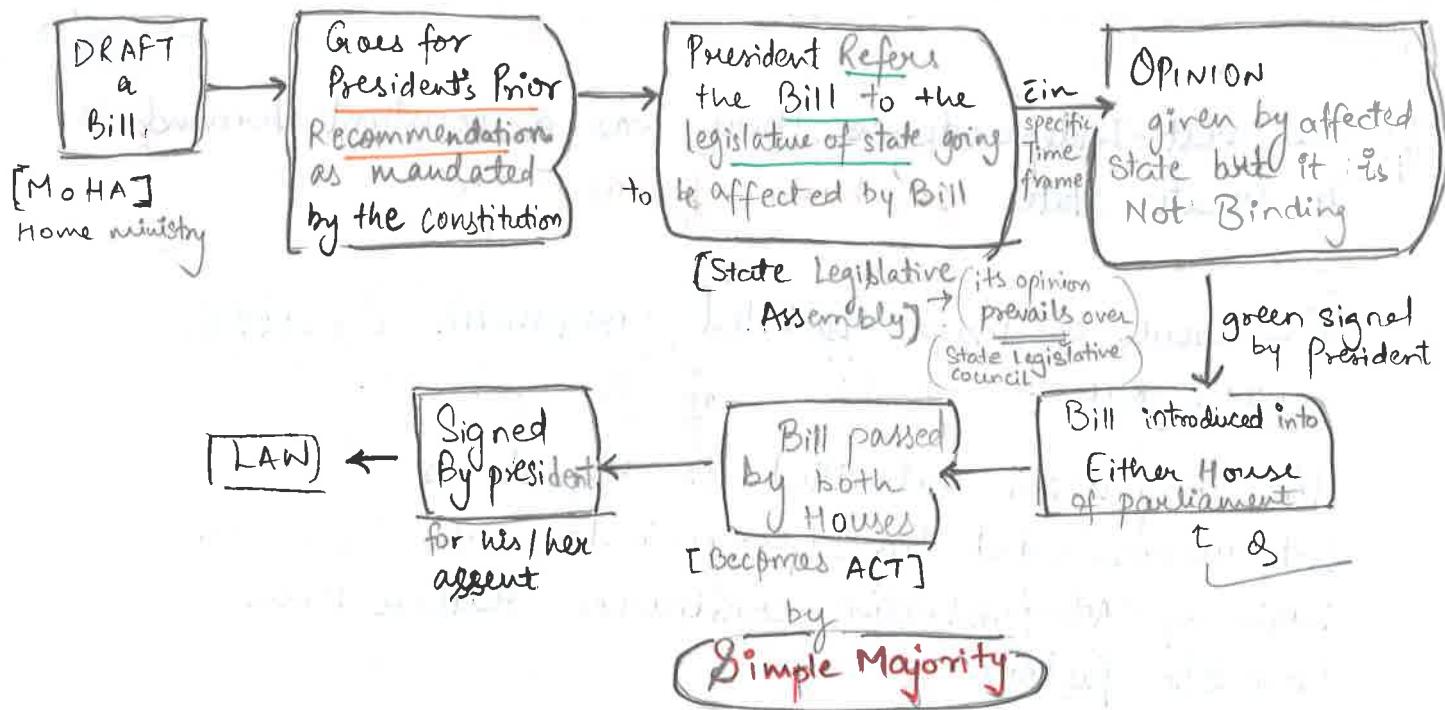
maybe (a) already in existence (b) New creation of that state

→ There is nothing in constitution, which would entitle a new State (after its formation or admission in Union), to claim complete equality of status with an existing State.

### ARTICLE 3 :

Formation of **new States** and Alteration of **areas**,  
**Boundaries** or **Names** of Existing States

- ① The constitution in **ARTICLE 3** also empowers the Parliament to create a Union-Territory similar to creation of a State(s). (done by SIMPLE MAJORITY) ↓
- ② Any bill that seeks to bring any change in respect to a Union Territory shall / shall not be referred to UT's Legislative assembly.



③ Schedule 1 [Names of States & U.T.]

Schedule 4 [Allocation of Seats in Rajya Sabha to States & U.T]

Both are to be amended when New State is created.

④ A draft Bill is sent to State for its Opinion <sup>once only</sup>, even though govt. may amend it many times. mcs

### ARTICLE 1:

(amendment)  
Any bill under Article 2 & 3 shall not be deemed to be a Constitutional amendment (<sup>as stated</sup> under Article 368).

→ The power of parliament is exclusive <sup>for that bill</sup> and can be passed by simple majority.

## # REORGANISATION OF STATES

- ① The post-Independence there was a constant demand to create states on basis of language.

The Govt. of India appointed LINGUISTIC PROVINCES COMMISSION - S.K. Dhar Commission, in 1948 June.

The commission submitted its report in December 1948, but recommended the Reorganization of States on basis of Administrative convenience rather than Linguistic factors.

- ② It created much resentment & lead to the constitution of another committee by Indian National Congress

The J.V.P Committee → - Jawaharlal Nehru  
- Sardar Vallabhbhai Patel  
- Pattabhi Sitaramayya

to re-examine the possibility of Linguistic States formation.

In April 1949, it rejected the creation of states on basis of Language

- ③ The creation of ANDHRA PRADESH in 1953 was in the backdrop of death (of POTTI SRIRAMULU on 56<sup>th</sup> day of his Hunger Strike (by separating Telugu speaking areas from the Madras state)

④ The creation of Andhra Pradesh led to similar demands in other areas.

The Govt. of India constituted STATES REORGANISATION COMMISSION under the Chairmanship of Justice Fazle Ali in 1953.

The Other 2 members were H.N. Kunzru  
K.M. Panikkar

The commission examined the feasibility of Linguistic Provinces in a comprehensive manner.

→ Following recommendations were made by commission in respect to factors (to be kept in mind) for reorganising the States :-

- a) Financial, Economic & Administrative consideration [FEA]
- b) Linguistic & Cultural Homogeneity [Lc]
- c) Preserving & Strengthening → Unity & Security of the Country
- d) Planning & Promotion of Welfare of the people

## POSITIVES OF CREATING NEW STATE:

- 1) Better Administration
- 2) Linguistic & Cultural Diversity gets recognized
- 3) Tailor-made Solutions
- 4) Better Devolution of finances
- 5) Employment Generation

## CHALLENGES OF CREATING NEW STATE:

- 1) Additional Burden on Exchequer due to creation of new Infrastructure.
- 2) Political Instability → as small group of legislators would make or break a govt.
- 3) New Inter-State Water Disputes ★ + IS → Power Boundaries Disputes
- 4) Leads to Similar Demands at other places.

## # TYPES OF MAJORITY:

I) SIMPLE / ORDINARY Majority: जो भी लोग आवे हैं वो उनके वोट दे सकते हैं।

→ Majority of Present & Voting members.

→ Used to enact → Ordinary Laws

↳ NO Confidence Motion etc.

↳ Vice president Removal from Lok Sabha

→ It is the most common and ordinary majority.

Due to:  
- Death  
- Resignation  
- Disqualification

II) EFFECTIVE MAJORITY:

$$\text{Effective Strength} = \left[ \frac{\text{Total members in House}}{- \text{Vacant seats}} \right]$$

→ It is majority of Effective Strength of House  $\left[ \frac{ES + 1}{2} \right]$

Ex:- To remove Vice-president in Rajya Sabha; effective majority is used.

To remove Speaker of Lok Sabha, effective majority used.

UPSC Prelims Q

(To Remove V-P) → in Lok Sabha → Simple majority

(vice president) in Rajya Sabha → Effective majority

### III) SPECIAL MAJORITY: To amend the constitution

This much ppl should come ↓  
 ① [Majority of Total Membership (of House)] AND [ $\frac{2}{3}$ rd of Present & Voting members (of House)]  
 Both cond's to be filled; And whichever is more is taken as Benchmark for min. Votes reqd.

② For amendments (altering) affecting [FEDERAL] Centre-State Relations :-

[SPECIAL MAJORITY + Ratification By  
 (as above)  $\frac{1}{2}$  of [Total State Legislative Assemblies]  
 By Simple Majority ] (U.T not included)

Eg: Total strength (TS) = 100  
 Vacancy = 10  
 Effective Strength = 90  
 Present = 90  
 Voted = 90

$\frac{100}{2} = 51$  votes +  $\frac{2}{3} \times 90 = 60$  votes  
 These 2 conditions need to be fulfilled

Eg: Like any change in 7<sup>th</sup> Schedule [42<sup>nd</sup> amendment]

- In parliament → Special majority
- In State LA → SIMPLE majority in their respective legislative Assembly

IV) Absolute Majority:  $\left[ \frac{\text{Total Membership}}{2} + 1 \right]$  (majority of Total members)

[CLASS-7] [21/7/22]

Prepared Rights are legally protected.

F. P for Citizens		1
14	15	17
20, 21, 21	16	18
22	19	
23	20	
24		
25	30	
26		
27		
28		

Fundamental  
PART-3  
Rights

ARTICLE  
12-35

# PART-3

(MAGNA CARTA)  
OF INDIAN CONSTITUTION

## FUNDAMENTAL

## RIGHTS

ARTICLE  
12-35

Rights → are legally protected Interests

Classified as :

- a) Statutory (= Ordinary ) Rights
- b) Constitutional Rights
- c) Fundamental Rights

### Statutory Rights

Eg:  
a) RTI  
b) MNREGA

a) provided by an Ordinary Law

b) Enacted, Repealed or Amended by  
Simple majority

c) If violated ; don't provide for a  
direct approach to Supreme Court  
; i.e 1st " " High court

d) Have less protection compared to  
Fundamental Rights

↳ here we can approach  
directly to Supreme Court

## (Constitutional Rights):

- a) any Right provided by Fundamental Law of Land  
i.e Constitution
- b) Though in our Constitution; Constitutional Rights are those Rights Outside PART-3 but INSIDE constitution
- c) Remedy: We can Approach 1<sup>st</sup> to High Court  
(when violated)  
↓ then  
We can approach Supreme Court

## Fundamental Rights:

- a) Rights included PART-3 of our constitution.  
↓  
(Magna Carta of " ")
- b) When violated → Remedy → We can Approach  
↓  
Supreme Court or Directly High Court
- c) are FUNDAMENTAL FOR HUMAN EXISTENCE.

- Positive Rights → asking Govt. to do something
- Negative Rights → any right restricting/preventing Govt. from doing something

⇒ **Fundamental Rights**: [ F.R.] → are justiciable

a) provide for securing a LIBERAL DEMOCRATIC STATE

b) Most FR are Negative Rights

Some FR cast a positive <sup>(Rights)</sup> Obligation on the state  
Eg: Right to Education

c) "FR are INDIA's PACT WITH CIVILIZED WORLD" — Sarvapalli Radhakrishna

d) FR → have HIGHEST ORDER IN OUR CONSTITUTION

↳ inspired from Bill of Rights from USA.

FR are also inspired in CONTENT from Motilal Nehru Report (1928)

UN Declaration of Human Rights

French Revolution etc.

e) PART-3 [= FR] also provides HIGHEST & QUICK REMEDY ⇒ Direct Approach to Apex Court

f) FR are mostly available against THE STATE.

↳ While Supreme Court in some / RARE cases ; makes it available against PRIVATE Individual, Organisations etc.

## ARTICLE - 12: Definition of STATE

DEFINES STATE  $\sqsubset$  crt FR & DPSP:

The definition of State in ARTICLE 12 is only for sake of F.R. (wider the definition  $\Rightarrow$  wider the scope of state of FR)

- a) UNION GOVERNMENT AND PARLIAMENT  $\leftarrow$  Executive & Legislative organs
- b) STATE GOVERNMENT AND STATE LEGISLATURES [including U.T.]
- c) LOCAL AUTHORITIES  $\rightarrow$  Municipalities, P.R.I  
(ULB)
- d) OTHER AUTHORITIES  $\rightarrow$  STATUTORY OR NON-STATUTORY
- e) Judges in administrative Capacity & not in Judicial capacity

### CASE :

Supreme Court in R.D. SHETTY Case [ P. N. Bhagvati ]  
laid down certain principles to determine whether an Authority / Organization Qualifies as STATE or Not.

- a) Whether Functions are of PUBLIC CHARACTER
- b) LEVEL OF FINANCIAL DEVOLUTION FROM GOVT.
- c) Deep & PERVERSIVE Control of Govt
- d) Whether an agency is enjoying MONOPOLY STATUS

### Ruling Regarding PRIVATE Bodies:

→ Any entity using a "Public Resource" in its Business and sharing revenue with the government

Thus, private companies in Contract w/ Govt. for providing services thru Govt. are included in STATE.

## ARTICLE - 13: Laws Inconsistent [in or in] Derogation in Fundamental Rights

- The Pre-Constitutional Laws shall be void to the Level of Inconsistency
- Post-Constitutional Laws shall be void to the Level of Contravention

The Term Law includes Ordinances, Rules, by-Laws (that have force of Law) or Customs etc.

CASE → The Supreme Court in GOLAKNATH Vs STATE OF PUNJAB

① Ruled that the Term Law in Article 13 includes Ordinary Laws & Constitutional Amendments thereby the power of Parliament (to Amend the Constitution) and (repeal, take away or abridge) any of the Fundamental Rights. taking away power to

Limiting



② Supreme Court in Keshwananda Bhauti Vs State of Kerala gave the ① "DOCTRINE OF BASIC STRUCTURE".

It ruled ② that the Term Law doesn't include [Constitutional amendments as under Article 368] but only includes Ordinary Laws



This was SUBJECT TO NOT VIOLATING THE BASIC STRUCTURE OF THE CONSTITUTION, thereby putting certain Limitations on the power of parliament to amend the Constitution.



Fig: [44<sup>th</sup> Amend. Article 19(1)(f) deleted] i.e. Right to Property was omitted.

⇒ Parliament can amend & snatch FR but can't alter Basic Structure of constitution.

- That part (ideology) of constitution that can't be altered by the state, on which constitution rests.

## DOCTRINE OF BASIC STRUCTURE OF CONSTITUTION

- (a) was ruled by Supreme Court in Keshvananda Bharti vs State of Kerala case

The Doctrine has been expanded over years by Apex court

- (b) Keshvananda Bharti Case was explained in other cases such as

I. R. COELHO Case [2007] → S.C upheld Free & Fair Elections as a part of BSC.  
Indira Gandhi Case [1975]  
Minerva Mills Case [1980]

- (c) The Constituent Power of Parliament to amend the Constitution is given by Constitution itself, hence LIMITED.

It is dif from UNLIMITED Constituent Power of Constituent Assembly to enact the Constitution.

- (d) The Theory of Basic Structure is dynamic (changed by S.C over yrs)

i) K. Bharti Case → Here, Basic Structure was laid down:

[= FR Case]

R 1) Republic form of Govt

2) Secularism

AS 3) Supremacy of constitution

4) Separation of Power

5) Sovereignty & Unity of India

D 6) Democracy

IDRS

## 2) Indira Gandhi Case

[1975]

- a) Equality of Status & Opportunity to an Individual
- b) Rule of Law
- c) Free & Fair Elections
- d) Judicial Review
- e) India as Sovereign Democratic Republic

SIR

DR

## 3) Minerva Mills Case → a)

[1980]

- Judicial Review

\* b) Constitution of India is resting on Harmonious Balance b/w FR & DPSP

- c) Limited power of Parliament to amend the Constitution

## 4) L. Chandra Kumar Case →

Power of High Court under Article 226 & 227

## 5) Raghunath Rao Case →

Principle of Equality

## 6) S. R. Bommai Case →

- a) Federalism
- b) Secularism
- c) Social Justice

Vasman Rao Case

# TYPES OF DOCTRINES :

DOCTRINES : → are not mentioned in constitution

↳ used by S.C for interpretation + Judicial Review of Legislations passed by Legislature.

→ Helps in Examining the Constitutional validity while exercising Judicial review

→ Doctrine is a RULE / PRINCIPLE / THEORY OR TENET that serves as a precedent for further judgements

→ Doctrines have been developed from :

- a) English Common Laws
- b) S.C judgements etc.

① DOCTRINE OF SEVERABILITY :

→ aka DOCTRINE TO SEVERE <sup>PROVISIONS</sup> that are inconsistent c F.R. in order to UPHOLD Rest of the LAW as Constitutional.

→ Things to be kept in mind :

- a) Law must stand on its own (post-severing of provisions)
- b) Prime purpose of the Law must not be defeated

→ CASE → STATE OF BOMBAY VS F.N. Balsara

## ② DOCTRINE OF PITH AND SUBSTANCE

essence/True Nature  
of something

Essential part  
of something

→ It arises when there is a [in terms of Federal Structure]  
CONFLICT B/W D/F LISTS and SUBJECTS enshrined there in.

→ If the court is to look into Every single TRANSGRESSION  
or INCIDENTAL ENCROACHMENT upon other LIST

↓  
Then it would be very common to declare  
LAWS as **UNCONSTITUTIONAL**

∴ To save the Laws from being declared **Unconstitutional**  
This Doctrine permits Court to Examine **TRUE NATURE**  
and **CHARACTER** of the Law and **IGNORE** **INCIDENTAL**  
encroachment.

→ Apex Court ruled that this Doctrine promotes  
HARMONIOUS Interpretation to resolve inconsistencies

### CASE : PRAFULA Vs BANK OF Commerce

→ Predominantly for Union & State Relations (federalism)

### ③ DOCTRINE OF ECLIPSE:

When a Law is in Conflict w/ F.R; so  
F.R Eclipses / Overshadows the operability  
of a Law; then the Law becomes Dormant  
[Unconstitutional]



But in Subsequent Constitutional amendments;  
the Restrictions are removed



Then the Eclipse gets revoked, making the  
Law Constitutional

CASE: Bhikhaji Narayan Vs State of Madhya pradesh

### ④ DOCTRINE OF COLOURABLE LEGISLATION: [ FRAUD ON THE CONSTITUTION ]

→ It is employed to Check the Legislature from  
doing something [that is Directly prohibited] in an  
indirect manner [by colouring the legislation.]

→ Origin: From Latin maxim  
"Whatever the Legislature can't do Directly  
Can't do Indirectly"

→ A CASE: Apex Court ruled in

K.C. Gajapati Narayan Deo Vs State of Orissa  
by bringing the above Doctrine in Indian  
jurisprudence

## ⑤ DOCTRINE OF HARMONIOUS CONSTRUCTION:

- It is used in a way that a Law (statute) shouldn't be interpreted / construed in isolation but as a whole; so as to bring Harmony and remove any inconsistency or Repugnancy.
- When in a statute 2 provisions are in conflict; they should be interpreted in a way to give Effect to both...
  - ↓
  - making any one of them useless / inoperative should not be adopted
  - Court should try to make both laws valid to the best possible extent to bring Harmony to both sides.
- It is used for any law (general Doctrine).

Eg: Federalism

- Separation of powers etc

## ARTICLE 14: Equality Before Law & Equal protection of Laws

The State shall not deny <sup>(1)</sup>EQUALITY BEFORE LAW and <sup>(2)</sup>EQUAL PROTECTION OF LAWS within Indian Territory

any person

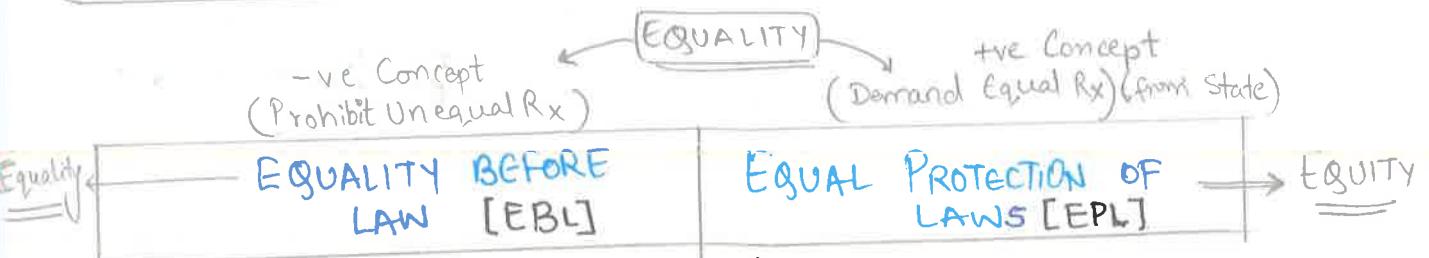
The term → PERSON is applicable to :

- Citizens
- Non-Citizens
- Legal person such as Corporations, Companies etc.

Rule of Law : by A.V. Dicey → [ Rule of Law and Not Rule of Men ]

- 3 Components
- Primacy of Rights
  - Equality Before Law
  - Punished only for Breaking a Law

[No person shall be punished except for Breaking of Law]



1) British origin

→ Component of Rule of Law

2) Prime Aspects of EBL:

- Absence of Special privilege
- Equal Subjection of all persons to ordinary laws of land
- No Person is Above the Law

3) EBL is a Negative Concept

1) American Concept

2) Prime Aspects of EPL:

- Equal Rx of ALL who are in equal circumstances
- $\text{LIKE}_{\text{ppl}}$ . should be Rx ALIKE  
 $\text{UNLIKE}_{\text{ppl}}$ . shouldn't be Rx ALIKE
- Allows state to go for for Betterment (Public welfare)  
Reasonable classification but any arbitrary classification isn't permitted.

3) EPL is a Positive Concept

(" Discrimination)

→ Article 14 → is to provide both Equality & Equity.

(KING IS LAW) → (LAW IS KING)  
# RULE OF LAW : = [Supremacy of Law (constitution)]

→ It is Basic Structure of constitution

→ was given by A.V.Dicey

→ Components:

a) Promotes absence of Arbitrariness

→ No person can be punished except for Breach of Law.

b) Equality Before law

c) Primary of Rights of an Individual

Potential Question  
Ans → How (Rule of Law) promotes Democracy?  
(Rule of people)

→ Whenever any Law is arbitrary → ARTICLE 14 gets violated

“S.C ruled that” :

→ Equality is a dynamic concept, it can't be Cribbed, Cabined or confined in traditional limits.”

→ Equality Before Law = Rule of Law + Natural Justice

→ Reasonableness (Non-arbitrariness) is the <sup>(essential for)</sup> essence of Equality

## EXTRA-CASES:

### ① Shankari Prasad Case:

S.C. ruled that the power of Parliament to amend the Constitution is not to be restricted and thus the Apex Court Upheld the Validity of 1st Constitutional Amendment

### ② Sajjan Singh Case:

Apex Court reiterated its earlier judgement that the "Power of Parliament to amend the Constitution cannot be curtailed".

In Article 330	In Article 332	RESERVATION	In Article 15	16
for Parliament seat	State legislative seat	Reservation in Academic Institutions, public places of employment (on Basis of place of residence)	Reservation in Academic Institutions, public places of employment (on Basis of place of residence)	
for SC/ST acc. to their population %		Initially was for 10 yrs as in ARTICLE 333 Extended by constitutional amendments time to time → It is a Constitutional Right (CR)	No Time frame given in Constitution It is a enabling provision, not CR/FRL	

## ARTICLE 15

→ has narrow grounds for (i) Discrimination (preventing)

→ It is a general article

→ Pen to Aeroplane included

Religion race caste sex, Place of Birth  
 (No discrimination on Basis of)  
 → (Discrimination on Basis of Place of Residence can be used for Reservation in academic institution)

It is silent on place of Resid.

→ Provisions in Article 330,

Reservation in Lok Sabha & State Legislature

respectively <sup>for SC/ST</sup> till the time they are mentioned in

Article 334. (They are Constitutional Rights) → The reservation was given in 1950 for 10 yrs only → but with Const. amendments, it is extended 10yrs.

→ Reservation in Article 15 & 16 is not a Fundamental Right i.e. State may give or won't give acc. to the necessity. (They are <sup>not</sup> constitutional Rights either)

[only for citizens]

## ARTICLE 15

Prohibition of Discrimination on Basis of Religion, Race, Caste, Sex or Place of Birth

(1) The State shall not discriminate against any citizen on grounds of Religion, Race, Caste, sex or place of Birth. [Article 15 is available to NON-CITIZENS]

(2) The article makes general prohibitions of above grounds i.e. (a) access of shops, public restaurants etc. or (b) wells, tanks, wholly / partly maintained by state funds or dedicated to general public use.

## ARTICLE 16

→ has wider range of grounds

→ It is specifically to deal w/ public employment

→ for Public Employment

→ R R C S, Place of Birth, Place of Residence

(Discrimination on Basis of Place of Residence can't be used for Reservation)

# Deceit

Reservation

Reservation is Enabling Provision Not a Right

State other citizens

(3) The article further states that Nothing shall prevent the State from making Any Special provision for Women and Children.

(4) The Article 15<sup>(4)</sup> was added by <sup>Clause</sup> 1<sup>st</sup> Constitutional Amendment empowering the state to make any special provision for advancement of Socially or educationally Backward Classes of citizens or for SC ST.

(5) <sup>93<sup>rd</sup></sup> Constitutional Amendment added Article 15<sup>(5)</sup> (2005) whereby State shall not be prevented from making any special provision for advancement of socially and educationally Backwards classes of citizens (SEBC) or SC ST for Admission in Educational Institutions including Private Institutions, aided or unaided, other than Minority Education Institutions (4?)

(6) <sup>103<sup>rd</sup></sup> Constitutional Amendment added Article 15<sup>(6)</sup> (2019) empowering State to make any special provision for EWS [Economically weaker sections] and also Reservation upto 10% for admission in Edu. Institutions

The EWS shall be determined by the state from time to time.

[List]

Scheduled Castes → defined in Article 341

Scheduled Tribes → " in Article 342

OB C → " " Article 342A

Third Article  
366

→ Reservation is not a FR but a provision of achieving substantive equality given by Constitution to the state.

ARTICLE 15(4) exempts Minority Educational Institutions. Y?

D) In 1990's, St. Stephen's College Vs University of Delhi

S.C upheld [Article 30] → Minorities have a Right to Administer an Educational Institution of their choice means

This gave (Right to Minority Institutions) to Reserve 50% Seats for students practicing that particular religion

R = Reservation

when minority R added to existing R

NOT VIABLE

50% Reserved for Christians in St. Stephen's college

(as Reservation cap exceeded)

22.5% [SC + ST]  
27% [OBC]

a) Since there is already a reservation for Religious Minority of 50%; there is no need to provide Reservation for SC, ST, OBC and if provided it would exceed 50% Reservation cap set by S.C.

b) S.C → is defined in Article 341 [No other person of other religion can be SC other than Hindu, Sikh, Buddhist religion]  
under  
Presidential order S.C List → 1<sup>st</sup> time will be issued by president

OBC → Article 342A

Any further change is consulted in parliament by amendment & consulted to State Govt.

Under "SC" list → Christians can't be SC → Not a single Christian can be 'S.C' becoz they are not in SC List.  
But Christians can be ST.  
Muslim minority can't be S.C

If there are no S.C in minority groups, there is no point in giving them Reservation under SC quota.

"Parishwaran prasad case" → Union of India will defend president of what he has done in his/her personal capacity

[CLASS - 9] [23/7/22]

Composite Population of  
A - 330,332  
15  
16

→ [only for Citizens]

**ARTICLE 16** : Equality of opportunity in matters of public employment

- (1) There shall be equality of opportunity for all citizens in matters relating to Employment under the state
  - (2) No citizen shall be Discriminated on Grounds only of Religion, Race, Caste, Sex, Descent, place of Birth, Residence or any of them
  - (3) No thing shall prevent State from making Provision for Reservation <sup>in appointments / posts</sup> for any Backward class of citizens which in Opinion of the state is not adequately represented.
  - (4) Parliament can prescribe by Law Residence as a criteria for certain classes of Employment in State or U.T for the residents of that State or U.T [This Exclusive Domain of Parliament and not the State Legislature]
- (1995)
- 4A → 77<sup>th</sup> Constitutional Amendment overturned the [S.C judgement of INDRA SAWHNEY CASE which prohibited Reservation in Promotion]
- So, this amendment provides Reservation in Promotion for SC / ST if they are not adequately represented in services under the state.

→ Reservation in Article 16 was not in Constitution & was not added

(original)

(5) Nothing shall prevent the State from Operating of any Law that provides for Incumbent of an office, shall be a person belonging to that Particular Religion or particular Denomination.

4B → Unfilled SC/ST Quota of a particular year when carried forward to Next year, will be treated separately and not clubbed with Regular vacancies of that year. [81<sup>st</sup> CAA]

Not of Article 16

(ARTICLE 366) says that Definition of SC/ST/OBC is given in 341/342/342A respectively.

ARTICLE 341 & 342 respectively provides for

SC & ST List through PRESIDENTIAL ORDER issued respectively. and any change to it is done by Parliament

A 366

341 342 342A

SC ST OBC List

Centric List

[provided for OBC list thru presidential order issued]

The 102<sup>nd</sup> Constitutional Amendment Act inserted ARTICLE 342A which was subsequently amended by Parliament through 105<sup>th</sup> CAA to provide for Centre & State OBC List respectively.

(6) → 103<sup>rd</sup> Constitutional Amendment added Article 16(6) empowering State to make any special provision for EWS for Reservation in Appointments/posts in addition to existing Reservation and subject to max 10% Reservation



In M. Nagaraj Case → S.C ruled that State should give reservation to Backward & Inadequately Represented classes (in services) Based ON QUANTIFIABLE DATA and forming Committee to assess ground level representation of the above classes.

## I [TEMPORARY Commission] (FOR BACKWARD CLASSES):

(ad hoc)  
In Article 340 President constitutes from time to time Backward Classes Commission to

"Investigate the Conditions of Socially & Educationally Backward Classes and Suggest measures for their Advancement".

In pursuance of Article 340 → 3 Backward Classes Commissions have been constituted till date :

1<sup>st</sup> BCC KAKA - KALEKAR [1953]

2<sup>nd</sup> BCC B.P. MANDAL [1979]

3<sup>rd</sup> BCC Justice G. Rohini [2017]

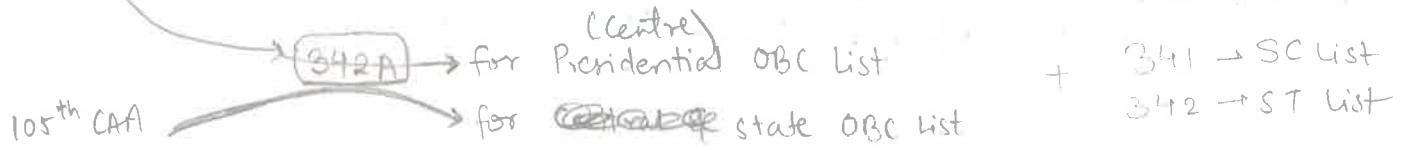
To look into Sub-categorization of OBC's.

## II [PERMANENT COMMISSIONS] (FOR BACKWARD CLASSES)

ARTICLE 338 → National Commission for Scheduled Castes

338 A → National Commission for Scheduled Tribes

102<sup>nd</sup> CAA → 338 B → National Commission for Backward classes



Reservation → VERTICAL → on basis of Caste  
 Reservation → HORIZONTAL → on any other grounds  
 Eg: Disability, Woman, LGBTQ etc.

ST [CLASS = CASTE]

# B.P. MANDAL COMMISSION: B.P.M.C

- was constituted in [1979]. [during Moraji Desai (Janta Party) Govt.]
- Submitted its report in [1980] (during Indira Gandhi's; but didn't accept B.P.M.C's recommendation.)

(Recommended that):

→ 27% of Reservation can be provided to OBC

↓  
V.P. Singh Govt. [in 1990] accepted the recommendations of B.P. mandal commission

→ Again in 1991 Govt. gave Additional Reservation

for Poor sections in UnRESERVED Category [ $10\%$  to EWS]

(CASE):

↓ [1992]  
Apex Court in INDRA - SAWHNEY vs UNION OF INDIA  
ruled that [= MANDAL CASE]

Ⓐ The TOTAL Reserve Quota shouldn't exceed 50%. [except in extra-ordinary conditions]

Ⓑ 10% Reservation for Poor sections of UnRESERVED Category was held <sup>VOID</sup> on the ground that Economic Deprivation isn't a criteria to provide reservation.

[The same was Breached through 103<sup>rd</sup> CAA 2019 by inserting Article 15(6) & Article 16(5) for Economically weaker Sections]

1st Indian PM not belonging to Congress party  
→ Moraji Desai (Janta Party) Govt.

(C) OBC community getting 27% Reservation was held valid subject to Application of CREAMY LAYER

[In pursuant of Apex Court judgement, Govt. constituted RAM-NANDAN Committee to identify Creamy Layer among OBC's]

(D) The Reservation shall be restricted to Appointment / Entry Level but not in matters of Promotion.

[The Parliament by <sup>77<sup>th</sup> CAA extended Reservation in Promotion to SC / ST communities] (ARTICLE 16(4A))</sup>

(E) A Permanent Statutory Body should be established to examine complaints of OVER-INCLUSION and UNDER-INCLUSION IN List of OBC's.

[102<sup>nd</sup> CAA → Article 338B → NCBC]

### B.P. Mandal Commission:

"THERE IS EQUALITY ONLY AMONG EQUALS.  
TO EQUATE UNEQUALS IS TO PERPETUATE INEQUALITY"

(Like to be treated alike,  
Unlike " " unlike)

## RESERVATION IN PRIVATE SECTOR

→ The States in recent times have Reserved Seats in PRIVATE SECTOR for their Residents

→ For Example :

The Law passed by Haryana State Legislature has been challenged and under Judicial Review

[Reserving 75% of private jobs in Haryana for its Residents]

• CHALLENGED bcoz : VIOLATIVE OF:

(1) ARTICLE 14 → UnArbitrary classification

(2) ARTICLE 19(1)g → Right to practice <sup>any</sup> occupation, Trade or profession

} This should have been fulfilled

### CHALLENGES OF Reserving Seats in PRIVATE SECTOR :

1) Against the Economic Integration of India as One Market



The GST, Other provisions for Inter-State Trade & commerce promote Economic Integration ; while this reservation will be a Dent on "

2) Will lead to Similar Responses by other States

3) may lead to shifting out of Industries  
↳ Flight of Capital

4) Against the Spirit of Constitution that gives Citizen the Right to work anywhere in the country.

4) will have Bearing on Labour Market  
and Unemployment Situation.

- (Y such law?) → 1) Public Sector have minuscule proportion of jobs  $\Rightarrow$  so policy needed to regulate private sector jobs to achieve mandate of equality for all citizens
- 2) Since private sectors use public Infrastructure (subsidies, land, electricity)  
state has legitimate right to require them to comply  $\in$  Reservation policy

### # BRIEF ANALYSIS OF RESERVATION IN INDIA:

- (A) The provision of Reservation promotes Substantive Equality [It recognizes that Law must take elements like Discrimination, marginalization, and unequal Distribution into account to achieve equality & equity]
- (B) It is to Adhere to Principles of Social Justice and Equity
- (C) Based on Principle of Reasonable Classification
- (D) There should be Equity in all Social & Economic Walks of Life

M.G.  $\rightarrow$  whenever you doubt  $\rightarrow$  think of Poorest of poor  
(Bapu)

## ARTICLE 17

: Abolition of Untouchability

Untouchability is abolished and its practice in any form is forbidden.

- The term Untouchability has not been defined in the constitution.
  - The term Untouchability has WIDEST OF AMPLITUDE (interpretations) and deliberately left open ended.
  - It has been made OFFENCE by Article 17.  
 And ARTICLE 35 mandates the Parliament (<sup>Not State Legislature</sup>) for prescribing punishment for offences in PART-3 including Untouchability.
- ↓
- The Parliament of India enacted SC/ST-Prevention of Atrocities Act, amended from time to time.

# SC / ST Prevention of Atrocities Act

## (A) NEW OFFENCE ADDED:

- (I) Garlanding SC / ST with footwear
- (II) Compelling MANUAL SCAVENGING
- (III) Threatning | Imposing Social Boycott
- (IV) Sexual Exploitation of SC / ST women
- (V) Preventing SC / ST from places of public  
Worship, Education or Health

## (B) ROLE OF PUBLIC SERVANTS DEFINED:

- (I) Mandatory Registration of FIR
- (II) Giving a Copy & Reading of FIR
- (III) Failure to Perform Duties | Neglection  
would lead to Imprisonment.

(C) A NEW CHAPTER FOR  
RIGHTS OF VICTIMS AND WITNESSES:

→ The State must specify schemes for the protection of Victims and Witnesses.

⇒ COURT JUDGEMENT:

\* Shubhash Kashinath Mehejan Vs State of Maharashtra:

[S.C ruled that]: in SC/ST Act

- a) Prima facie inquiry shall be conducted before the Registration of FIR to ascertain the veracity of the complaint.
- b) No arrest shall be done without the permission of SSP. (senior S.P.)

⇒ Parliament Later Amended the Act to do away with the above (PRE-CONDITIONS) and also added that PROVISIONS OF ANTICIPATORY BAIL shall not apply to SC/ST Act. (CrPC ⇒ Sec 438)

Acts/Laws → 15-16 + Current Affairs  
(For mains)  
+ Prelims

↓  
→ don't do section  
→ only synopsis of Powers + Functions

Topic

## ACTS | LAWS

: Only synopsis + Powers + Functions [Not Deeper or sections]

- 1) RTI Act
- 2) MNREGA Act
- 3) Lok-Pal - Lokayukt Act
- 4) PESA Act (panchayat Extension to Scheduled Areas)
- 5) Right of Traditional Forest Dwellers & ST , Act (2021 P)
- 6) SC / ST Prevention of Atrocities Act
- 7) Protection of Human Rights Act
- 8) Right to free and Compulsory Education Act (2022 M)
- 9) AFSPA Act
- 10) Child and Adolescent Prohibition and Regulation Act
- 11) Food Security Act (2021 M)
- 12) Environment Protection Act, (2022 P)
- 13) Wildlife Act
- 14) Right to fair compensation & Rehabilitation Act
- 15) Rights of P & Disabilities (2022 M)



UAPA / DSPE / PRS legislation (some provisions)

6.5 Bailable  $\Rightarrow$  Prisoner has Right to Bail  
[i.e. Court doesn't have Discretion]

Non-Bailable  $\Rightarrow$  Court is at Discretion  
for giving Bail

## ARTICLE - 18 : Abolition of Titles

- (1) Indian state shall not confer any Titles except Military or Academic.
- (2) [Indian citizens] shall not Accept Title(s) from a Foreign State.
- (3) Any person who is [not a Citizen of India] shall not accept Any title of Foreign state without the President's Consent if he works in an office of profit or Trust.
- (4) [Any person] working in office of profit or Trust (Citizen / Non-Citizen) cannot accept any Gift / Emolument(s) / Perks without the consent of President.

★ Ministerial Offices are not under OFFICE OF PROFITS.

- ⇒ Maximum No. of Bharat Ratnas to be awarded in a year = 3
- ⇒ PADMA Awards don't come under the Category of Title [Balaji Raghavan Case]

⇒ Awards cannot be used as Prefix | Suffix

⇒ Padma Award Committee is headed by  
Cabinet Secretary;

⇒ For Padma Award, anyone can Nominate  
Himself | Herself.

⇒ Article 18 is not justiciable, so even if  
anyone takes title, he/she won't face punishment.

\* → Embassies are Islands of Foreign territories  
; so law of the country (of that embassy) would  
apply to it.

→ Titles will <sup>cause</sup> unreasonable distinctions and inequalities in  
the society

\* → The Term (office of profit) isn't defined in the constitution

## ARTICLE 19

certain

Protection of Rights regarding  
Freedom of Speech; etc.

Clause 1) All the Citizens shall have the right to-

Sub - " a) Freedom of Speech & Expression

→ It is not an absolute but a reasonably restricted one.

Clause(2) → Reasonable restrictions can be imposed on the grounds :

- Sovereignty & Integrity of India
- Security of State
- Friendly Relations with Foreign state
- Public order
- Decency or Morality
- Contempt of Court
- Defamation
- Incitement to an offence

Potential  
UPSC

→ The restrictions can be imposed by a Law.  
passed by parliament.

① → Speech is Verbal expression  
while, Expression is of widest Amplitude  
↓ includes  
Cartoons, gestures, E-mails, [silence] etc.

- S.C has ruled time and again that Freedom of Speech & Expression is the most important facet of a Democracy.
- In K.S. PUTTUSWAMY Case;  
↓  
Justice D.Y. Chandrachud stated that "Dissent is the safety valve of Democracy".
- In Shreya Singhal Vs Union of India  
↓  
S.C. struck down Sec 66 A of IT, Act, [2000] as being violative of Article 19(1), because it placed Unreasonable restrictions by using vague terms like - Annoyance, inconvenience, obstruction etc.
- Right to be silent is a part of Article 19(1)(a).
- Implied Consent is a part of Expression

② → Sedition has been a matter of Contest for judiciary since post-independence.

↓  
Many see it as a COLONIAL LEGACY to stifle dissent.

→ S.C in Kedarnath Singh Case, upheld Sec 124 A.

→ In 2022, S.C again is Re-examining the Constitutional Validity of Sec 124A. And has put a moratorium [pause] on filing of new cases under this section.

As of 2022

③ \* HATE SPEECH [Covered in June MM, 2022]

④ → Cinematic Expression should be allowed and unreasonable restriction on any form of artistic expression shouldn't be held valid.

1 (b) → Right to Assemble peacefully without arms

(3) → Reasonable restrictions can be imposed in the interest of -

- Sovereignty and Integrity of India
- Public Order

→ Magistrate can curb an Unlawful Assembly if he/she feels there is threat to public order, under Sec 144 of CrPC.

→ Sec 141 of IPC defines Unlawful Assembly.

\* [All offences are defined in IPC]

→ "Bandhs" are illegal & unconstitutional

Kerala HC judgement & reaffirmed by SC.

As they impair the Social, Economic and Political fabric of the Nation [Bharat Kumar Case]

Kerala HC case

→ In T.K Rangarajan Case, S.C ruled Right to Strike is not a Fundamental Right, but it is not illegal.

→ Everyone is conscious of his/her Duty, right won't be far to seek  
→ Liberty is the freedom guarded by Law

1(c) → Right to form an Association / Union  
Co-operatives

(4)→ Reasonable Restrictions can be imposed on  
the grounds of -

- Sovereignty & Integrity of India
- Public Order
- Morality

→ Right to form an Association also includes  
Right to continue with the membership &  
to AVOID joining an Association.

\* → 97<sup>th</sup> CAA added this clause

\* → Co-operative is a State Subject.

I (d) - Right to Travel throughout the Territory in India

(5) → Reasonable Restrictions for it are:

- In interest of General public
- & S.T.

[CLASS-II] [21/8/22]

Foreigners can travel throughout the country, but they don't have a Right ||  
But, [There is a "BIG WORLD BEYOND Fundamental Rights".]

- The Right to Travel abroad is an Implicit Right under Article 21.
- The Right to Travel throughout the country though is covered in Article 19 1(d) but for abroad it is Article 21.
- The Right to Travel abroad is also necessary to Enjoy Fundamental Right under Article 19 1(g) i.e The Right to practice profession.
- The Foreign Nationals don't enjoy such Rights.

→ Inner Line Permit under Bengal Eastern Frontier Regulation prohibits certain areas from being visited by Indian Nationals without government's permission

→ Protected area Permit under BEFR is applicable for Foreigners for vast areas in the country.

### I (e) Right to Reside and Settle Throughout the Territory of India

(5) → It can be Restricted in the interest  
of :

- General Public & S.T.

### I (f) Right to Property Repealed

→ It was deleted by 44<sup>th</sup> CAA and  
added as Article 300 A; wherein  
"NO PERSON SHALL BE DEPRIVED OF  
HIS PROPERTY, SAVED BY AUTHORITY  
OF LAW."



- \* The remedy doesn't lie in Supreme Court directly anymore; as it is NO MORE A Fundamental Right [just a Constitutional Right]; so High Court is 1<sup>st</sup> approached.

1(g) Right to practice any Trade, occupation  
, profession or Business

[6] → The STATE can prescribe Qualification  
for any profession or Reserve a Business  
fully / partially for itself.

## ARTICLE 20

: Protection in respect of conviction for offences

### ① NO EX-POST FACTO LAW:

- The Criminal Laws cannot be retrospectively applied. [to a crime committed in past]
- Civil Laws can be applied retrospectively [HATHI CORPORATION CASE]. [Eg: Tax Laws.]

### ② NO SELF-INCrimINATION:

- The self-Incrimination cannot be forced.  
i.e. NO PERSON SHALL BE FORCED TO BE A WITNESS AGAINST ONESELF.

#### # Exemptions:

- The Confessional Statements though are permitted
- The Giving of Signature, Thumb Impression are not protected under Self Incrimination.
- DNA Test has also been permitted in Paternity Disputes.

DNA  
fingerprint

Compulsory  
for paternity  
Testing

Narror Analysis

can't be done  
forcefully

also can't be used  
as a sole evidence  
to convict someone

### ③ NO DOUBLE JEOPARDY :

- No person shall be punished for the same Crime Twice.
- It doesn't include departmental proceedings, administrative actions.

Prisoner Identification Act

~~provided~~ available against State only

## ARTICLE 21 : PROTECTION OF LIFE & PERSONAL LIBERTY

No person shall be deprived of his/her Life or personal Liberty except procedure established by Law.

Due process of law	Procedure Established by Law	EBL	EPL
→ From American Constitution → Broad	→ From Japanese Constit. → Narrow	→ British +ve concept	→ American +ve concept

→ The term Procedure Established by Law is narrow when compared to Due process of Law

→ In A.K. GOPALAN CASE, S.C. took narrow interpretation of Article 21.

It held that under this; only arbitrary executive action can be saved from but not " Legislative action. [In Due process of law ⇒ Both arbitrary executive & legislative actions are under judicial Review.]

→ S.C, later in Maneka Gandhi Case, 1978, overruled the Gopalan Judgement that it can also check the Fairness, justness & Reasonability of legislative act while exercising Judicial Review

Thus, the elements of Due process of law were brought in Indian jurisprudence by S.C through this case. (But still, our constitution hasn't fully adopted Due process of law).

→ Due process of Law gives Widest Amplitude for judicial review to S.C.

→ The Apex Court in Maneka Gandhi Case expanded the ambit of Article 21 to state that "Life doesn't mean mere Animal Existence".

### IMP. CASES Related to RIGHT TO LIFE :

1) Sunil Batra Case → Right to Healthy Life

2) Hussainara Khatoon Case → Right to Speedy Trial

3) Vellore Citizen's Welfare Forum Case → Polluter pays Principle was established

4) Kiran Bedi Case → Right to Reputation

5) M.C. Mehta Case → Right to Clean Environment  
[State Acts as a Trustee for general public Benefit]  
(good)

→ It is said that "Even if all the other fundamental rights are deleted ; Article 21 acts as guarantee/protector of the aspects of other F.R."



⇒ If <sup>(Art. 21)</sup> it is interpreted in a liberal manner ; it will include all aspects of other Articles [F.R.]

# RIGHT TO DIE AS A PART OF RIGHT TO LIFE:

- ① → The S.C initially in P.RATHINAM CASE ruled that Right to Life includes Right to Die. and declared IPC 309 as Unconstitutional.
- ② → Then Later, Apex Court in Gyan Kaur Case (Gyan) ruled that RIGHT TO LIFE Doesn't INCLUDE RIGHT TO DIE and brought back IPC 309 as Constitutional.
- ③ → On the petition of Pinky Vermaani, S.C gave Landmark Verdict in Aruna Shanbaug Case that PASSIVE EUTHANASIA can be permitted on Case by Case basis by Jurisdictional High Court after constituting a Medical Board. (3-member)  
(2 members)
- ④ → Common Cause, an NGO filed a petition in S.C crt Right to Die as a part of Right to Life
  - ↓
  - Since there were inconsistencies b/w Gyan Kaur & Aruna Shanbaug, a Constitution Bench was made to bring Final Clarity over the Legal issue.
  - ↓
  - ⑤ In Common Cause Case, S.C ruled that Right to life includes Right to die = Dignity.  
(in vegetative state / coma)

- B) It also brought the concept of Living will or Advance medical Directive in above case.  
(common cause)
- C) Apex Court also observed that Welfare of the patient shall be of paramount.

### ARGUMENTS IN FAVOUR OF PASSIVE EUTHANASIA

- 1) It gives Dignity to Dying person.
- 2) The facility (medical) can be given to some other patient to save his/her life.
- 3) It will relieve the family members of physical / mental / financial stress.

### ISSUES WITH PASSIVE EUTHANASIA:

- 1) There can be No anticipation of a future Tech. that can bring the person back to normal life.
- 2) Susceptible to Misuse  $\Rightarrow$  can become a "NORM"
- 3) Sanctity of Life is reduced.

→ National Mental Healthcare Act <sup>been</sup> has diluted /  
widely Decriminalized to a large scale.

# RIGHT TO PRIVACY: as a Part of Right to Life

→ In K.S. PUTTUSWAMY Vs Union of India  
the Constitution bench of S.C. ruled that  
RIGHT IS PRIVACY is an inherent part of  
RIGHT TO LIFE

→ The court specifically stated that Privacy  
crt Health, Family, Life, Marriage etc.  
are Core tenets of Human existence

→ Though, Right to privacy is not an ABSOLUTE  
RIGHT, it can be breached subject to 3 tests:

- ↓
- A) Doctrine of proportionality
  - B) must be backed by a Legislative Mandate (Law)
  - C) must be for a Legitimate Cause  
(aim)

ARTICLE 22

: Protection against arrest and detention in certain cases

- The liberty of an individual is of highest value in any liberal democratic state.
- The Constitution of India under Article 22 gives protection when liberty is curtailed in punitive detention
- These protections aren't available in cases of **PREVENTIVE DETENTION** or to an **ENEMY-ALIEN** -

a) Every person who is arrested shall be produced before the Nearest **Magistrate** in 24 hrs. excluding the journey time.

b) The <sup>arrested</sup> person shall be informed the **Grounds** of his/her arrest

c) The <sup>arrested</sup> person shall be allowed to consult **Legal practitioner** of his/her choice

These 3 provisions available only in  
Punitive Detention

[Judicial magistrate is a part of Executive]

[18 sunset clause]

Sunset Legislation → my law is a date of expiry]

Potential  
Q

PREVENTIVE DETENTION LAWS can be enacted by both Parliament and State Legislature

[on other matters of Part-3  $\Rightarrow$  only Parliament can make laws]

Preventive Detention also gives protection like:

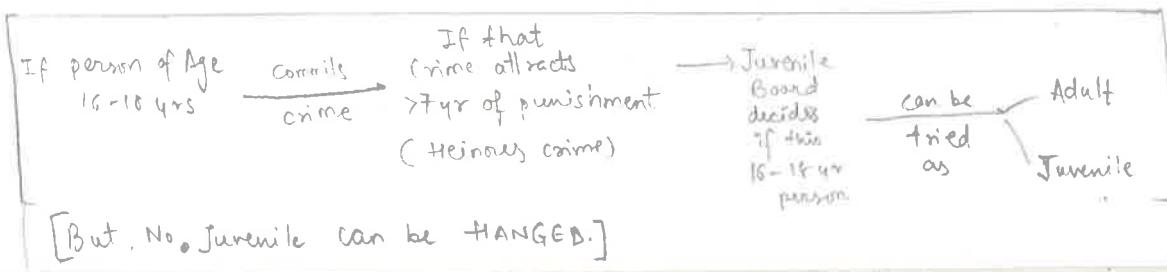
- a) Ground of Detention shall be communicated unless it is against public interest [Time-limit undefined]
- b) The Detainee shall be given an opportunity to make a representation against the Detention order.
- c) The Detention can't be extended beyond 3 months unless an Advisory Board consisting of persons who are (serving) / have been (Retired) / Qualified to be High court judge; is set up and extends detention before 3 months completion

### CASE:

$\Rightarrow$  In A.K. Roy Case  $\Rightarrow$  Apex court upheld the constitutional validity of National Security Act.  $\checkmark$

Judicial Custody

Police Custody  $\rightarrow$  max. 14 days



## ARTICLE 21(A) : Right to Education

- Apex Court in **Mohini Jain Case**, interpreted Article 21 to include Fundamental Right to Education upto Higher Education Level.  

- Later, S.C. diluted its verdict in **J.P. Uni Krishnan Case** wherein it understood that it isn't economically feasible to provide Education as an Implicit fundamental right upto higher Education level.  
So, it restricted it to School level upto Age of 14.
- **86<sup>th</sup> CAA, 2002** made following changes:
  - A) Added **Article 21(A)** ⇒
    - ① Right to Free & Compulsory Education to all children
    - ② in Age group 6-14 yrs in
    - \* ③ the manner state may determine by law.
  - B) It added 11<sup>th</sup> Fundamental duty in **Article 51(A)** where, it is the duty of parent/guardian to send their children to school.

c) The Age in Article 45 was reduced from Age 0-14 to 0-6 yrs. for Free & Compulsory Education and Early Childhood Care.

→ The Parliament of India enacted Right to Free & Compulsory Education <sup>Act, 2009</sup> to properly implement Article 21 A. to:

(A) Age-Appropriate Classroom

(B) No Capitation Fees [No Donation fees]

(C) No physical punishment

(D) Financial Burden shall be shared b/w Centre & States.

(E) School Management Committees shall comprise of Parents, local representatives etc.

(F) There should be a Neighbourhood School.

(G) There should be a Healthy Teacher : Pupil ratio.

(H) Annual Status of Education Report by PRATHAM NGO highlights the Qualitative aspect of Education

↓  
→ The students aren't able to solve Basic Arithmetic and science Q's.

→ So, Quality of Education remains a concern.

(2) State can impose Compulsory service for public purposes and not make any Discrimination on grounds of Race / Religion / Caste or class.

## ARTICLE 23

: Prohibition of Traffick in Human beings and Forced Labour

(1) The Traffic in Human beings and Begari and other similar forms of forced Labour are prohibited and shall be an offence in accordance with law.

→ Only the parliament can prescribe punishment for offences under Fundamental Rights.

[BLA Act]

→ Parliament has enacted Bonded Labour Abolition Act and Immoral Trafficking Prevention Act

[ITP Act]

### CASES:

→ In Asiad Case, S.C ruled that even the payment of wage less than minimum wage shall be violative of Article 23.

→ In Bandhua Mukti Morcha Case, the Apex Court ruled that forced Labour in any form should be prohibited and it is a BLOT on a democratized society.

## ARTICLE 24

: Prohibition of employment of children in factories etc.

No child below the Age of 14 yrs shall be employed in Factory / Mine or Hazardous employment.

Potential  
The Constitution doesn't place a blanket ban under Article 24.

The Child & Adolescent Labour [Prohibition & Regulation] Act has extended the ban to cover all forms of child labour. [BLANKET BAN]

→ Apex Court in (M. C. Mehta Case) held that Match Stick Industry in Sivakasi area to be Hazardous for children.

[International Labour Org.]

→ India has ratified 6 out of 8 ILO conventions and made changes in Domestic Law to synergise International practices.

F.R. to be Theist → Explicit Right  
Atheist } Implicit Right  
Agnost

Religion ⇒ Illegal ⇒ go to court ⇒  
conversion

## ARTICLE 25: Freedom of conscience & freedom of profession, practice and propagation of religion

(1) Subject to Public Order, Morality & Health, all persons are equally entitled to freedom of conscience, profess, practice and propagate Religion.

→ Apex court observed that all persons have

- Explicit F.R. to be Theist (Hindu, Muslim, Christian, etc.)
- Implicit F.R. to be Atheist or Agnost.  
(50% Theist & 50% atheist)

→ Secularism held to be a Basic Structure; as in:  
Kesavananda Bharti Case  
S. R. Bommai Case

→ Dr B.R. Ambedkar stated that Religious conceptions in India are so vast that they cover every aspect of life from Birth to Death.

- The rights under Article 25 are Qualified, not Absolute
- Freedom of Religion was incorporated in USA constitution by 1st CAA.
- State can open Hindu Religious institutions for all classes & sections of Hindus.

- Article 25 is an Individual Right.
- Article 26 is a Collective Right.

### CASES:

1) S.C. in Shahbano Case ruled that the provisions of Section 125 of CrPC shall be applied and even a Muslim woman can seek maintenance out of personal Laws. (Muslim Shariat Act)

2) Parliament enacted Muslim Women (Protection of Rights on Divorce) Act, where maintenance shall be given only for 3 months and [post that the relatives / Waqf Board shall take care.]

3) In Shayara Bano Case, S.C. ruled that Instant Triple Talaq (which is  $\Rightarrow$  irrevocable) is UNCONSTITUTIONAL and is Talaq-e-Biddat is an innovative practice & NOT THE CORE ELEMENT of religion.

4) The parliament enacted Muslim Women (Protection of Rights on Marriage) Act, making Instant Triple Talaq, criminal, cognizable & compoundable offence.

arrest without warrant

Non-negotiable

## ARTICLE 25

2 (b) State can throw open Hindu Religious Institutions of public character to all classes and sections of Hindus for proving social welfare.

## SABRIMALA ISSUE

: Banning <sup>Age</sup> ♀ [10-50 yrs] <sup>in</sup> [menstruation]  
from entering temple on ground  
that deity of temple was a  
complete celibate

→ Rule 3(b) of Kerala Temple Authorization of Entry Rules [made under the Parent Act KTA of Entry Act] were challenged for being violative of :

- a) Article 14
- b) Article 25
- c) Parent Act

→ The Apex Court in Young Lawyers Association Case

- A) The rules are violative of Parent Act, because they prohibit Entry of women in Age group 10-50 yrs inside Sabrimala Temple Complex.  
★ [as Parent Act is about Entry & Rules talk about Prohibition in Temple]
- B) The S.C. also found them violative of Article 14 [Arbitrary classification]  
Article 25 [a ♀'s Right to practice her Religion]  
Article 25 & 26 need to be read in Harmonious way

- {
- c) The rules also promote Hegemonic Patriarchy
  - d) S.C also found them violative of Article 17
  - e) Apex Court also ruled that these followers of Lord Ayappa don't form a Separate Denomination. [so this <sup>prohibited</sup> practice isn't a essential practice acc. to Doctrine of Essentiality]

Justice Indu Malhotra Ma'am:



In her dissenting Opinion, observed that the Constituted rules had in it the Essential practice; thus it is Constitutionally valid.

Many review Petitions were filed challenging the Verdict and the matter has been referred to a Constitution Bench.

OBITER DICTA  $\rightarrow$  Observation of court [Normal statement that helps to under court's decision]

RATIO - DECIDENDI  $\rightarrow$  Reasons for the judgement of court on a case

Constitutional Bench  $\left\{ \begin{matrix} \text{max - 13} \\ \text{min - 5} \end{matrix} \right\}$  odd No. only

Petition  $\Rightarrow$  Judgement  $\Rightarrow$  Review Petition  $\Rightarrow$  Curative Petition

Collective  
Right

## ARTICLE 26

: Freedom to Mx  
Religious Affairs

Subject to Public order, Morality & Health

Every Religious Denomination or any section shall have Right to :

- Establish & maintain Institutions for religious and charitable purposes
- To manage its own affairs in matters of religion
- To own and acquire movable/immovable property.
- Administer such property in accordance to law.

### COURT CASE:

→ S.C. in Tilkayat vs State of Rajasthan ruled that Right to manage properties of a temple was a Secular matter and NOT a religious.

### In Sardar Singh Case

Administration of property by Religious Denomination can be Regulated by law.

→ The Separate Denomination Test is mainly determined through aspects such as:

- A) It should have a Common Organization
- B) Should have a Distinctive Name
- C) Should be a Collection of Individuals with Common Belief.

## ARTICLE 27

Freedom as to Payment of Taxes for promotion of any particular Religion

- exhibits positive character of Indian Secularism
- State maintains an Equidistance and patronizes all Religions

No person shall be compelled to pay taxes ; the proceeds of which shall be used to promote any particular Religion ;  
[but it can be used to promote All Religions equally]

### COURT CASE :

→ Ramchandra Vs State of West Bengal

S.C. ruled that

Fees can be Levied to provide certain facilities  
and for proper maintenance

Tax on Tax = Surcharge

Direct Tax => Here, Incidence can't be shifted  
Indirect Tax => Here, " can be shifted

## ARTICLE 28

: Freedom from Attending Religious Instruction

- It establishes the Secular character of Education system in India
- It can be broadly classified in 3 parts:

1) No Religious Instruction shall be imparted into an Educational Institution wholly maintained out of State funds.

2) Clause [2] is an Exception to clause [1]

↓  
Religious Instruction can be imparted into an Educational Institution administered by the state [established under any endowment or trust] that requires Religious Instruction to be imparted.

3) All such Institutions which receive Aid or Recognition from state can Impart Religious Instruction only with the consent of the person [guardian] if person is minor

(Article 350 a) ⇒ Facilities for Instruction in Mother Tongue at Primary Stage to linguistic minority groups children

⑧ Schools that <sup>are</sup> owned only by a "Religious Denomination"; it is mandatory to attend Religious Instruction given by the school.

## COURT CASE :

### → Aruna Roy Case

↓  
S.C. ruled that:

Religious philosophy / Culture that form  
Part of Indian Society / History can be  
imparted and it is Not violative of  
Article 28.

### → In DAV College Case:

↓  
The Educational Institution imparting a  
particular language spoken by majority  
was held NON-VIOLATIVE of Article 28.

## ARTICLE 29

: Protection of Interests of Minorities

[Court Case]:

- The term Any section of citizens has been interpreted by Apex Court in TMA Pai Foundation Case to include both Majority & Minority Community
- The article is available only to Citizens.

1) Any section of Citizen [Majority & Minority] can conserve their Language | script | Culture.

The Rights under Article 29 have been specifically added to Acknowledge, Respect & Conserve the Diversity of India

2) No citizen shall be denied admission into an Educational Institution either maintained Out of State funds or receiving aid from State on grounds of Religion, Race, Caste, Language.

["Sex" term is missing as Deliberate omission ; to allow state Edu institutions which are women specific]

RR GL

## ARTICLE 30

Right of Minorities to Establish & Administer Edu. Institutions

- exclusively Reserved for Minorities
  - Religious
  - Linguistic
- The Religious & Linguistic Minorities enjoy F.R under Article 30.

①

Provides for F.R to Religious & Linguistic Minorities to establish and Administer Education Institutions of their choice

COURT CASE:

→ St. Stephens Vs Delhi University Case

S.C ruled that :

While Administering an Educational Institution Minorities can Reserve upto 50% seats for their respective communities.

(minorities Linguistic)  
Religious

National Commission for Minorities Act

National Commission for Minorities Educational Act  
Institution

↓  
Empower the Central Govt. to Notify  
Religious Minorities.

(Decided by)

Religious Minorities ⇒ Centre

Linguistic Minorities ⇒ State

As of  
8 Sept. 2022,

→ A petition is pending in Supreme Court wherein Demand to declare Minorities on State basis.

→ The term "Minority" has not been defined in Constitution but literally means Non-Dominant group.

Article 30(1), (2) ?

[CLASS-14] [9/9/22]: Article 19 1(f)

The F.R. to Property was made a Constitutional Right through 44<sup>th</sup> CAA.

The same amendment added Clause 1(A) in Article 30; wherein the

1(A) State while compulsorily acquiring the property of an Educational Institution established and administered by Minorities shall not give them a Compensation that will restrict or abrogate their Fundamental Right under Article 30 i.e. they shall be offered a Market Compensation.

(2) State shall not discriminate b/w a Minority and other Educational Institutions while granting Aid.

ARTICLE 31 has been Repealed by  
44<sup>th</sup> CAA

ARTICLE 31 A: added by 1<sup>st</sup> CAA

→ Here, 5 Categories of Laws are saved from being violative of Rights conferred under Article 14 and 19.

Both  
Parliament &  
State  
can make  
Laws

These laws generally are related to

- Amalgamation of Corporations
- Acquisition of <sup>any</sup> Estate
- Modification of Mining Rights etc.

→ The state shall provide Compensation acc. to Market Value while acquiring a Land of a person under Personal Cultivation within the ceiling limit.

Article 38 → minimize inequalities in income  
39(c) → prevent concentration of wealth / Socio-Eco. / welfare state

## ARTICLE 31 B

- 1<sup>st</sup> CAA added Article 31 B and IX<sup>th</sup> Schedule to the Indian Constitution.
- ARTICLE 31 B is the Corresponding Article to IX<sup>th</sup> Schedule of constitution.
- ARTICLE 31 B provides for :

Immunity to All those Laws which are inserted inside IX<sup>th</sup> schedule for violating any of Fundamental Rights

↓  
Purpose of IX<sup>th</sup> Schedule was to mainly Immunize Laws related to Land Distribution by ZAMINDARI ABOLITION ACTS.

(In Pakistan ⇒ there haven't been Land Reforms till yet)

(Not through Bullet ⇒ Through Ballot)

## COURT CASE :

→ Apex Court in J.R. COELHO CASE ruled that :

All those Laws that are inserted in IX<sup>th</sup> Schedule after 24 April 1973 shall be judicially reviewed for the violating [ARTICLE 14 AND OR Basic Structure of Constitution]  
[15  
19  
21]

→ Basic Structure Doctrine and Judicial Review being an important component was upheld in Keshvananda Bharti Case.

- Scope of Article 31 B is wider than 31 A. as 31(B) included all Laws & 31(A) had only 5 Laws under it.
- Purpose of Article 31 B gets defeated if Laws other than those related to DPSP are (Land Redistribution) by zamindari Abolition Acts inserted inside IX<sup>th</sup> Schedule.

In Keshvananda Bharti Case

2 CAA were challenged

24<sup>th</sup> CAA  
regarding the term Law in Article 13

25<sup>th</sup> CAA  
which added Article 31C & exempting it from judicial review

## ARTICLE 31 C

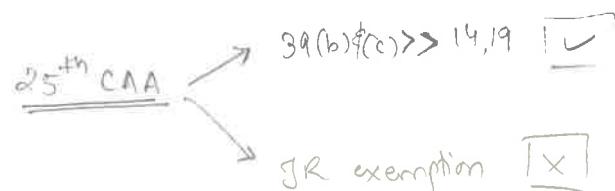
→ 25<sup>th</sup> CAA added Article 31 C wherein;  
The State while making Laws to implement  
Article 39 (b) & (c) Immunes them from  
being violative of Article 14 & 19.

→ The 25<sup>th</sup> CAA was challenged in Keshvananda  
Bharti Case

The Apex court ruled that :

A) Article 39 (b) & (c) implementation violative  
" 14 & 19 is valid

B) Exemption from Judicial review is Constitutionally  
invalid because Judicial Review is part of  
Basic Structure of Constitution



Article → 39 (b)

→ Parliament further amended constitution and provided for by 42<sup>nd</sup> CAA :

Any Law seeking to implement Any DPSP's can violate Article 14 & 19.

42<sup>nd</sup> CAA

→ Any Law for >> A-14, 19  
any DPSP



→ The above change was held INVALID by Apex court in Minerva Mills Case.

### Current Status of Article 31 :

→ Any Law implementing Article 39(b) & (c) can violate Article 14 & 19

## ARTICLE 32 : Right to Constitutional Remedies

- Rights are legally protected interests.
- Fundamental Rights has NO VALUE without sanctity of implementing them.  
∴ Implementation of F.R is also a F.R under Article 32
- Apex Court can directly issue WRITS for violation of F.R only.  
while, High Courts can issue WRITS for violation of F.R or any other Rights.

∴ Writ jurisdiction of HC is wider than SC

- The Article 32 has been hailed as HEART AND VERY SOUL of the Constitution.

Court Case

⇒ I.R Coelho Case: Article 32 is an integral part of Basic Structure (feature) of constitution.

Article 226 ⇒ H.C. writ jurisdiction

## LOCUS STANDI

: aggrieved should seek remedy

→ The principle of it is:

- Enforceability and if the principal is applicable; only the Aggrieved person can seek remedy.

→ While, in the situations where Locus Standi is Waived:

- Any person can seek Remedy on the behalf of aggrieved.

Eg: PIL [Public Interest Litigation]

OBITAR DICTA ⇒ Observations made by court (in case)

Ratio Decidendi ⇒ <sup>Binding</sup> Decision by court

## Principle of Natural Justice

- 1) Audi alterum Partum ⇒ listen to Both parties before dispensing justice
- 2) Fair Trial
- 3) No one to be a judge in their own case

# **WRITS** : is an order. [Anything issued under an Authority is a Writ]

**HABEAS CORPUS** :

↓      ↓  
TO HAVE      BODY

→ means = TO HAVE BODY OF

**ROLE** { → To check Legality of a Detention

→ This Writ is an Important thing for securing Personal Liberty.

→ Can be issued against Public Authorities

Private Individuals

→ Can't be issued when :

- Detention is Lawful /
- By a Competent Court /
- Contempt of Court or legislature /
- Detention outside Court's jurisdiction

Process

Person files a PIL ⇒ court will issue Habeas Corpus ⇒ Justice done

## MANDAMUS : [ TO DO ]

[=We command]

- issued by Court to a public official to perform a duty which a " failed / refused to perform
- The writ can be issued a
  - Corporation /
  - Inferior Court /
  - Tribunal /
  - Government
- Mandamus can't be issued if the Duty is discretionary in Nature.

## PROHIBITION : [ TO FORBID ] [ NOT TO DO ]

PREVENTIVE IN NATURE

- issued by Higher Court to a Lower Court to prevent them from exceeding their jurisdiction / usurping a jurisdiction which they don't possess.
- issued against
  - ↑ Judicial /
  - Quasi-Judicial Bodies

## CERTIORARI: [= To be certified]

[PREVENTIVE & CURATIVE IN NATURE]

- [HC takes the case from Lower Court if HC exceeds its jurisdiction] [HC corrects error of Lower court]
- issued by a Higher Court to Lower Court
  - To transfer a Case pending with " " to HC
  - Quash the order of Lower court on the grounds like: Error of Law

- can be issued against
  - Judicial
  - Quasi-Judicial Bodies

Administrative Authorities

[In cases of Rights affecting individual]

## QUO WARRANTO: [= By what Authority?]

→ The Principle of Locus Standi doesn't apply here. [i.e. anyone can file case]

→ To check Legality of a person holding Public office of permanent character.

→ It cannot be issued against

- PRIVATE OFFICE
- MINISTERIAL OFFICE

## ARTICLE 33)

The fundamental Rights of

-Armed Forces ,

- Forces in connection with Public order

-Intelligence

-Counter-Intelligence

Can be restricted for

Maintenance of Discipline among them  
Proper Discharge of their Duties

→ Parliament has enacted :

- a) Police forces Restriction of Rights Act.
- b) Army Act
- c) Navy Act

## ARMED FORCES SPECIAL POWER ACT

→ It is De-facto Martial Law & Not De-jure <sup>Martial</sup> Law  
(In-practical) (Not on paper)

→ This is a Law enacted in 1958 to deal with matters related to indemnifying <sup>forgiving</sup> of certain acts during the Deployment of forces of Union to aid Civil Administration.

### FEATURES:

① Governor of a state / Administrator of Union Territory / Central Govt

↓  
can declare an area as Disturbed Area

→ Apex Court

Naga people's Movement of Human Rights Case

↓  
ruled. The Declaration of an area as Disturbed Area shall be periodically reviewed every 6 months.

- ② Declaration of an area as Disturbed Area; confers powers such as
- a) firing to an extent of Causing Death
  - b) Maintenance of Public Order
  - c) Destroy an Arms Dump
  - d) Arrest out Warrant
  - e) Enter & search without Warrant

- ③ Arrested person has to be handed over to the Nearest Police Station with Least Possible delay.

Case: Also re-affirmed in Horendi Gogoi Case

- ④ No prosecution suit / Legal proceedings shall be instituted against any person for anything done under the Act without the previous sanction of Central Government.

## ARTICLE 34

Restriction on Rights conferred by this part while Martial Law is in force

## MARTIAL LAW

- Not defined in Constitution
- No grounds mentioned.

→ Parliament may be Law indemnify <sup>[Act] (=forgone)</sup> ~~an act~~  
done by a person in service of <sup>^</sup>Union/  
State | or any other person in connection  
of Maintenance or Restoration of order

→ The Act of Indemnify enacted by Parliament  
doesn't lead to any challenge for  
Violation of Fundamental Right.

## APEX COURT:

"The INVOKATION OF MARTIAL LAW doesn't  
lead to automatic suspension of Habeas Corpus"

## MARTIAL LAW

(I)

Grounds  
of  
Enforcement:

NOT MENTIONED  
IN CONSTITUTION

[generally can be imposed in  
Complete Breakdown of  
Public Order]

(II) F.R

Suspension: → Doesn't Ipso facto  
suspend F.R

(III) Area

M.R generally imposed  
in a definite area of  
the Country

## NATIONAL EMERGENCY

3 specific grounds under  
Article 352

- External Aggression
- War
- Armed Rebellion

→ ARTICLE 358 automatically  
Suspends A-19 when  
External Aggression / War  
are grounds.

→ N.E can be imposed  
in Part / Entire Country

## ARTICLE 35 : Legislation to give effect to the provisions of this part

- Empowers Parliament; Not State Legislature to make laws for those acts which are made offence in Part-III.
- Parliament is exclusively empowered to make laws for matters under
- a) Article 16 (3)
- b) Extending Writ jurisdiction <sup>to courts</sup> other than S.C/H.C  
Article 32 (3)
- c) For provisions under Article 33 & 34.







# DPSP's

- The DPSP's have been inspired from Irish Constitution
- They are similar to Instruments of Instruction in GOI Act, 1935.
- Mainly Promote  Social  
Economic } Democracy
- In words of "Granville Austin" [Referring to DPSP's]  
↓  
Constitution of India is equipped with  
TOOLS FOR SOCIAL REVOLUTION.
- DPSP's are "Benchmark for GOVERNANCE".  
\* ↓  
are [Govt's Litmus test] while drafting laws & the Law fails in Court of people if it contradicts DPSP.

66 "Never Accept Govt's Quirking, Never Reject Govt's Understanding"

Supreme Court

S.C. & DPSP

### 1) Paschim Bengal Khet Mazdoor Samiti Case

S.C observed that:

Role of State is that of:

a) Welfare  $\Rightarrow$  Both at Centre & State Level

### 2) MINERVA MILLS Case

Constitution of India rests on Harmonious Balance between F.R and DPSP

### 3) A. K. Thakur Case

DPSP's  $\rightarrow$  are not Sub-ordinate to F.R.

L are Essential for Governance

### 4) Olga Tellis Case

Relevance of DPSP's Stems from the fact that , it is fundamental for Governance.

✓ DPSP's were made Non-justiciable Keeping Economic Capacity of State in mind. [at the time of Independence]

**ARTICLE 36** : Definition

Definition of state in Part III will also be applicable for Part IV

**ARTICLE 37** : Application of the Principles contained in this part

These Principles are Non-justiciable yet they are fundamental for Governance; it shall be duty of state to apply DPSP's in making Laws.

WRITE SDG's in conclusion for

DPSP's answers

## SOCIALIST PRINCIPLES

: 38 | 39A | 41 | 42 | 43  
39 | 43A | 47

### ARTICLE 38 : Promotion of Welfare by State

- Minimize Inequalities in Income &  
Eliminate Inequalities in Status
- Mandate to build a Welfare State &  
build Institutions promoting Social, Political  
& Economic justice

## ARTICLE 39: Certain Principles to be followed by State

- a) Right to Adequate means of Livelihood
- b) Resources of Community shall be subserve the common Good by Equitable Distribution
- c) Economic system shouldn't result in Concentration of Wealth.
- d) Equal pay for Equal Work - for both Men and Women [BCCI India & New Zealand Cricket Board] follows it.
- e) Health and Strength of Workers & children not be abused by Economic Necessity to perform works not suited to Age and Strength.
- f) Children are to be given Opportunities to develop in Healthy manner. [42<sup>nd</sup> CAA]

Direct Tax → Progressive Tax  
In " " → Regressive Tax

## ARTICLE 39 A) Equal Justice & Free Legal Aid

→ added by 42<sup>nd</sup> CAA

- Operation of Legal system promotes Justice  
- on the basis of Equal opportunity &  
③ provide Free Legal Aid

### Legal Services Authorities Act,

- provides free legal aid to certain classes of persons and
- Establish Lok Adalats for Speedy Disposal of Cases

## ARTICLE 41

: Right to   
 Work  
 Education  
 Public Assistance

→ State ~~can~~ in the Limits of its Economic Capacity make Effective provisions for

- Right to work & Education

- Public Assistance in cases of
  - Unemployment (MNREGA)
  - Disablement
  - Any Undeserved Want

Eg: Old Age pension schemes

MNREGA

→ State under Article 41 would strive to Look after that sector of population which is facing any deprivation arising out of multitude reasons; thus aiding the Goal of Welfare State.

## ARTICLE 42

Provision for:

→ Just and Humane Conditions of work and Maternity Relief

→ Maternity Benefit Act has been amended in 2017 extending MB from

12 weeks  $\Rightarrow$  26 weeks

partially has Gandhian Principle too

## ARTICLE 43 : Living Wages for Workers

→ State shall secure by suitable legislation  
Living wage assuring Decent Standard of Life  
- Full Enjoyment of Leisure  
- Social & Cultural Opportunities

## ARTICLE 43 A : Participation of Workers in

Mx of Industries, Undertakings etc.

by the state through suitable  
legislation.

## ARTICLE 47

Duty of State to Improve Level of Nutrition  
and Standard of Living and to Improve

Public Health

This is one of the Primary Duties of State.

*Confirmed  
by students*

Synopsis of  
Gandhiji's own  
Books

## GANDHIAN PRINCIPLE :

- 1) Non-Violence
- 2) Satya-grah
- 3) Fasting
- 4) Civil Disobedience
- 5) Celibacy
- 6) Vegetarianism

{ 1) No org  
2) No timely elections  
3) No uniformity in structure  
4) No position given

### GANDHIAN Principles of DPSP's

Article 40 → Organ<sup>s</sup> of Village Panchayats

[43] → Promotion of Cottage Industries → Individual Co-op Basis  
 → [43B] → for autonomy, Democracy, profess<sup>m</sup> Mx of co-op.

[46] → Educat<sup>n</sup> & Eco Interests of weaker sections

[47] → Ⓛ consumption of intox Drinks except for medicinal use

[48] → prevent slaughter of cow, calver, cattle etc

## ARTICLE 40: Organisation of Village Panchayats

- Organize Village panchayats  
Endow them with such Powers necessary and enable them to function as Units of self Government
- [73<sup>rd</sup> CAA incorporated]  
  - 1) Part IX [Article 243 - 243D]
  - 2) XI Schedule [29 subjects]
- Panchayati Raj Day → 24 April
- Concept of Village Panchayat is based on Gandhian principle
  - a) Village Based Economy
  - b) Idea of self-sufficiency [derived from Village Swaraj]

## ARTICLE 43

→ Promotion of Cottage Industries on Individual and Co-operative Basis

## ARTICLE 43B : Promotion of Co-operative Societies

→ inserted by 97<sup>th</sup> CAA

→ The State shall take steps to promote

- Voluntary Formation
- Autonomous Functioning
- Democratic Control
- Professional M<sub>x</sub> of Co-operatives

- MSME's are classified on basis of Capital
- Cottage Industries are enterprises; where production is undertaken by members of family within the household ~~without~~ Electricity.

## ARTICLE 46

: Promotion of -Educational  
-Economic Interests of

SC  
ST  
Weaker Sections

- State shall promote with special care Educational and Economic Interests of weaker sections in particular SC and ST.
- [ Object and the Reasons of the Bill that became 103<sup>rd</sup> CAA mentions this Article 46 as one of reasons for adding Article 15(6) and Article 16(6)]
- The provision for Weaker sections is from the Gandhian Methods during Constructive Programmes undertaken by Gandhiji.

## ARTICLE 47 :

- The Gandhian principle of Prohibition has been added; wherein

State shall strive to prohibit the Consumption of Intoxicating Drink; except for Medicinal Purposes

## ARTICLE 48 :

- Prevent the Slaughter of cows, calves, milk and draught cattle.

| LIBERAL-INTELLECTUAL |  $\Rightarrow$  DPS's

Article 44 → UCC for the citizens

45 → Early childhood care & Education for 0-6 yrs

48 → Organize Agric & Animal husbandry on model & Sci-lines

48A → Protect of Environ. & safeguarding forest & wildlife by State

49 → State to protect Monuments of historic & national importance

50 → Separate Judiciary from Executive

51 -

## LIBERAL - INTELLECTUAL PRINCIPLES :

Not Resistant to change

### ARTICLE 44 : UCC for the Citizens

- State shall endeavour to secure for the citizens a UCC throughout the territory of India.

### UNIFORM CIVIL CODE:

- In the absence of an agreed definition of UCC; the key areas of contention are:

- a) Marriage
- b) Inheritance
- c) Divorce
- d) Maintenance etc.

India is not <sup>a case of</sup> symmetric federalism ⇒ But an Asymmetric one

India is Not a Land of Melting pot ; but a State of Salad Bowl

## PROS :

- 1) Promote National Integration
- 2) It will lead to an End of Complexity of personal Laws
- 3) Many of Gender-Based Bias deriving their sanctity from Religion would end.
- 4) Lead to a Rational Society
- 5) Beneficial in Better Enactment of Uniform Law, schemes etc.

## CHALLENGES :

- 1) Diversity of India makes it tough to implement and overcome personal laws.
- 2) Diversity Recognized under Constitution under
  - Article 371 A → Nagaland
  - Article 371 G → Mizoram
  - 6<sup>th</sup> Schedule

would need Re-negotiation.
- 3) Law Commission recommended → UCC isn't desirable nor feasible @ this time, Keeping mind the diversity of India

Law Commission [Neither Statutory Constitutional Body]

## COURT CASES:

### ① Miss JORDAN CASE:

→ Need for Uniformity in Marriage & Divorce

### ② JOHN VALLAMATTOM CASE:

→ S.C comprehensively discussed UCC as a necessity for National Integration

### ③ SARLA MUDGAL CASE:

→ No Necessary Relation b/w & UCC being opposed on grounds of Religion.

Matters like  
- Marriage  
- Inheritance etc.

### ④ Shayna Bano Case

### ⑤ Shah-Bano Case

## WAY-FORWARD :

- Stakeholders should be consulted
- Adopted in a Piece-meal approach
- Spread of Awareness about the Benefits  
Society would reap of implementing UCC.
- Sun-Set <sup>UCC</sup> Legislation [to see its effects over a period of time]

## ARTICLE 45

→ Providing Early childhood care and Education to all children until the age of 6 years.

Article 47 → as in socialist principles

## ARTICLE 48

→ Organize Agriculture and Animal Husbandry on Modern and Scientific Lines

## ARTICLE 48A

→ State shall strive to protect and improve environment & safeguard forest and wildlife

Wildlife ⇒ Concourse - List

Murder is not a crime; But Homicide

## ARTICLE 49

: Protection of Monuments &  
Places of Nat<sup>n</sup> Imp.  
objects

→ Atulya Bharat Campaign [Incredible India  
Campaign]

↓  
To ↑ contribution of Tourism in  
India's Economy

→ It shall be the Obligation of State  
To protect Artistic or Historic Interest  
of monuments [declared to be of  
National Importance]

✓ → ASI is an attached office under  
Ministry of Culture [Not a Statutory Body]

\* It also undertakes → Expedition projects outside India  
Under-Water expeditions

## ARTICLE 50: Separation of Judiciary from Executive

→ Separation of Judiciary from Executive in  
the public services of the State.

## ARTICLE 51: Promotion of International Peace & Security

→ It says

- a) promotes International peace & security
- b) Maintain Honourable relations b/w Nations
- c) Foster Respect for International Law
- d) Settle International Disputes by Arbitration





PART-IV(A)

(FUNDAMENTAL  
DUTIES

[ARTICLE 51A]

# FUNDAMENTAL DUTIES

Q, Q, Q, Q

- The F.D were added through 42<sup>nd</sup> CAA
- Fundamental Duties  
PART - IV A & ARTICLE 51 A were added

## COURT CASE:

- ① CHANDRA BHAGAL Boarding Case in 1969
  - "It is fallacy to think that Constitution only has Rights but not Duties."
- ② AIIMS Student Union Vs AIIMS Case
  - Fundamental Duties are also of Interpretative Value

- F.D were added on Recommendation of SARDAR SWARAN SINGH Committee.
- F.D have not been enforced directly through a legislation ; but the parliament has powers to make them enforceable.

→ SOURCE OF Rights is Duty.

↓

If we all discharge our duties;  
Rights won't be far to seek - Gandhiji

→ United Nations Declaration of Human Rights

Specifies that:

↓

"Everyone has duty towards their Community  
and it will lead to free and full  
development of personality."

Article  
29

**ARTICLE 51 A**

It shall be the duty of every citizen of India:

- a) To abide by the Constitution,  
Respect its ideals & institutions  
And National **Flag**, National **Anthem** G [Not National Song]
- b) Cherish and follow Noble Ideals that inspired our National Struggle for freedom G [Indian Way]
- c) Uphold and protect Sovereignty  
Unity of India  
Integrity G [Indian Way]
- d) To defend and Render National Service when called upon to do so G [Indian Way]
- e) Promote Harmony & Spirit of Common Brotherhood transcending diversities and Giving up Practices derogatory to the dignity of women. G [Indian Way]

*Indian way*

f) To value and preserve rich Heritage of our Composite Culture.

*Indian way*

g) Protect National Environmental & Wildlife

*Indian way*

h) To develop Scientific Temper  
[ Humanism  
Spirit of Inquiry & Reform

*Indian way*

i) To safeguard public property & Give Up Violence

*Indian way*

j) Strive towards Excellence in Individual / Collective Activity

*86<sup>th</sup> CAA*

k) Casting duty upon the Parent / Guardian to send their children / ward to school in Age = 6-14 yrs.

Q/ Why F.R added to DPSP in Part IV? & Not in Part - III?

(F.R.)

Mostly
F.R. = -ve
DPSP = +ve
F.D. = +ve

a) Part - III is more for State & Part IV A for individual  
†  
So FR & FD weren't put together in Part - III.  
b) as F.R purpose is to have "Constitutionalism"  
(Limited power to govt)  
∴ F.D were added to DPSP as both are +ve  
(ask govt. to do something)

b) It would give <sup>wrong</sup> message to public that F.R are enjoyable on doing F.D. (if F.R & FD would have been in Part III)

## CRITICAL ANALYSIS OF F.R & F.D :

- A) Some scholars argue that F.D have remained meaningless without their enforceability
- B) The F.D like Spirit of inquiry & Reform, cherishing Noble ideals etc. have NO PARAMETER OF Enforceability. [Subjective]
- C) F.D were added in Part IV-A [i.e after DPSP's]; if fundamental duties & Fundamental Rights if they would have been added together then F.R & F.D would have been at Par; [but F.R are basically limiting the Powers of the state and in Part-III; they are mostly Negative in Nature.]
- D) F.D which could have been added
- Payment of Taxes [Swaran Singh Committee]
  - Vote
  - Family planning
  - Promote Sanitation

H = High

L = Low

PG = popn growth

MR = Mortality Rate

Malthusian  
Demography Model

HPG - HMR	①
LPG - LMR	②
LMR - HPG	③

1.  $\hat{f}_{\text{ML}}(\theta) = \frac{1}{n} \sum_{i=1}^n \hat{f}_i(\theta)$  (Maximum Likelihood Estimator)

2.  $\hat{\mu}_{\text{ML}} = \frac{1}{n} \sum_{i=1}^n x_i$  (Maximum Likelihood Estimator)

3.  $\hat{\sigma}_{\text{ML}}^2 = \frac{1}{n} \sum_{i=1}^n (x_i - \hat{\mu}_{\text{ML}})^2$

4.  $\hat{\sigma}_{\text{ML}} = \sqrt{\frac{1}{n} \sum_{i=1}^n (x_i - \hat{\mu}_{\text{ML}})^2}$

5.  $\hat{\mu}_{\text{ML}} = \frac{1}{n} \sum_{i=1}^n x_i$

6.  $\hat{\sigma}_{\text{ML}} = \sqrt{\frac{1}{n} \sum_{i=1}^n (x_i - \hat{\mu}_{\text{ML}})^2}$



THE  
PART-II  
UNION

( A  $\Rightarrow$  52-151 )

→ Union Executive shall comprise of :

- 1) President
- 2) Vice-President
- 3) Prime Minister & Council of Ministers (CoM)
- 4) Attorney General of India

PRESIDENT : Article 52 → There shall be a President of India

- Head of State
- Supreme Commander of Defence forces
- Nominal Head of the Executive (because all executive actions of Union are taken in Name of President); while the Real Head of Executive is Prime Minister

→ President is not a Member of Parliament but Part of Parliament [Article 79]

→ President symbolizes {Unity, Integrity, Solidarity} of Nation

→ President is 1<sup>st</sup> Citizen of the Country

→ "Impeachment" word to be used only for President.

→ As there is no authority above President to remove him  
while judges are removed when 2 Houses pass bill to remove a judge & it is assented by president.

→ Impeachment is defined along a process in Constitution of president

g) quasi-judicial  
funct

## PRESIDENT

### ELECTION

### IMPEACHMENT

due to violation of  
constitution

#### Electoral College

Elected Members of

a) LOK Sabha [543]

b) Rajya Sabha [233]

c) State Legislative Assembly

d) U.T.   
 Delhi  
 Puducherry

All [Elected + Nominated]  
members of

a) LOK Sabha

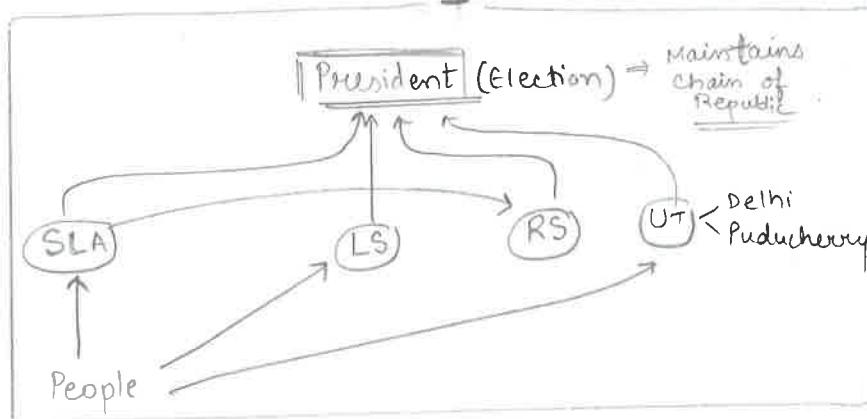
b) Rajya Sabha

→ Nominated Members  
don't participate here

→ Participate Here

→ Members of SLA &  
U.T. & Legislatures (Delhi &  
Puducherry)  
participate here

→ Don't Participate here.



#### 28 STATES 8 U.T

- J&K - Ladakh
- Delhi
- Chandigarh
- D.D., D.D.N.Haveli
- Puducherry
- Lakshwadeep
- A&N Island

#### STATES WITH Legislative Council

- Bihar, U.P
- Karnataka, Maharashtra
- Telengana, A.P

#### U.T with LA

- J&K
- Delhi
- Puducherry

## ELECTION

$$\text{Value of Vote of } \textcircled{1} \text{ MLA} = \frac{\text{Total Population of State}}{\text{Total No. of Elected members in SLA (of the state)}} \times \frac{1}{1000}$$

$$\text{Value of Vote of } \textcircled{1} \text{ M.P.} = \frac{\text{Total Value of Votes of All MLA's of All states}}{\text{Total No. of Elected members of Parliament}}$$

Electoral Quota Required to Win the Election

$$\rightarrow = \frac{\text{Total No. of Valid Votes Polled}}{(1 + 1)} + 1 \\ (= \underline{\underline{51\%}})$$

✓ Value of Vote of

$$\text{LS member} = \text{RS member}$$

$$[\text{as Elected Members of Parliament} = \frac{\text{Elected LS members} + \text{RS members}}{2}]$$

- Resolutions are Substantive Motions
- Every Resolution is Motion  
but every Motion isn't Resolution

- All disputes related to Election of President shall only be decided by Supreme Court
- Vacancy in Electoral College shall not be a ground for questioning Election of president

**PROCESS :**

- Election is conducted through **Single Transferable Vote Proportional Representation**
- Each member in Electoral College will be given 1 Ballot paper and he/she would mark his/her choice in preference order of candidates as
 

1 → Mamaji (A)
2 → Ramnathji (B)
3 → Kapil Sibal (C)
4 → Pranab Mukherjee (D)
- If No one secures Requisite Electoral Quota; then for the Candidate securing least No. of Votes; her/his Ballot paper shall be taken out in which he has been 1<sup>st</sup> preferred  
And 2<sup>nd</sup> preference vote shall be allotted to the respective candidates.

The elimination of the Candidate securing least votes shall continue until someone secures the Required Electoral Quota. [51:1.]

⇒ [REASONS FOR OPTING] [Indirect Election for President]

1) Keeping in Parliamentary Convention of  
 [Shamsher Singh vs State of Punjab] Nominal Head of State → The President  
 acts on aid and advice of Council of Minister; which is headed by PM;  
 it is not necessary to opt for Direct Election.

2) Direct Election would entail Huge amount of - Time  
 - Energy  
 - Money  
 - Resources } Practically Impossible  
 REMT  
 so, Indirect Election was adopted.

Ques: 1971 → census → fixed for Presidential Election  
 Reason: TFR disparity b/w → States in ↑TFR (U.P./Mah.) & " " ↓TFR (T.N./A.P./Kerala)  
 So; the value of each MLA's vote would differ in these states (acc. to TFR)  
 ↑TFR State ⇒ ↑ value of <sup>vote of</sup> each MLA  
 ↓TFR " " = ↓ " "  
 ∴ 1971 census fixed till 2026.

## EXECUTIVE POWERS OF PRESIDENT

Article 53

73

77(1)

- 1) All Executive Actions of the Union are expressed to have been taken in the Name of the President. [Article 77(1)]
  
- 2) The Prime Minister & Council of ministers are appointed by the President.  
President acts on aid & advice of CoM (Article 74)
  
- 3) Appointment of :
  - a) Attorney General
  - b) Members & Chairman of UPSC
  - c) Members & chairman of Backward Classes Commission  
(Temporary ⇒ Article 340)
  - d) Comptroller & Auditor General of India [CAG]
  
- 4) President can seek Information related to the Administration of the Affairs of the Union from PM (Article 78(b))
  
- 5) President may ask <sup>PM</sup> to submit for Consideration [a decision] to of Council of ministers; for a decision taken by an individual minister solely (& not by Council of minister)

Article  
78(c)

## LEGISLATIVE POWERS OF PRESIDENT :

1) President summons and prorogues the sessions of parliament ends

Budget  
Monsoon  
Winter

2) President dissolves the House of people (= Lok Sabha)

3) President addresses the

1<sup>st</sup> session of Newly constituted Lok Sabha

1<sup>st</sup> session of Every year (= Budget session)

[To outline Map of Ruling Govt's plans & policies]

Collectively before Both the Houses of Parliament

4) President can send messages to the Parliament about Bills or otherwise.

5) President approves / assent / gives to the Bills. [Article 111]

6) 12 members to Rajya Sabha are Nominated by the President [other 233 RS members are elected by state LA members & U.T LA " ]

7) President lays the Report of:

- Comptroller & Auditor General
- UPSC

• NCST, NCSC, Backward Classes

[National Commission for ST/SC]

8) Disqualification of Member of parliament

Lok Sabha  $\Rightarrow$  5 years from 1<sup>st</sup> day of meeting

## ORDINANCE MAKING POWER OF PRESIDENT

- It is an Emergency Provision wherein the Executive can get an Ordinance promulgated by the President under Article 123  
[Ordinances during Recess of Parliament]
- It is NOT A PARALLEL LEGISLATIVE POWER.
- NO Ordinance can be promulgated to Amend the Constitution
- Ordinance can only be promulgated on those Subjects where Parliament Ordinarily has the power to make laws. (Article 73)
- Every Ordinance has to be replaced through a Bill within 6 weeks of Re-assembly otherwise; it lapses if not approved (within 6 wks)
- Ordinance Making → Exercised on the advice of Council of Ministers  
Not unilaterally by the President

During Reassembly,

→ Ordinance has to replaced by Bill  
with giving of Reasons, for why was  
is necessitated; as per the Rules &  
procedures of LOK Sabha

### COURT CASES:

#### 1) R.C. Cooper Case [= Bank-Nationalization Case]

S.C ruled that :

→ Promulgation of an Ordinance is Subject to  
judicial review on the grounds of Malafide.  
(Here, Ordinance was brought 2 days <sup>just</sup> before start of session)

#### 2) D.C. Wadhwa Vs State of Bihar:

→ Repromulgation <sup>of ordinance</sup> was held to be Unconstitutional.  
(as Executive is bypassing Legislature's Role ⇒ Violation of Separation  
of Power)  
(Here, Ordinance was Repromulgated 256 times)

→ Maximum life of an ordinance = [6 months] + [6 weeks]  
from start of  
Reassembly session  
↓  
max gap b/w  
2 sessions of  
Parliament  
[after that ordinance  
lapses if not  
approved]

✓ Governor also has powers of  
issuing an ordinance

# JUDICIAL POWERS OF PRESIDENT

Article 143

- 1) Supreme Court Judges  $\Rightarrow$  Appointed by the Hand, Warrant, Seal of the President  
(right)

[Under Article 143]

- 2) President can seek Advice from S.C on any Question of Law/ that is of Public Importance

↓  
Here, S.C renders an Opinion

→ [S.C is not bound to give opinion here and President is not bound to consider opinion of S.C (advice)]

\* But; when president seeks advice on "Any Preconstitutional Law"  
S.C is Bound to give opinion to the president.

- 3) Granting Pardon to death sentence of any person

## ORDINANCE POWERS

MISUSE a) Deliberate Bypassing of Legislature → cont. fraud against citizens & spirit of Democ.

b) Violation of SOP → law making is domain of legislature

c) Satisfaction of presid. needed to pass ordinance → scope of misuse

Constit. safeguard → 4 points as in Lakshmi Nath v. Paribrahman → in Semin.  
O → Bill in the C. Parl. → Immediate Ex  
on Reasons for Ordinance (in 6 weeks)  
in the C. Parl. → Immediate Ex

→ Reasons for ordinance promulgation  
or reasonably for Bill to replace ordinance

S.C cases → R.C. Cooper v. D.C. Wadhwa

Krishna Kumar Singh → Ordin. to be issued on  
circumst. existing to take effect immediate with

## FINANCIAL POWERS OF PRESIDENT

: Article 112  
113  
267

- 1) President <sup>(presents)</sup> causes to be laid before Both Houses of parliament Annual Financial Statement (Article 112)
- 2) No Money Bill shall be introduced in Lok Sabha <sup>except with the prior Recommendation of President</sup> [to prevent Private member from introducing money Bill to withdraw money] } Reason
- 3) No Voting on Demand in Lok Sabha shall take place except with the Prior Recommendation of President - [Article 113]
- 4) Contingency Fund of India is operated on the Behalf of president of India . (Article 267)

$$\text{Demand for Grants} = \left[ \begin{array}{l} \text{(Funds) Money Asked by Ministries} \\ \text{for their expenditure} \end{array} \right]$$

veto power  
→ Not mentioned in Constitution

## VETO POWER OF PRESIDENT : [Article 111 + Article 368]

→ Veto = Forbid

Power of parliament  
to amend the Constitution

→ Bill becomes an Act only after receiving  
Assent of the president [Article 111]

→ Veto powers have been provided to Prevent  
Hasty Legislation. & at times to Stop a  
Private Members Bill [④ → Private Member Bill  
have been passed in past]

→ Presidential Veto is generally Not exercised  
except in Rare occasions.

→ TYPES : [These are Not explicitly mentioned in  
the Constitution]

### ① ABSOLUTE VETO :

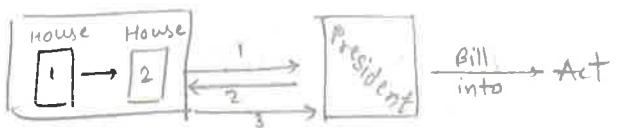
→ President withholds his assent (Rejected)

↓  
∴ Bill dies forever [ie Reflects <sup>This</sup> Rejection]  
[Generally, exercised over → @ Private member's Bill]

② when New Cabinet recommends President not  
to give assent to the Bill]  
(that was passed in previous Govt's session)

## ② SUSPENSION VETO : [ Article III ]

- When the Bill is sent back by the President to the House for Reconsideration and the Veto can be over-ridden by a Simple majority



- President shall not withhold his/her assent; if the House reconsiders the Bill and sends it again.

[money Bill is (assented) by President in one go  $\Rightarrow$  No Reconsideration asked by him/her]

## ③ QUALIFIED VETO: Not in India

[When president sends back Bill back]

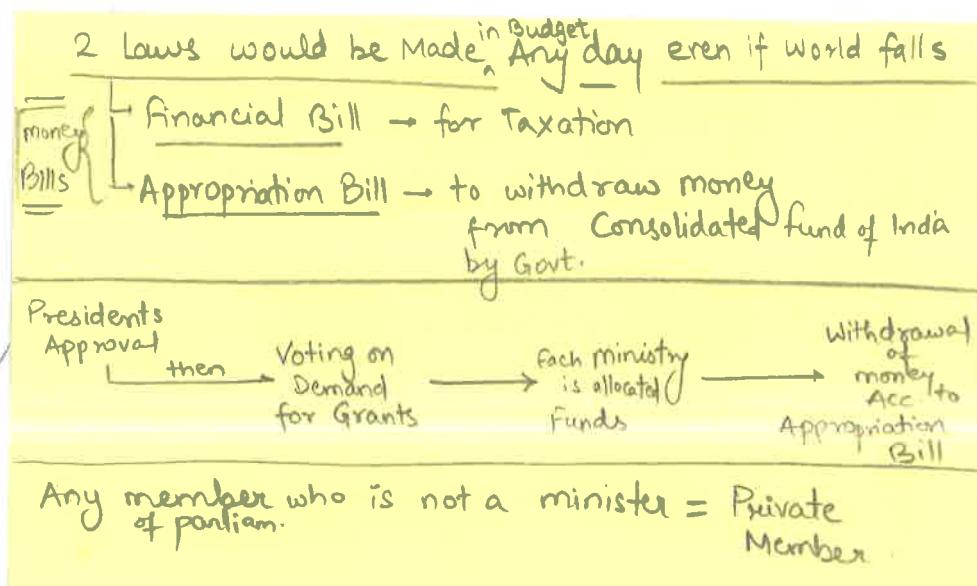
- Presidential Reconsideration is over-ridden by a Special / Higher Majority.  
( $2/3$ rd)  
USA

## ④ POCKET VETO:

- No time limit is mentioned in Indian Constitution; unlike USA, where the President has to send the Bill in 10 days for reconsideration to the House.
- Here, president can keep the Bill pending without taking any action for indefinite time period

✓ Presidential Powers of Pocket Veto in India are larger than that of President of USA.

✓ No Veto can be applied to Constitutional Amendments.  
[Article 368]



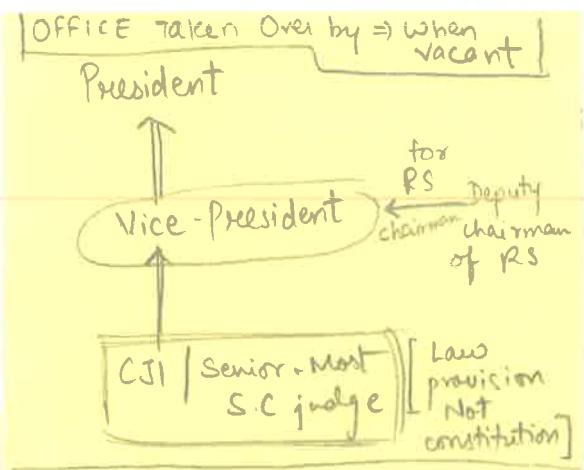
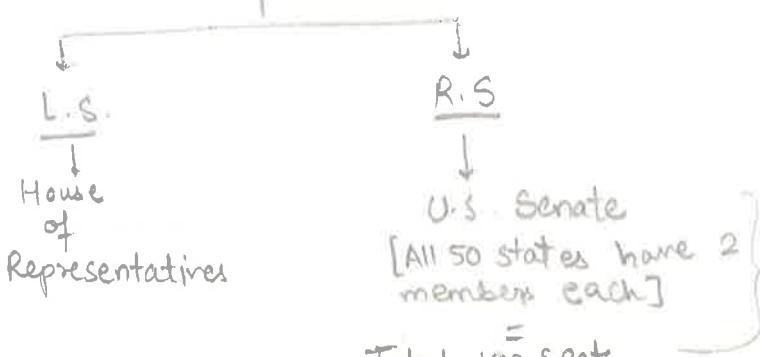
#### FUND TYPES:

- a) Consolidated Fund of India
- b) Contingency "
- c) Public Accounts fund

Budget → Presented by Finance Ministry  
[by Dept. of Economic Affairs]

→ President can use Veto on Money Bill ; but he doesn't do it as he is the one who approves 1st (asks) for Introduction of Money Bill in Parliament . }

[USA]  
Parliament (= USA Congress)



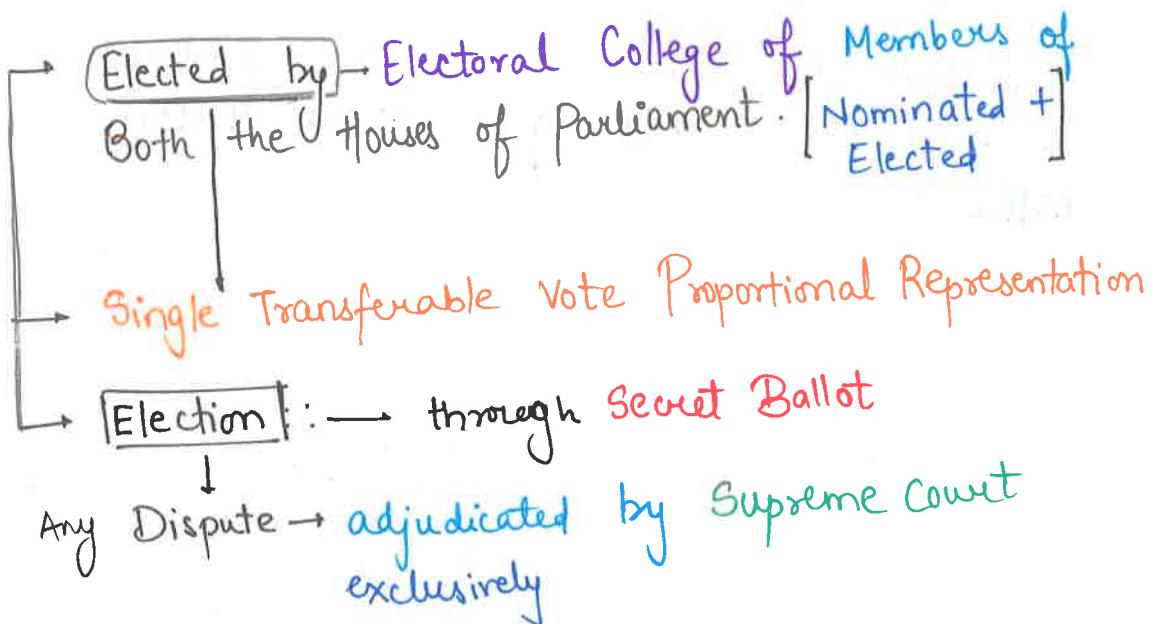
If a president 'A' resigns  
 ↓  
 Vice-president 'B' now takes over  
 'A' office (of president)  
 So, B is now → VP &  
 Acting president (for smth)

Now, if 'B' wants to contest for  
 Presidential elections (upcoming)  
 He/she will resign as VP  
 ↓  
 El next day go to Presidents office  
 & accept his/her own resignation  
 Eligible to contest for Presid

⇒ When a "VP" is acting president  
 ↓  
 He/she doesn't act as Chairman of R.S.  
 ↓  
 For this; Rajya Sabha, etc taken  
 over by Deputy chairman of R.S

## VICE-PRESIDENT: Chairman of Rajya Sabha

- VP is 2<sup>nd</sup> in Order of Precedence
- VP's Office is Modelled on the Lines of VP of USA.
- VP is <sup>by virtue / Automatically</sup> **ex-officio** Chairman of Council of States [=Rajya Sabha]



- VP also officiates as Acting President in the event of sudden vacancy etc. /  
↓  
This can maximum be for 6 months And an Election for office of president has to be conducted (in 6 months)
- If the "office of VP" is vacant → Elections to it are done as soon as possible till then CJ / Supreme Court judge occupies his/her office  
Not a Constitutional provision ←

## → REMOVAL OF VP:

o Ground: No grounds mentioned in Constitution

o Procedure & Majority:



→ Any such Resolution can only be introduced in Rajya Sabha and after giving 14 days notice  
(removal of VP)

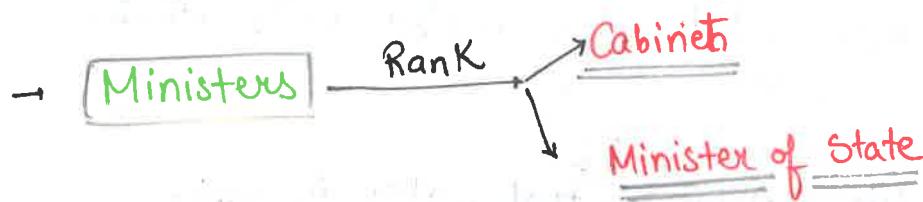
VC ————— gives Resignation ————— President

↑  
gives Resignation  
to

## COUNCIL OF MINISTERS : [COM]

UNION | STATE

- Max. strength of COM : 15% of Strength of
  - LOK Sabha [Union Level] //
  - SLA [State Level]
- There is NO INTERNAL CLASSIFICATION IN THE CONSTITUTION. [regarding distribution of seats].



[There used to be Deputy Minister ; but NO more post exists now].

### Role & Functions :

i) President shall act on the Aid and advice of Council of Ministers [Article 74]

{ He/she may ask the COM to Reconsider their decision once and shall <sup>(appmre)</sup> act accordingly if the " is reconsidered [and sent for the 2<sup>nd</sup> time]. back }

2) In contrast,

Relation b/w State Council of Ministers & Governor is a bit different.

In Constitution

Though, there is NO DISCRETION for President except an Implied one (situational) on the bills sent to him/her.

But, there is an EXPLICIT DISCRETION for the Governor on bills sent by SLA.

3) Constitution further puts the Onus on the Governor whether a matter falls within his Discretion or not.

↓  
And his decision on that matter is FINAL

[Needless to say that,  
Discretion can't be employed by governor in a routine manner]

4) • PM is appointed by the President &  
• CoM are " " " President on  
the advice of PM [Article 75(1)]

[@ state Level ⇒ Governor & Chief Minister]  
respectively

No Confidence motion Article 75(3)  $\Rightarrow$  entire Basis of Parliamentary Democracy

5) Ministers hold office during the pleasure of President. [Article 75(2)]

6) COM shall be Collectively responsible to:

- House of people @ Union Level
- SLA @ State Level

[ARTICLE  
75(3)]

7) Ministers take the Oath of Office Secrecy } Article 75(4)

→ COM are in theory / on paper advising the President; but the actual decision is taken by Cabinet; which is enforceable for the Entire COM.

→ Ministers participate in the Proceedings of Both the Houses; but they shall be entitled to Vote only in the House they are member of.

## CABINET

- The term Cabinet was added through 44<sup>th</sup> Constitutional Amendment Act.
- This was added as a provision in Article 352 ⇒ to ensure that National Emergency can only be proclaimed on the written advice of Cabinet & not be decided by President unilaterally.
- ① Cabinet is the Highest Decision Making Authority in our Politico-Administrative & Executive Set-up of the government.
- ② It is the Body dealing with Legislative Financial Foreign Affairs Matters
- ③ Also a Chief - policy formulating authority.

## COM

1) Bigger Body  
[max. strength : 15% of LS]

2) Includes: Cabinet Minister  
Minister of State  
Deputy Minister (if any)

3) Powers: On paper

4) Meets: Rarely

## CABINET

1a) Smaller Body having Ministers of Cabinet Rank

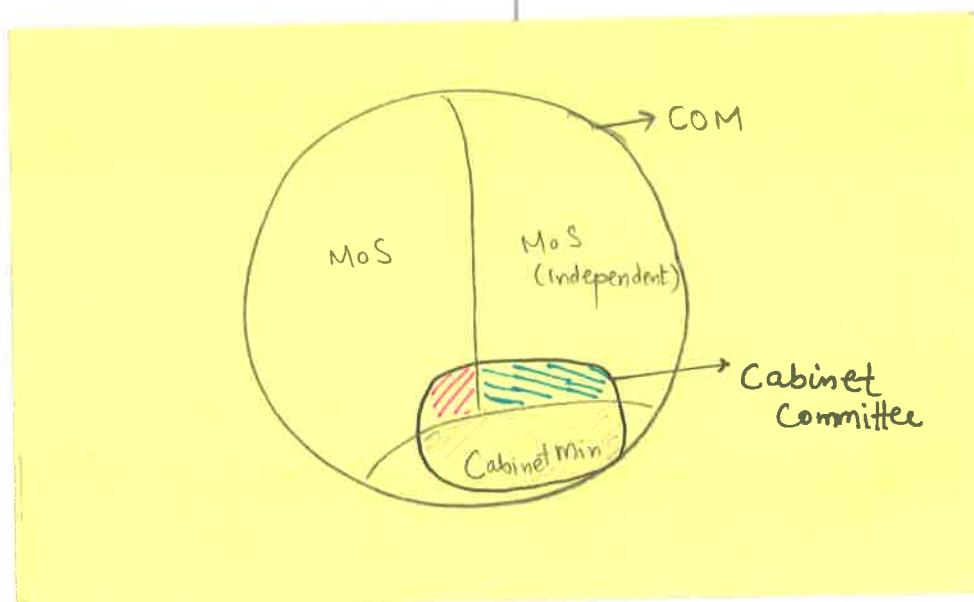
2) Includes: Cabinet Ministers  
[part of COM]

3) Powers: Real powers

[Its decision are binding on Entire COM.]

4) Meets: Regularly [~ weekly]

As ~~Ministers~~ <sup>swim</sup> sail and sink together with Cabinet



Statute  $\Rightarrow$  Statutory Body  
executive order  $\leftarrow$  Rules  $\Rightarrow$  Extra-Constitutional Body

## CABINET COMMITTEE

- : not mentioned in Constitution
- The Cabinet Committees are  
Extra-Constitutional Bodies [outside constitution]  
deriving their existence from GoI Transaction  
of Business Rules under Article 77 (conduct)
  - Prime Minister constitutes Cabinet Committees  
time to time
  - Comprises of:
    - mostly : Cabinet Minister [mostly]
    - sometimes : Minister of State [MoS] [very less]
  - Headed by: Prime Minister / Senior Cabinet Minister
  - 8 CC:
    - 1) CC on Political Affairs
    - 2) CC on Security
    - 3) CC on Economic Affairs
    - 4) CC on Appointments
    - 5) CC on Accommodation
    - 6) CC on Parliamentary Affairs
    - 7) CC on Investment & Growth
    - 8) CC on Employment & Skill Development

Newly added  
since 2019

] except these 2;  
PM is Head of all  
other CC.

→ Role of CC:

- 1) They are specific ~~crt~~ Various Sectors and reduce the workload of the Cabinet
- 2) Discuss and give Tailor-Made Solutions  
Exhaustively Deliberate on a Topic
- 3) Take Decisions & Formulate Proposals  
↓  
And put for the Consideration for the Cabinet
- 4) CC's like:
  - a) Economic Affairs: Imp. from Sphere of Economic Administration
- 5) India's Nuclear Doctrine empowers the CC on Security to take a decision on Retaliatory strike.
- 6) Empowered Group of Ministers can be constituted for Specific issues.

~~8~~ [Article 60] [Article 69]  
President & VP's Oath are mentioned in  
Constitution and Not in 3<sup>rd</sup> Schedule

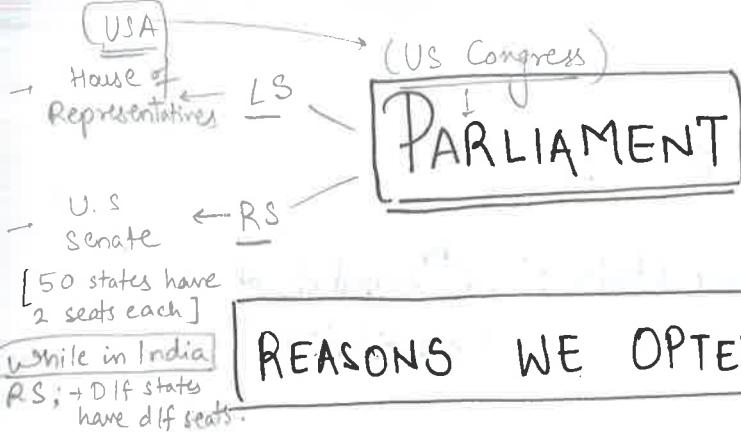
### Kitchen Cabinet ↗

3 Ways in which GoI communicates to Citizens

- a) Press Info Bureau [PIB]
- b) Prasar Bharti (statutory Body) [Broadcasting] its official
- c) Gazette of India (गोपनीय पत्र) [most sacred Doc]  
[legal doc of GoI]

→ Justice Hurried is Justice Burried

→ Society needs Mediocre Heroes



Article 79: Constitution of Parliament  
 Consisting of - President  
 - LS  
 - RS

## REASONS WE OPTED FOR BICAMERALISM:

1<sup>st</sup> provided in GoI, 1919

- 1) → Rajya Sabha ensures Federal Balance.  
 → Some Specific Powers are bestowed upon RS.  
 → Giving Representation to States @ National Level.

### 2) Having 2 legislatures leads to :

- exhaustive deliberation on issues
- Prevention of Hasty legislation

{ ① Accountability  
 ② Transparency

### 3) Gives wider choice to PM while deciding Council of Ministers.

### 4) Nominated Members in RS from diverse fields bring their Rich Experience in Law making.

### 5) Dissolution of LOK Sabha may create a vacuum; ∴ RS may meanwhile approve National Emergency. [as RS is a permanent House]

As per Article 4 => New State created  $\Rightarrow$  Simple Majority reqd for amendment in Schedule IV

→ The No. of seats in :

a) Rajya Sabha from every state :

& 3 U.T.  
[ Delhi  
J&K  
Puducherry ]

IV<sup>th</sup> Schedule of Constitution

LSA  
Special Majority +  $\frac{1}{2}$  of SLA  
by simple majority

RJA  
Constitutional Amendment done  
to ① R.S seats

b) Lok Sabha from every state :

& all U.T.'s

1<sup>st</sup> Schedule of RPA, 1950

Amended by  
Simple Majority

→ Seats in Lok Sabha were to be Re-adjusted after every census.

But → Total Fertility Rate [T.F.R] of States in Northern, Eastern & Southern parts varied considerably.

∴ 42<sup>nd</sup> CAA froze the seats till Yr. 2000.

(of Lok Sabha)

then

Article 82 (2001) 84<sup>th</sup> CAA has frozen them till 1<sup>st</sup> census (seats of Lok Sabha & SLA)

used 1991 Census Data  
Pop<sup>n</sup> figures to readjust &  
Rationalize Territorial constituencies

Article 82 (2003) 87<sup>th</sup> CAA  $\Rightarrow$  provided for use of Pop<sup>n</sup> figures 2001 Census Data to Readjust & Rationalize Territorial constituencies

White Total No. of Constituencies were fixed for a State only Name, area, ST/SC reserved changed

## [DELIMITATION] :

- Purpose → As far as possible, there should be Inter state and Intra state Parity in Population while determining LOK Sabha Constituencies  
 (Pop<sup>n</sup> in 1 constituency of U.P = Pop<sup>n</sup> of 1 constituency of Bihar)  
 → determined Based on Population; not by geography
- LOK Sabha Constituencies are not similar to the Administrative / Revenue Districts.
- The constituencies are determined by DELIMITATION COMMISSION.

→ Delimitation Act, 2002 established Delimitation Commission, 2002

→ The Delimitation Order, 2008 without changing Total No. of constituencies [Acc. to 1971 census]  
 ↓  
 { a) Altered the area of constituencies / Name change of constituencies  
 b) Classified New Reserved Constituencies & Unreserved constituencies  
 c) Allotted Seats for SC/ST as per 2001 Census [Article 330] and consequently seats for General were ①.

→ 87<sup>th</sup> CAA provided for Use of Census Data of 2001

### Constituency of

LOK Sabha ⇒ as decided by Delimitation commission

Rajya Sabha ⇒ Whole State

Nominated Member ⇒ Whole India

Article 82 → Readjustment after each census

Allocation of seats in L.S.

Readjusted acc. to Law.

after each census

Division of each State in territorial constituencies

### ARTICLE 329:

- Laws related to Delimitation cannot be challenged in Court of Law to prevent unnecessary litigation.
- Rajya Sabha is a Permanent Chamber  
↓  
It's member have Tenure of 6 years as per Representation of people Act, 1951.

- RPA Act, 1951 was amended in 2003 to provide for:

A person registered as voter in any of the constituencies of the country can take part in Rajya Sabha Elections from any state.

### Court Case:

Kuldeep Nayar Vs Union of India

- S.C upheld the above amendment.  
Saying that there is NO DOMICILE CONDITION for contesting in L.S. elections, the same principle can be applied to R.S. also.
- Law passed by legislature is presumed to be valid till proven otherwise.

Whenever a law is challenged in court; the onus to prove it unconstitutional is on the petitioner; & the law is presumed to be valid until held invalid by court

## QUALIFICATIONS TO BE A MEMBER OF PARLIAMENT

### AGE

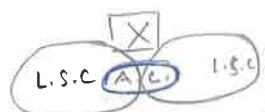
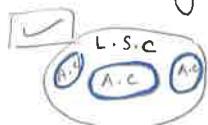
- Lok Sabha → 25 years
- Rajya Sabha → 30 years
- Lok Pal → 45 years (former judge of SC / CJ / 25 yrs of impeccable integrity)
- She/he should be a Citizen of India
- Candidate must subscribe to an Oath - to bear True faith towards Constitution of India to uphold Sovereignty & Integrity of India

### AGE

- for Governor / VP / president ⇒ 35 years

→ 1 Lok Sabha constituency has certain fixed no. of Assembly constituencies  
[At present generally  $\Rightarrow 1 \text{ LS.C} = 4-5 \text{ AC.}$ ]

→ An assembly constituency falls under only 1 Lok Sabha constituency



Original Constitution has.

Article 262  
Article 329

→ exempted them from jurisdiction of court

Interstate Water Tribunal

# DISQUALIFICATION OF M.P.

Article 102  
103

## (I) SET ASIDE BY HIGH COURT :

→ As per Article 329 (2) ;

Any election can be challenged only through an Election petition before an authority to be decided by appropriate legislature (= law)

→ RPA, 1951 provides for :

Challenging of any election :

- In Jurisdictional High Court
- in 45 days of Declaration of Election Result
- Either by a Registered voter of that Constituency

OR

One of the Contesting Candidates

→ The Decision of High court can be challenged in Supreme Court

→ In this, ✓ Election is Set aside.

MLA /  
If a M.P. is disqualified under 10<sup>th</sup> Schedule,  
he/she is disqualified from membership of  
House of Parliament  
office of minister is  
not office of profit

## Office of Profit Disqualification Act

Ques  
II

**OFFICE OF PROFIT**: Article 102, 103

For Disqualification of M.P./MLA for occupying Office of Profit

ARTICLE - 103

The Decision is taken by President on the Binding advice of Election Commission of India

→ While in State Legislature, decision taken by Governor on Binding advice of Election Commission of India.

→ Office of profit is NOT Defined in the Constitution

↓  
Concept behind it is to:

a) Maintain Separation of powers

b) Ensure Legislative acts impartially & prevention of Anti-Defection (due to greed of getting executive post in govt. bodies)

→ The test is done by <sup>supreme court</sup> S.C. primarily on 3 grounds for Disqualifying a M.P.:

A) Holds an office

B) Office is one of Profit

C) To be decided on Basis of certain Principles:

↓  
Next page

Ques { ⇒ Acc. to ARTICLE 102 ⇒ Minister's office is not an office of profit

⇒ Parliament by an amendment can exempt any post from office of profit.

OFFICE OF PROFIT decided on  
# Basis of certain principles:

- 1) Mode of Appointment to the Office is Government or Not.
- 2) Whether the Government has the right to Dismiss or Not.
- 3) Whether the Government pays Remuneration or Not.
- 4) Whether the Government controls functions of office holder

Court Case:

- 1) Subramanyam Swamy Case  
S.C ruled that ~~Elect Commission of India~~ ECI acts as Quasi-judicial Body.
- 2) Jaya Bacchan Case  
Pecuniary Gains shall be taken in account while determining over an Office of profit.

(III)

a) The person declared as of **Unsound mind** by the Court. (ARTICLE - 102)

Article-102

b) The person is No longer a **Citizen of India**

c) The person is an **undischarged insolvent**  
(court hasn't discharged him/her)

added by 52<sup>nd</sup> CAA

(IM)

Schedule 10<sup>th</sup>: **ANTI-DEFLECTION**

1) If one gets elected through a party & gives up **Primary membership** of the party later



**SHE | HE gets disqualified**



2) If a person is elected as an **Independent (IM)** member and joins a party later. [Though IM can support/vote other party but can't take membership of other party]

3) If  $< \frac{2}{3}$ rd members join another party or form a different group.

4) If a member of a party votes against directions of party OR abstains from voting and is **NOT condoned by the party** in 15 days

→ he/she can join a party only in 6 months of being nominated.  
(now only in RS)

5) If a Nominated member joins a political party, he/she shall be disqualified. after 6 months of being nominated

→ If a member of parl<sup>(MOPB)</sup> gets disqualified under Schedule - 10<sup>th</sup>

## EXEMPTIONS :

→ Disqualification shall not apply to

{ Speaker  
Deputy Speaker  
Deputy Chairman of Rajya Sabha

↓  
(S) He loses membership of House & cannot become a minister  
↓  
∴ He needs to get re-elected to become minister (by By-elections)

If he/she voluntarily gives up the membership of the party from which they were elected.

→ Decision for Disqualification is taken by the Speaker of the House

## Court Case :

### i) Kihoto Hollahan Case

S.C ruled that Decision of Speaker shall be subject to Judicial Review on grounds of Malafide

## 2) Speaker Manipur Legislative Assembly Case

→ S.C <sup>(observed)</sup> ruled that Decision under Schedule 10<sup>th</sup> should better be taken by an Independent Tribunal comprising of judges

IV [RPA, 1951] → In PDF to be given by Sir  
Section 8

Original Constitution → had 8 schedules

1) 1<sup>st</sup> CAA added { IX<sup>th</sup> Schedule  
Article 31 A  
31 B  
" 15(4)

2) 10<sup>th</sup> schedule → Before: Dealt w/ Sikkim  
↓  
Deleted  
Now: Anti-Defection Law

3) 11<sup>th</sup> Schedule: 29 subjects dealing w/ P.R.I's

12<sup>th</sup> Schedule: 18 subjects " " ULB

(Special Case)  
→ In Delhi ⇒ CM is appointed by President

→ State Election Commission => P.R.I & ULB elects conducted

→ ECI → VP | President | LS | RS | SLA | Legis. Council elects " => Under  
[A-324]

[ICA]:

Jharkhand CM involved in a govt. contract  
↓

[RPA, 1951] ⇒ Any sitting Legislature cannot take interest into any  
Govt. contract.

## [ANTI - DEFLECTION LAW]:

### RATIONALE :

- 1) Provides Stability to Government
- 2) Will erode people's faith in Democracy & its Institutions if there is frequent Defection.
- 3) Anti-Defection also leads to curbing of:
  - a) Corruption
  - b) Expenditure of By-elections
  - c) Disruption of Governance

final interpreter of constitution  
in the House

## OFFICE OF SPEAKER:

- The Speaker is one of the most Imp. Constitutional authority and is elected by the Members of parliament among themselves
- Date of Election of Speaker is fixed by the **PRESIDENT** and announced by Pro-temp. Speaker

### ○ PRO-TEM SPEAKER:

- One of the members of newly constituted LOK sabha is appointed by **President** to act as Speaker Pro-temp'
- He/she is administered Oath by **President** & presides over new constituted LOK Sabha, conducts Election of Speaker & Temporarily holds office till Election of Speaker.
- No specific oath ceremony for Speaker of House, he/she just takes oath as an M.P | MLA.

Q L.S. → Tenure is 5 years from the 1<sup>st</sup> day of session (1<sup>st</sup>) [i.e. 1<sup>st</sup> meet]

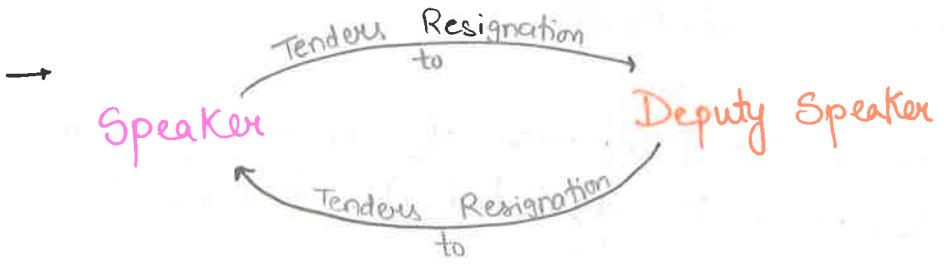
Speaker →  
R. → Deputy Speaker

## DEPUTY SPEAKER : ARTICLE 93

- Date of Election of Deputy Speaker is determined by the Speaker as soon as possible (when he/she becomes Speaker) as per Rule 8 of Rules & Procedure of L.S.
- Convention is that ; position of DS is occupied by Opposition party  

↓

But, it is Not a Constitutional provision



- The Outgoing Lok Sabha Speaker continues to hold office till the newly constituted L.S. meets as a symbol of continuous chain of Democracy.

- Their offices are not vacant
- If Speaker absent in House ; Deputy speaker takes over it.
- If Deputy Speaker " " " ; panel of chairperson take over proceedings.

offices Vacant → If Speaker / DS office vacant

↓  
President appoints a person from House for vacant office(s)

## POWERS AND FUNCTIONS OF SPEAKER

- ✓ 1) Speaker presides over the proceedings of LS.
- 2) Speaker is the final interpreter of Constitution within the House [ARTICLE - 122] ⇒ Courts shall not inquire in proceedings of Parliament  
↓  
To maintain Separation of power.
- 3) Derives powers from 3 sources:
  - a) Constitution
  - b) Rule of procedure & Conduct of Business [ARTICLE 118]
  - c) Parliamentary Conventions etc.
- 4) Speaker → (N) votes @ Second Instance  
(not 1<sup>st</sup> " )  
[Casting Vote in case of tie]  
 ↓  
 in Resolution for his/her Removal  
 votes @ First Instance
- 5) Speaker decides over Disqualification under the 10<sup>th</sup> Schedule
- 6) He/she certifies a Bill as Money Bill (Article 110)
- ✓ 7) Speaker presides over Joint Sitting of parliament (called by president)  
[ARTICLE - 108]

## CHAIRMAN OF RAJYA SABHA

→ Vice-president is ex-officio Chairman of R.S. and has functions similar to that of Speaker wherein Speaker has 2 Extra functions:

- A) To preside over Joint-Sitting [Article - 108]
- B) To certify a Bill as Money Bill

## DEPUTY SPEAKER OF LOK SABHA

- It is an Independent Constitutional Authority and derives POWER from Constitution Rules etc.
- He / she automatically becomes Chairman of Parliamentary committee when he / she becomes a member of it.
- There is NO SPECIFIC OATH of Speaker / Deputy Speaker  
↓  
They take OATH as members of parliament only.

## REMOVAL OF SPEAKER / DEPUTY SPEAKER:

- Speaker & Deputy Speaker can only be removed by Resolution passed by Effective Majority after giving 14 days of Notice
- When the removal proceedings are going on, the house cannot be presided by the Speaker and she / he can only cast vote @ First Instance
- No grounds mentioned for Removal.

## LEADER OF THE HOUSE) :

→ Rules of LoK Sabha provides for Prime Minister as the Leader of LS

→ (i.e PM is a member of RS)  
If PM is not a member of LS.;  
he she appoints seniormost Leader of LS  
as Leader of LS

→ The Leader of RS. is a senior Minister  
nominated by PM

⇒ If PM is member of RS ⇒ PM is Leader of RS

Leader of  
LS

## LEADER OF OPPOSITION

- It is a Statutory Post as per LOP, Act, 1977.
- The LOP is given the Status of Cabinet Minister.
- As per Mavlankar Rule,
  - a) Single largest party in Opposition With
  - b) at least 10.1% of Total membership of House

↓

shall be accorded the post of "Leader of Opposition"
- If < 1/10<sup>th</sup> of Total strength of House ⇒
- LOP is also Part of Collegium that selects:
  - a) Director - CBI
  - b) CIC (central Information Commissioner)
  - c) Lokpal
  - d) CVC etc.  
(central vigilance commission)

CTI also part of their selection
- LOP plays a Constructive Role in criticizing policies of govt. constructively so as to maintain balance

## OFFICE OF WHIP

class monitor (of a party)

→ occupied by Chief Whip  
issues Whip for their party

- It is Not mentioned in Constitution  
neither in the Rules or any Statute
  - Whip is based on Parliamentary conventions
  - Whip is incharge with :
    - A) Maintaining Attendance
    - B) Issuing Directions on Voting
    - C) Monitoring Behaviour of members
- } for / of party members

## (I) SUMMON :

→ The President summons both Houses of parliament on advice of PM.

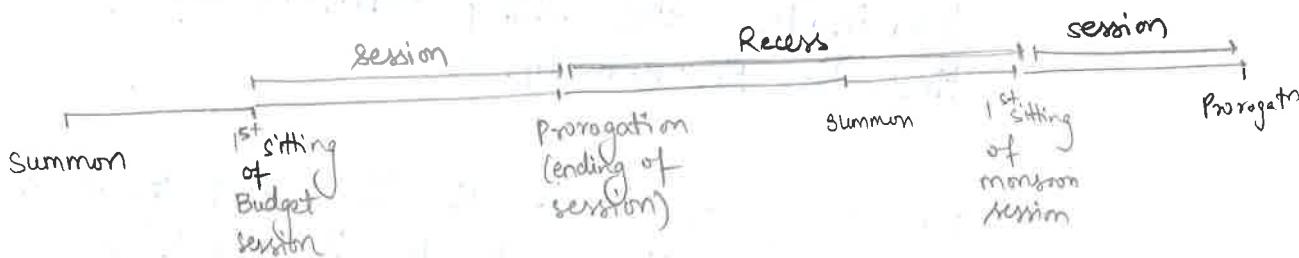
Max. Gap b/w 2 sessions = 6 months

→ Generally, 3 sessions in a year

- A) Budget
- B) Monsoon
- C) Winter

→ Session is the period from <sup>1<sup>st</sup> Sitting of House</sup> till its prorogation (ending of session)

→ Recess is period from prorogation till <sup>(period b/w 2 sessions)</sup> 1<sup>st</sup> sitting of Reassembly of House.



(II) ADJOURN : Small Breaks

- Sessions of parliament are Adjourned i.e. Work is suspended for a specified time period.
- This doesn't have any effect on the session and is generally for lunch, weekends etc.
- By presiding officer / speaker

(III) ADJOURN SINE DIE :

- It is the termination ending of sitting for Indefinite time period.
- Presiding officer / Speaker terminates the sitting without specifying time for Reassembly.  
no proper date for Resumption
- Generally, ASD is at the end of session but it doesn't lead to prorogation.  
(ending)  
so, if speaker wishes, he can call session back

## IV PROROGUE :

- This leads to ending of session
- Done by: Issue of an order by President

### NOTE:

- Prorogation of a session → Lapses all the pending Notices  
↓  
except the Notice pending for Introduction of Bills
- In U.K, Prorogation leads to Lapses of Notices of Bills

## DISSOLUTION : Article 83(2)

### LOK SABHA :

→ Tenure: 5 years from its 1<sup>st</sup> Meeting

Exception: Can be extended by 1 year @ a time  
during National Emergency

→ can also be dissolved during mid-term  
by the President

(President on advice of PM can also dissolve LS)

NOTE: Dissolution of LS is an Irrevocable Step.

L.S का साथा लौप्ता हो तो Lapse होता।

(LAPSING OF BILLS)  $\Rightarrow$  Article 107, 108

### Effects of Dissolution on Bills:

1) Bill Introduced & Pending in L.S.  $\Rightarrow$  LAPSES

2) Bill " " " " R.S.  $\Rightarrow$  DOES NOT LAPSE

3) 

Introduced in LS	}	$\Rightarrow$ LAPSES
Passed in LS		
Pending in RS		

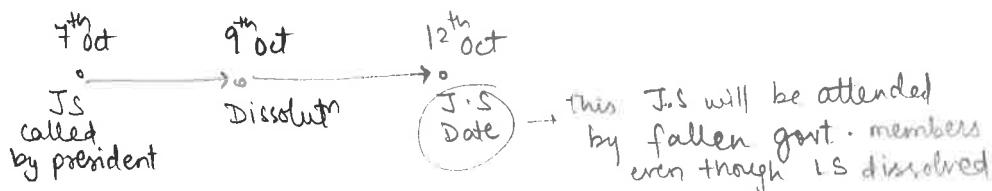
4) 

Introduced & Passed by ] RS	}	$\Rightarrow$ LAPSES
Pending in LS		

5) Bill passed by Both Houses & Pending in President for Assent  $\Rightarrow$  NOT LAPSE Does

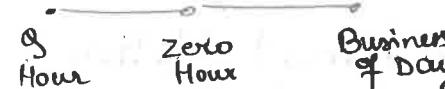
6) Bill for which a Joint session called  $\Rightarrow$  shall NOT LAPSE  
by President before Dissolution of L.S & JS is scheduled on later date of dissolution

7) Bill sent by President for Reconsideration  $\Rightarrow$  shall NOT LAPSE



# PARLIAMENTARY DEVICES

- I) QUESTION HOUR (N): begins @ start of session but can be shifted to late part of day
- It is one of the devices through which the accountability of executive is ensured.
  - It is usually 1<sup>st</sup> Hour of the day & is mentioned in Rules of procedure.
  - 3 types of questions:
    - 1) Starred Question: → Oral Answers given  
↓  
supplementary Q's can follow
    - 2) Unstarred Question: → a Written answer is communicated  
↓  
Supplementary "Q's" can't be asked
    - 3) Short Notice Question: The device is specially used to ask a "Q" in short span of 10 days and answered orally.  
↓  
oral answers given are real

II) ZERO HOUR : 

→ Informal device; Indian Innovation

→ Here;

Issue can be raised without prior Notice

→ Not mentioned in Rules of procedure

### III) MOTIONS :

A) Substantive ⇒ Any motion dealing with Substantive matter or very imp. issue.

Eg: Removal of CEC  
Impeachment of President

B) Substitute ⇒ It seeks to substitute the original motion and changes the " " by proposing an Alternative

C) Subsidiary ⇒ It is with reference to <sup>any</sup> Original Motion

d) Adjournment Motion:

(heavily criticize)

- The AM is moved to Censure the Govt. and draws its attention towards an Urgent issue of Contemporary relevance
- It can only be brought in Lok Sabha [Article 75(3)] as Council of ministers are collectively responsible to LS
- AM is required to be discussed for min.  $\Rightarrow 2\frac{1}{2}$  hrs
- Notice should be supported by to be accepted by house (Speaker) 50 members

## NO-CONFIDENCE MOTION

Whip is used here

- Council of ministers shall be Collectively Responsible to the House of people  
[ARTICLE - 75 (3)]

- CoM enjoy Powers till they have CONFIDENCE OF L.S.

- <sup>[NCM]</sup> NO CONFIDENCE MOTION can be brought by opposition against CoM wherein it needs support of atleast 50 Members to be accepted by speaker

- NCM doesn't require any reason to be accepted

- Passage of NCM leads to Fall of Govt.  
(by Simple Majority)

## CONFIDENCE MOTION

⇒ whip is used here

- CM is the device to Regain the confidence of SLA/LS by the Leader of SLA/LS when asked by president/governor.
- It is generally in Cases of
  - Wafer-thin Majority |
  - Confusion or Majority |
  - fractured Mandate
- [Simple Majority]  
Passage of CM leads To
  - Regaining Confidence &
  - Survival of Govt.

## MOTION OF THANKS

: Article 87

- As per Article 87 of constitution,  
the **President** addresses Both Houses of parliament  
assembled together @
  - Start of 1<sup>st</sup> session of every New year &
  - 1<sup>st</sup> session after Each General Election
- Purpose of this address:  
To highlight Policies and programmes  
of the govt.
- Motion is put to Vote & its  
Non-passage in L.S. ⇒ will lead to  
**Defeat of Govt.**

## CLOSURE MOTION: to save time

→ They are Parliamentary Devices to ensure that the debate is cut-short and put to Vote!

### (A) Closure by Compartment:

→ The bill is compartmentalized into PARTS and Parts are discussed as a whole and put to Vote  
(These parts contain many sections of Bill)

### (B) Kangaroo Closure:

→ In this, important clauses are identified, discussed and put to Vote.

### (C) GUILLOTINE Closure: more common

→ This is when the undiscussed part of Bill is clubbed with the discussed part and put to Vote.

### (D) Simple Closure:

→ enough discussion has been done on a Bill within time / before time  
↓  
so, Bill is put to Vote.

## RESOLUTIONS

- Motions that are substantive in character are called as Resolutions
- They are put to Vote and used to Draw the attention of House and are of substantive matter of public interest
- All Motions are Not Resolutions  
But, All Resolutions are Motions

## TYPES OF BILLS :

① {ORDINARY BILLS} : Simple majority

- This is most frequently introduced
- It is to Pass an Ordinary Law and Amend an Existing Legislation.

### Stages of Enactment :

A) 1<sup>st</sup> Reading : Introduction and acceptance

- Here, the Permission of House is sought and House grants leave to introduce the bill.

The Bill is then published in the Gazette of India  
and becomes the property of House

- If the Bill is already published in Gazette, the leave of House to introduce the bill is not necessary

B) 2<sup>nd</sup> Reading: Detailed Discussion & Amendments

- This is the **Most Important Stage** where the Bill is discussed in detail.
- It may be referred to Select / Joint Committee (LS + RS members) or they may also invite Public Opinion Based on Voting
- They may also consider the bill later.
- Bill is discussed in details & amendments are moved

C) 3<sup>rd</sup> Reading: Accepted / Rejected

- Bill is either **Accepted** or **Rejected** as a whole.
- NO amendments are allowed here

The Bill is now transmitted to the 2<sup>nd</sup> House, which has following options:

- i) Pass the Bill in Transmitted form & send to President
- ii) Pass the Bill in <sup>(suggested)</sup> Amendments & transmitted back to 1<sup>st</sup> House
- iii) Reject the Bill
- iv) Taking NO Action (for 6 months)

Joint Sitting  
called  
by Ruling  
Govt.  
Here

→ President may call a JOINT SITTING  
under Article - 108

Presided by: Speaker of L.S.

In his/her absence Deputy Speaker of LS

" " " " Deputy Chairman of RS  
(Not chairman of " ) as

At last by; any member selected by the members collectively.

## ② CONSTITUTIONAL AMENDMENT BILL : [CAB]

→ It will be required to be passed by  
Special Majority in LS/RS

→ Both Private & Govt. Member of Parliament  
can introduce CAB

→ Any CAB which alters the Federal Structure  
has to be ratified by Half of State Legislative Assemblies.  
along with simple majority [Simple Majority]  
LS/RS

→ The "Reading" procedures are same as in Ordinary Bill.  
(1<sup>st</sup>/2<sup>nd</sup>/3<sup>rd</sup>)

**CAA**

**Amended**

105<sup>th</sup> → 342A added

Provided

States having their own  
OBC list

104<sup>th</sup> → 334

To extend Reservation for  
SC/ST in LS/SLA.

103<sup>rd</sup> → 15(6)  
16(6) } added

} EWS Reservation

102<sup>nd</sup> → 338B  
342A } Added

NCBC was given  
Constitutional Status  
(from Statutory status)

→ for Central OBC List

101<sup>st</sup> → 279A added

GST council & GST  
were introduced

100<sup>th</sup> → —

Land Boundary agreement  
b/w India & Bangladesh  
implemented

[ 11 enclaves given to " "  
51 enclaves taken by India ]

99<sup>th</sup> → 124 amended

124 A  
B  
C } added

⇒ NJAC

98<sup>th</sup> → 371 J

97<sup>th</sup> → 43 B → Promotion of Co-op societies

96<sup>th</sup> →

95<sup>th</sup> →

# BUDGET

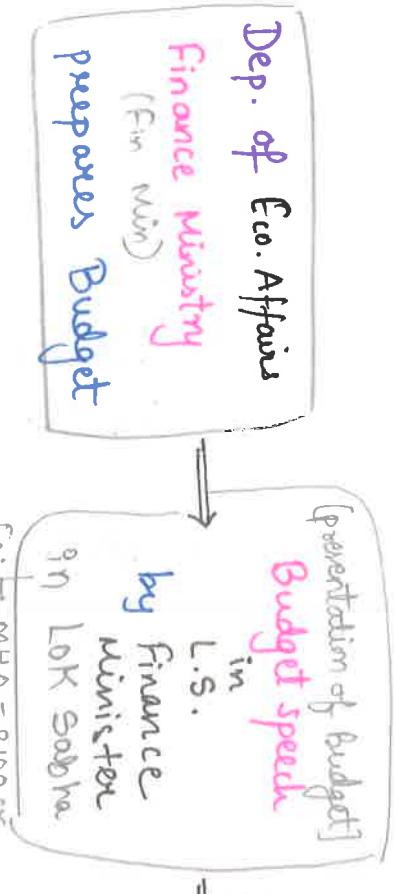
word  
not used in Constitution

uses the term "Annual financial Statement"

- The term **Budget** has not been used in the Constitution.
- **Budget** is prepared by Dept. of Economic Affairs in Ministry of Finance.

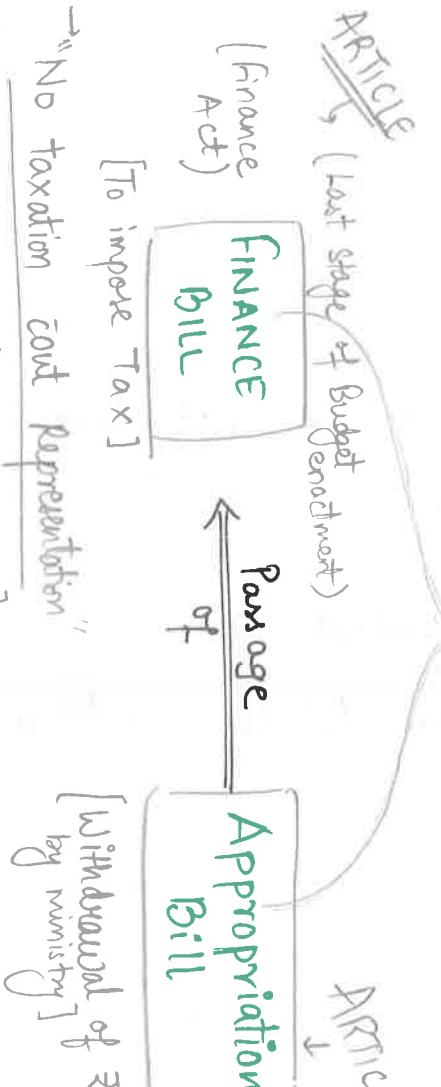
ARTICLE - 112)

Session Not ended



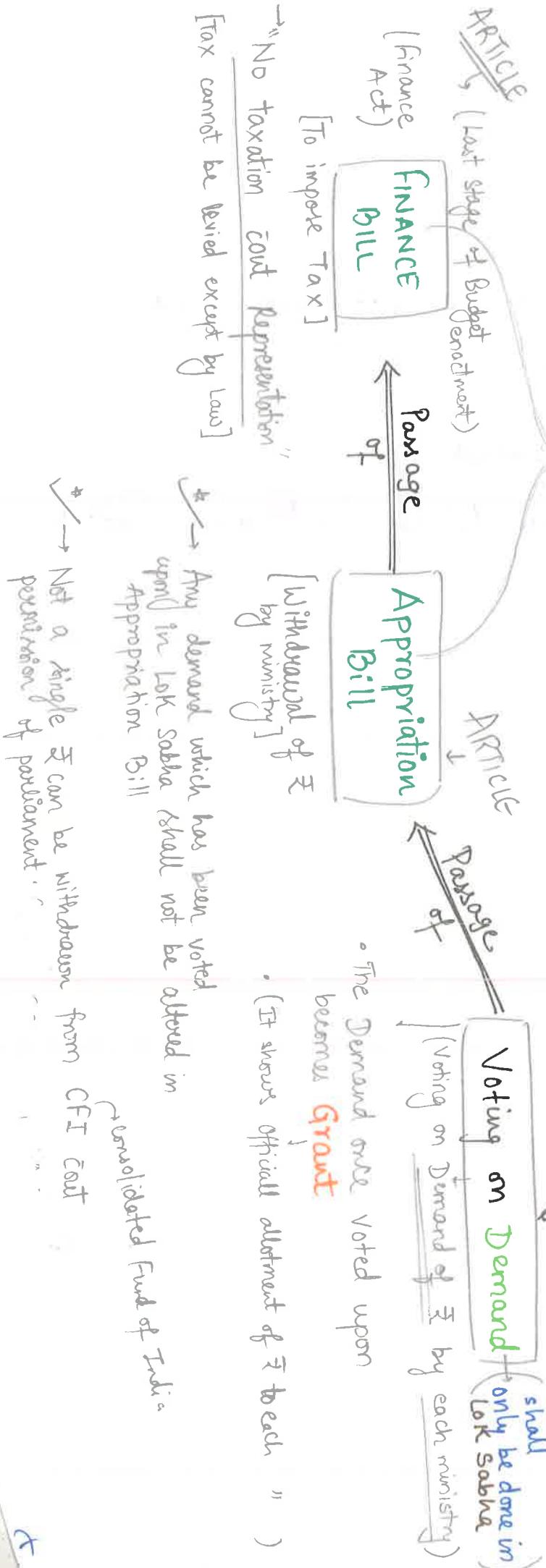
General Discussion

House is adjourned for 3-4 weeks and simultaneously  
Dept. Related Standing Committees (DRSC)  
examine proposed Demands of their respective ministries  
and give their report to parliament



- They both are passed every year.
- always certified as Money Bill

Reassembly of House



Aadhar Bill = Money Bill ; as subsidies under it were to be given from Consolidated Fund of India.

All Finance Bills are Financial Bills  
But, all financial " " not finance Bills

III

## MONEY BILLS

### FINANCIAL BILLS

any Bill that

deals in Money

a) Money Bill → Eg: Appropriation Bill  
Finance Bill etc.

b) Financial Bill - I ARTICLE 117(1)

only deals in taxat\*

c) Financial Bill - II ARTICLE 117(3)

**MONEY BILL**: President can use any veto except suspensive veto.

→ ARTICLE 109 & 110 deal with Money Bill

→ It can only be introduced in House of people (LS) and only with Prior Recommendation of President.

→ It cannot be sent back for Reconsideration by President to LS but it can be Rejected by him / her

→ Speaker of LS while transmitting a Bill to RS, certifies it as Money Bill and (s)he has discretion to certify it as " " .

→ A bill can be certified as Money Bill if it deals with all or any of provisions like -

- A) Imposition of Taxes
- B) Withdrawal of money from CFI (consolidated fund of India)
- C) Declaring an expenditure to be charged upon CFI

→ Rajya Sabha may suggest Recommendations to Money Bill which may or may not be acceptable to Lok Sabha

R.S can't Reject Money Bill and maximum delay it for 14 days; also it cannot suggest amendments to it.

Post 14 days or Rejection ⇒ Bill shall be deemed to be passed by Both Houses of parliament.

## FINANCIAL BILL - I

→ It is the bill which deals with all or any one of matters of Article 110 but also deals with other matters of general legislation

\* → FB - I is similar to Money Bill on 2 counts:

A) can be introduced only in L.S.

B) " " " " @ prior recommendation of president

↓  
→ Otherwise, it is an **ORDINARY BILL**

∴ It can be **Rejected** / } by R.S  
Delayed }

And

There can be **joint sitting** also be called

Eg: Dams Safety Bill

## FINANCIAL BILL - II :

- It is generally that kind of Bill that is involved with Expenditure from the CFI but not with matters <sup>expected</sup> under Article - 110
- It is just an Ordinary Bill except that   
 Recommendation of President is needed @  
 Consideration Stage [2<sup>nd</sup> Reading Stage]  
 (Discussion Stage)
- so, it can be delayed | Rejected by R.S.  
 and joint sitting can also be called upon.
- Eg: ① salaries of Govt. employees  
BILL TO

## IMPORTANT CONSTITUTIONAL PROVISIONS FOR BUDGET

(I) **ARTICLE 112** : Annual Financial Statement

→ President shall cause to be laid before Both Houses of parliament the Annual financial statement

↓  
∴ Fin. Minister presents the Budget]

→ The Voting on Demand shall take place in LS only.  
[as acc. to Article 75(3) ⇒ CoM are collectively responsible to LS]

→ Parliament can reduce/abolish a Tax but can't  
① it.

[Finance Minister is given the authority to ↑↑ abolish a tax  
by a law; while parliament has to agree ↑↑ abolish tax proposed by Fin min]

→ The Tax shall only be levied / collected by  
the authority of Law. [Finance Act & Bill]

## ARTICLE 114

→ The Appropriation through law is the only in which money shall be withdrawn from Consolidated Fund of India.

→ The Estimated Receipts & Expenditure of the govt. shall be placed in a statement.

→ The Estimates of Expenditure charged on CFI shall not be submitted to Vote.

→ The Budget shall distinguish Expenditure from Revenue Account  
from other Expenditure.

$$\text{Revenue Deficit} = \text{R. expenditure} - \text{R. Receipt}$$

$$\text{Fiscal Deficit} = \text{excess of Budget expenditure over Budget Receipts other than Borrowings}$$

$$\text{Primary Deficit} = \text{FD} - \text{Interest payment}$$

High courts → Salary ⇒ from CF if State  
Pensions ⇒ from CFI - G.O.I

(II)

## VOTE ON ACCOUNT

- It is generally passed after the General Discussion but before the **Adjournment** for 2-3 weeks.
- It Only has Expenditure part of **Budget**
- And is presented by a **Regular Government**
- Generally, has  $\frac{1}{6}$ th of Budget Expenditure. i.e Exp. reqd for 2 months [April & May]; as Budgets Deadline ends on 31<sup>st</sup> March, following which no money can be withdrawn w/out law.
- The VOA after **Preponing** of Budget since 2017 is **NO LONGER Required / Used** (**DISCONTINUED**)

Budget interim (Feb 1)

### Noting on Account

- covers only Expenditure
- covers only Withdrawal of money
- Presented by Ruling Govt
- Discontinued since 2017

### Interim Budget

- Covers Expenditure + Taxation
- covers everything of Budget but it is Budget Lite
- Presented by Outgoing / Caretaker / Govt Interim
- Still going on (when required)

(= BUDGET LITE)

III

## INTERIM BUDGET

→ Budget presented in  
Election year  
(Before Elections)

- Presented by a Govt. that is facing Elections / Interim / Caretaker Govt.
- Has both Expenditure & Taxation Part.
- It is expected from a Govt. (that faces election) to NOT TAKE any major policy decisions which is expected to be taken by Newly elected govt. (<sup>Govt.</sup> yet to come in power)

[In election year]

↓  
2 Budgets are presented

① By Outgoing Govt.      ② By Newly elected Govt.

(= Interim Budget)

# EXPENDITURE

IV

## CHARGED EXPENDITURE :

MADE OUT EXP.  
↓  
Votable

- NON-VOTABLE part of expenditure but it can be discussed
- To maintain Independence & Impartiality in certain offices : [under ARTICLE - 112]

①

a) Allowances of President

b) Allowances, Emoluments, Salaries of

- Speaker
- Deputy Speaker
- Chairman
- Deputy chairman

c) Salaries & Allowances <sup>pensions</sup> of → Supreme Court

d) Pensions → High court

e) Salaries & Allowances <sup>pensions</sup> of CAG

f) Salaries & Pensions of UPSC [ chairman members ]

②

Their Service Conditions cannot be varied

to their Disadvantage [ i.e. 2 cars can be given to 3 cars for S.C. judge but not 1 car ]

## SPECIAL POWERS OF RAJYA SABHA

Under Part - XI  $\Rightarrow$  Relation b/w Union & State

(I)

ARTICLE - 249

→ Creating | Empowering the Parliament  
To legislate on State List.

→ If the R.S passes a Resolution by a  
Majority of  $\frac{2}{3}$  rd of members present & voting  
that it is necessary in National Interest  
for Parliament to legislate on State List

↓  
The " may go ahead and make  
a Law by ordinary majority & legislate on  
that subject.

→ Validity of Resolution = 1 year from Date of passing

. Max. Validity of Law = 6 months after the  
Resolution ceases to be in  
operation

Under Part - XIV  $\Rightarrow$  Services Under Union & State

## II ARTICLE - 312 :

→ In order to create a New All India Services

If RS passes a Resolution supported by Not less than  $\frac{2}{3}$  of members Present & Voting that is necessary in National Interest for parliament to Create a New AIS; then

Parliament may by Law create a New AIS

Eg: In 1966, Indian Forest Services was added

(original constitution had IAS & IPS)

## III ARTICLE - 67 :

→ The RS can initiate a Resolution for Removal of Vice President.

[Note]: → AIS are unitary in Nature

→ Brainchild of "S. Patel" to prevent secessionist tendencies.

## SPECIAL POWERS OF LOK SABHA

- 1) A **Money Bill** can only be introduced in LS [Article 109, 110]
- 2) The **National Emergency** can be discontinued through a **Resolution** only in LS (<sup>By</sup> simple Majority)
- 3) A **No-Confidence Motion** shall only be introduced only in LS [Article 75(3)]
- 4) **Voting on Demands** takes place only in LS. [Article 75(3)]

## MULTI PURPOSE ROLE OF PARLIAMENT

- 1) Legislative Role
- 2) Executive Functions - CoM
- 3) Financial Functions
- 4) Judicial Functions - Impeachment of president
- 5) Electoral Functions - for VP & P

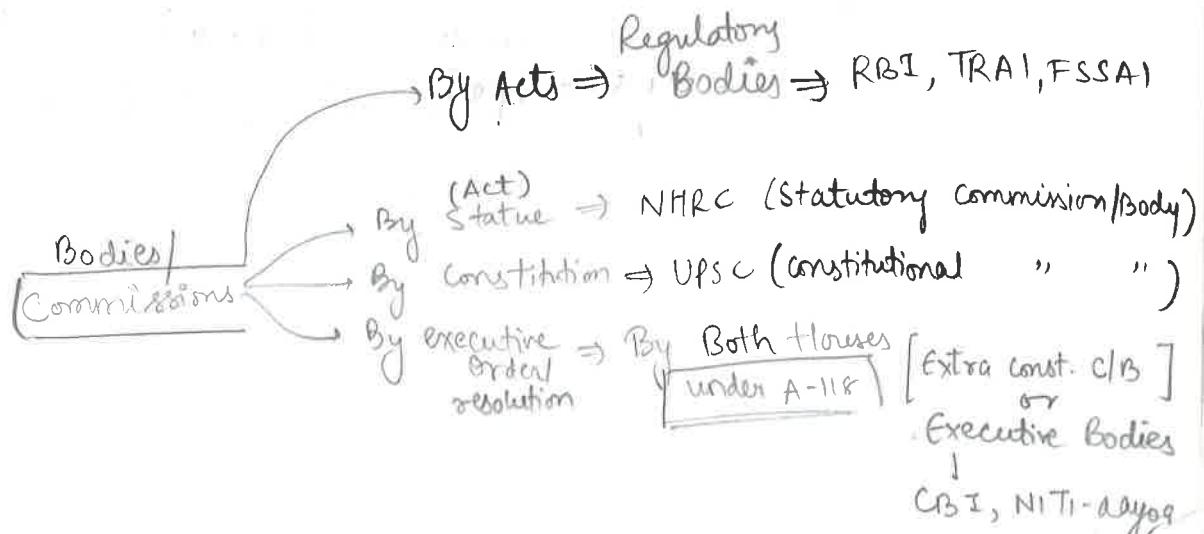
# PARLIAMENTARY COMMITTEES

A - 118

→ PC's are of extreme significance due to their multiple contributions.

## ROLE:

- I) PC's acts as a mechanism in Improving the effectiveness of Parliament.
- II) The PC's are extremely effective to Aid the overall Parliamentary functions because of the growing Complexity, volume & Technical nature of the work, that too in a Limited Time.
- III) ∵ PC's make a detailed examination after exhaustive deliberation far away from hustle and bustle of politics in calm & considerate manner.



## \* FEATURES OF PC :

- 1) Appointed or Elected by House  
OR  
Nominated by Speaker / Chairperson
- 2) Works Under the overall direction of Speaker / chairperson
- 3) Presents Reports to either Speaker / Chairperson
- 4) Secretarial Assistance is provided by either LS / RS

## \* DERIVE POWER FROM :

- Article 105 → Privileges of Parliamentary Members
- Article 118 → Parliament's authority to make Rules for Regulating its procedure  
(see Speaker power & funct<sup>n</sup>) & conduct of Business.

## CLASSIFICATION - PC's

→ Broadly, Types are:



- 1) Financial Committees [FC]
- 2) Dept. Related Standing Committees [DRSC]
- 3) Other Parliamentary <sup>standing</sup> Committees
- 4) Ad-hoc Committees [AHC]

### (I) AD-HOC Committees : (AHC)

- Can be inquiry or advisory committees
- constituted for a particular purpose and are dissolved after their purpose is achieved.
- Advisory Committees are diff from other AHC because  $\Rightarrow$  They are concerned with Bills & give their advice on proposed legisl.
- Main Ad-hoc committees are  $\begin{cases} \rightarrow \text{Select Committee} \\ \rightarrow \text{Joint } " \end{cases}$

(ii)

## FINANCIAL COMMITTEES

Public Acc Comm.  
Estimates Comm.  
Committee on

→ Types:

### ① Public Accounts Committee:

→ PAC is an important FC; wherein  
the Reports of Comptroller & Auditor General [C & AG]  
Annual Audit ↓

- a) Report on Appropriation Account
  - b) Report on Finance Account
- } are studied by it

→ PAC → setup for 1st Time in 1921

Composition:  
22 members [15 + 7]

L.S. R.S.

→ Chairman of PAC as a matter of  
Convention is from the Opposition [To uphold Principle of  
Natural Justice]  
(any member)

→ Members of PAC are elected by STVPR  
[Single Transferable vote Proportional Representation]

→ A MINISTER Cannot become a member of PAC.

- Reports of CAG are tools of Opposition in Democracy
- Financial Legitimacy of executive to legislature is ensured by CAG reports

## Major Functions:

- 1) To study Appropriation Accounts  
Finance
- 2) To ensure that → Money has been disbursed  
(as per Legal norms,  
Expenditure conforms to the authority that  
governs it.)

## ② Estimates Committee :

→ It is a committee that has its origin in 1921 and was called @ that time Standing Financial Committee

### COMPOSITION:

- 8 → Total Members = 30  
All members from Lok Sabha
- A minister cannot be a member of EC
- Chairman → appointed by Speaker and who is from Ruling party
- Members elected by STVPR
- AKA Continuous Economy Committee

## FUNCTIONS :

- 1) To give suggestion on overall Economic prudence
- 2) To suggest Alternative policies
- 3) To ensure Money is within limits of policy as in the estimates.
- 4) Suggest the forms in which Estimates are to be presented in parliament

[Yielding the floor] → when speaker asks one member to stop speaking & let some other members speak.

### ③ COMMITTEE ON PUBLIC UNDERTAKING:

- It is an important committee dealing w/ CAG Report on Public Undertaking (PU)
- Committee was constituted on the Recommendations of Krishna Menon Committee.
- Total Members = 22 [ 15 + 7 ]  
 Based on  
STVPR
- Functions :
- A) To study the Reports of CAG on Public Undertakings
- B) To examine Accounts of PU's.
- C) To look into whether PU's are following Prominent Business practices or not.
- D) The committee shall not interfere into Day to Day matters of General Administration.

**ARTICLE 148**: There shall be CAG of India

**ARTICLE 149**: Duties & powers of CAG

Any minister is not a member of DRSC | To Ⓛ control of DRSC

III

## DEPARTMENT RELATED STANDING COMMITTEES

1 DRSC may have  
≥1 ministries under  
it

- DRSC's are 24 in No.
- Came into existence in 1993
- They were ↑ from 17 → 24 in 2004,

① → DRSC's are an important aspect to Control Executive's Finance

They secure financial Accountability of executive towards Legislature.

② Assist Parliament in exercising Control over Budget

### COMPOSITION

• 16 DRSC's come under Administrative Supervision of Speaker - L.S.

And 8 DRSC's under Chairman - R.S.

• 31 members in 1 DRSC.

$$[21 + 10] \\ LS \quad RS$$

• Members & Head are Nominated by Speaker - L.S.  
Chairman - R.S.

Each DRSC has members from Both Houses

## FUNCTIONS OF DRSC's :

- 1) To study the Demands of concerned Ministries / Departments
- 2) To examine the Bills related to concerned Ministries / Departments.
- 3) To study Annual Report of Ministries
- 4) To consider National Basic Long Term Policy Document presented to the Houses (of concerned ministries)

Ministries DAY-TO-DAY administration shall not be interfered by the DRSC's.

Bill to:

JPC  $\Rightarrow$  @ 2<sup>nd</sup> Reading Stage  
is temporary in nature

DRSC  $\Rightarrow$  @ 1<sup>st</sup> Reading Stage  
is permanent in nature

IV

## OTHER PARLIAMENTARY COMMITTEES

A) ETHICS COMMITTEE: can expel members

→ was Constituted in R.S in 1997  
L.S in 2000

→ Role:

→ Examines Cases of Misconduct &  
Recommend Appropriation Action

B) COMMITTEE ON PRIVILEGES:

→ Functions:

Examine Cases of Breach of Privilege

→ L.S → 15 members

R.S → 10 members

(PC)	members
D FC	P A/C - 22
	Estimator - 30
	C m PU - 22
2) Ad-Hoc - *	
3) DRSC - 31	
4) Other P C	Ethics C - 7 C on privilege 15 LS Lang 1 - 39 (20+19)
Business advisory C	→ 15 LS 11 RS

(c)

## COMMITTEE ON WOMEN EMPOWERMENT :

→ Total members = 30

$$[20 + 10] \\ LS \quad RS$$

- Role : . Consider Report of Nat<sup>n</sup> Commission for women (St)  
• Examines initiative taken by Govt. for q.

National comm. for q

NC for minorities

NC for protection of children

NGT

CVC

Competition C of India

NABARD

} Statutory Bodies / commissions

Judiciary  $\Rightarrow$  under duty to protect  
Constitution & its Basic features

As seen in Article 141 & 144

Laws made by S.C.  
are binding in all courts in  
territory of India

all authorities  
civil or judicial,  
in territory of  
India shall  
act in aid of  
S.C.

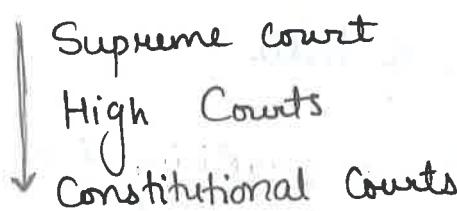
Constitution of India  $\Rightarrow$  Supreme Lex

# JUDICIARY

- (A) Prime Task is to Adjudicate upon Dispute between - Citizens and the State  
- Dif Units of State
- (B) Also, the Higher Constitutional courts perform Judicial Review

→ In India we have INTEGRATED JUDICIARY

Here, we have Hierarchy of Courts



→ In USA → the Federal Laws <sup>are enforced</sup> imposed by federal judiciary  
State Laws <sup>enforced</sup> by State judiciary

US Supreme Court doesn't have appellate jurisdiction in Civil & Criminal Matters.

S.C | H.C ⇒ Constitutional judiciary Bodies

[Lok-Adalats] ⇒ Statutory " "

[Gram Nyayalaya]

⇒ QUALIFICATIONS : to be S.C. judge

- A) One must be a Citizen of India
- B) Judge of High court | H.C's in succession for 5 years
- C) Advocate of High court | HC's in succession for 10 years. (BAR)

⇒ to be H.C judge :

- A) Citizen of India
- B) At least a practicing Advocate for 10 years. (BAR)
- C) should have held a judicial office for 10 years in Territory of India (State judicial Services)

\* NOTE:

There is a special qualification only for Appointment as S.C judge i.e a "Distinguished Jurist in the Eyes of President".

(Nobody has become S.C judge this way till date)

# APPOINTMENT OF S.C / H.C Judges:

Article 124(2) → S.C  
217 → H.C

## Chronology of Case:

I) **S.P. Gupta vs UoI** [= First Judges Case], 1982

→ S.C. held that,

The term Consultation in Article 124 doesn't mean Concurrence. (everytime)

→ It means that Primacy of CJI can be overruled for Strong reasons to be recorded. (cogent)

→ Primacy: Executive > CJI

II) **Second Judges Case**, 1993<sup>(2)</sup>: S.C Advocate on Records Association vs UoI

→ Collegium System came into existence by this case.

→ S.C overturned the previous judgement and ruled that the Term Consultation in Article 124 means Concurrence

→ Seniormost judge of S.C shall be appointed as Next CJI.

→ Outgoing CJI shall forward the Name of seniormost judge as Next CJI & the Govt. won't have discretion. [Judiciary > Executive]

→ But, (+nt) CJI will take plural consensus of 2 senior-most S.C judges

[CJI + 2] 244

Under A-143 ; president asked for a reference

### III) THIRD Judges Case, 1998 : [Re] Third Judges Case

→ Collegium was expanded from  $2 \Rightarrow 4$ .

$$(\text{CJI} + 2) \implies (\text{CJI} + 4)$$

Senior most judge

→ CJI while taking the opinion <sup>will</sup> not recommend even if 2 judges in Collegium disagree [decision to be taken by majority]

→ If in  $[\text{CJI} + 4]$  → the 4 judges would retire before tenure of CJI; i.e. they won't be able to become next CJI; the next CJI will expand collegium to  $[\text{CJI} + 4 + 1]$

next CJI

### IV) FOURTH Judges Case :

→ 99<sup>th</sup> CAA ⇒ amended Article 124 of constitution wherein the President shall consult

[NJAC] National Judicial Appointment Commission while appointing the judges of Supreme Court

• Article 124(A) was added

↳ NJAC was established

Composition:

- 6 members
- CJI
  - 2 seniormost judge of S.C. next to CJI
  - Union minister of Law & justice
  - 2 eminent persons

→ S.C judge can be elevated to Int'l Court of Justice

• Article 124 (B) : Functions of NJAC

- Recommend the appointment of S.C / H.C judges
- CJI of S.C / H.C & transfer of H.C judges

• Article 124 (C) : Procedure of NJAC functioning through a Law

Parliament will regulate procedure of Appointment through a Law (NJAC Act)



In pursuance of Article 124 (C) ; parliament enacted NJAC Act.

(On 15<sup>th</sup> Oct, 2015) :

S.C in S.C Advocate On Record Association & Others Vs Union of India



Ruled the following:

- Entire 99<sup>th</sup> CAA was declared unconstitutional
- NJAC Act. was declared unconstitutional.

Reason: Violates Independence of judiciary, which is Basic Structure of Constitution.

Memorandum of Procedure

ACTUAL PROCESS OF

APPOINTMENT OF

(1)

(Article 124) S.C Judge

[CJI + 4]  
Collegium forwards  
judge's Name(s) [Recommendation]

↓  
to  
Ministry of Law & Justice  
[Dept. of Justice]

↓  
forwards to

PM (Cabinet)

↓  
to

President

sign <sup>an</sup> order by his hand  
warrant will be read out  
Seal on order by him <sub>her</sub>

H.C judge (Article 217)

[CJI + 2]  
Collegium @ State Level  
forwards Recommendation

↓  
to  
State Law Dept  
(GOVERNOR)

[There are No  
ministries @  
State level;  
only Dept's]

↓  
to

Ministry of Law & Justice [Mo L&J]  
[Dept. of Justice]

↓  
to

Ministry of Home Affairs  
[I.B does an inquiry on  
judge(s) Background]

↓  
Report sent to

Mo L&J

↓  
to

Collegium @ Centre Level  
[CJI + 4]

↓  
Mo L&J

↓  
to

PM

↓  
President

↓ Hand  
Warrant  
Seal

- No. of judges in S.C is determined by a law enacted by Parliament (through Law)
- No. of judges in H.C is determined by President in consultation with CJI.

# LANDMARK CASE: → Central public Information office  
→ S.C, India

(CPIO, SCI Vs Subhash Chandra Aggarwal):

- The Office of CJI comes in purview of RTI Act, 2005.
- Sec 2(h) of RTI Act defines "Public Authority".
- S.C in a landmark judgement ruled that;
- a) Office of CJI is a Public Authority under RTI Act
- b) Input stage of Collegium shall not be revealed through RTI.  
(Discussion etc.)
- But the Output stage shall be open for RTI examination.  
(Final Name List)

→ S.C observed that Independence of Judiciary has to be balanced with Transparency.



"If there is a Darkness due to Lack of Transparency then Light of Transparency must shed Darkness."

→ Details of properties of S.C judges be disclosed.

People work upon constitution & not the constitution who works on people

## CRITICAL ANALYSIS OF COLLEGIUM SYSTEM:

(see net)

- Collegium system has been under judicial Contention and public discourse.

On one hand, it is required to have Transparency while maintaining Independence of judiciary.

- 1) Collegium is an extra-constitutional body deriving its existence from a S.C. judgement.
- 2) There is an Element of **Discretion**
- 3) There is NO merit-Based system or Objective criteria
- 4) Merit < Seniority
- 5) Scope of **Nepotism**
- 6) Distinguished Jurist Criteria has never been used.
  - Hardly, any appointments have been made from BAR.

[There has been some improvement recently].
- 7) No time limit  $\rightarrow$  Pending / Delayed Appointments by executive
- 8) No other country has collegium system  
(judges appointing judges)

"Judicial Primacy not to become Judicial Exclusivity"

## REMOVAL OF JUDGES - S.C / H.C

→ **Ground:** Proved misbehaviour | incapacity (medical)

→ No judge in India has been removed till now.

→ **Procedure:** Not mentioned in the Constitution  
mentioned in Judges Inquiries Act, 1969

President issues the removal order in the same session after receiving an address from the parliament.

→ **Majority Required:** mentioned in Constitution

**SPECIAL Majority** Same as amending the constitution

**Majority of Total Membership of House [ABSOLUTE MAJORITY]**

Supported by  $\geq \frac{2}{3}$  rd of members Present & Voting

Eg: Total = 100  
Vacant = 10

Effective Strength = 90

$$\text{Absolute majority} = \left[ \frac{100}{2} + 1 \right] = 51$$

$$P \& V = \left[ \frac{2}{3} \times 90 + 1 \right] = 61$$

Both need to be fulfilled

**Breach of privilege**  $\Rightarrow$  using Privilege in a manner that doesn't Before them (suit)

Opposition brings it  $\Rightarrow$  voter upon (motion)  $\Rightarrow$  Ethics committee deals with it

**Contempt of Parliament**

- any derogatory statement of Parliament
- Parliament can get him/her arrested.

→ Parliament enacted Judges Inquiries Act, 1968  
to Regulate Procedure of Removal of judges  
of S.C / H.C



→ Removal motion must be signed by  
at least 100 members in L.S /  
50 members in R.S

- It has to be presented to Speaker / Chairman
- A Speaker / Chairman may Reject the motion.
- If it is admitted ; they will constitute a 3 member Committee to Investigate the charges.

Comprise of : CJI / judge of S.C.

Chief Justice of H.C

Distinguished Jurist

- If person is found guilty by the committee ;  
the Both the Houses pass the Motion separately  
by SPECIAL MAJORITY



then , address the President to

(Remove the judge)

✓ Removal process has been made tough so as to maintain Independence of Judiciary

### OTHER ASPECTS OF INDEPENDENT JUDICIARY:

- o) Removal of judges very tough (uphill task)
- 1) Salaries  $\rightarrow$  Charged upon CFI  
Allowances
- 2) Security of Tenure
- 3) Power to punish for its Contempt (Article 129/215)
- 4) Service conditions can't be changed to their disadvantage.

✓ Judicial Independence isn't a Right of Judges but of Rights of Citizens.

Judicial Primacy is crucial for Judicial Independence.

Original  $\Rightarrow$  you can directly approach  
Exclusive  $\Rightarrow$  only way

## S.C. JURISDICTION:

(A) ORIGINAL JURISDICTION: **ARTICLE - 131**

→ It is for those Disputes where the S.C has Original and Exclusive jurisdiction.

→ As per **ARTICLE - 131**, the following Disputes can be exclusively dealt by S.C. only:

i) Between — Centre &  $\geq 2$  States

Centre + Some States  $\text{vs}$  Other States  
 $\geq 2$  states

(B) WRIT JURISDICTION: **ARTICLE - 32**

→ It is the Most Important

Reason: As S.C is the guardian and protector of Fundamental Rights

→ S.C can issue 5 types of Writs

Judgement  $\rightarrow$  Whole sentence of court

Judgement's part  $\in$

[Civil Court]  $\rightarrow$  Decree  $\Rightarrow$  Rights of party

Direction  $\Rightarrow$  minor pronouncements in Judgement

→ It is an Original and NOT Exclusive jurisdiction.

### ③ APPELLATE JURISDICTION :

#### A) Appeal on Constitutional Matters [Article - 132] :

- Appeal can be made against judgement of H.C ; if H.C certifies that the case involves Substantial question of Law requiring an Interpretation of Constitution.
- Certificate of appeal

#### B) Appeal on Civil Matters [Article - 133] :

- If H.C issues a Certificate of Appeal that it involves substantial question of Law and has to be decided by S.C

Appeal on

c) CRIMINAL MATTERS : [ARTICLE -134]

→ If H.C gives a Certificate of Appeal  
OR

→ It has on Appeal reversed the Order  
of Acquittal <sup>by lower court</sup> and sentenced the person to  
Death / Life Imprisonment

OR

→ It has taken a Case from Subordinate Court  
and sentenced the person to

[Death /  
Life imprisonment /  
10 years jail]

[CLASS - 26] [24/11/22]

D) ADVISORY JURISDICTION : Through this, S.C has given advice 15 times

→ Under Article 143, the President can seek an Advice on any Question of Law / fact that is of Public Importance from the Supreme Court

→ Apex court gives an Advice in an Open Court, where  $\geq 5$  judge bench sits.  
(minimum 5 judges)

→ Advice rendered by S.C. is NOT BINDING ON GOVT.

And it is NOT BINDING on S.C to render an opinion except the matter is with respect to a Pre Constitutional Treaty / Agreement



## (E) SPECIAL LEAVE PETITION : [ARTICLE - 136]

- S.C under Article 136 has exceptional powers to grant Leave through <sup>discretion</sup> against the judgement of any Court in India except a Military Court
- ↓
- This is a wide power not available to Supreme Court of United States of America
- SLP [power of S.C] has lead to, ↑ No. of cases in it.

No. of Cases in Each Jurisdiction of S.C.

SLP > Writ > Appellate > Federal > Advisory

# JUDICIAL REVIEW

## HISTORY :

- Concept of J.R. owes its Origin in Landmark Verdict given by Federal Supreme Court of U.S.A : "Marbury Vs Madison"
- The Apex Court in India has declared that Judicial Review is the Basic Structure of Constitution [ Kesvananda Bharti Minerva mills Case ].
- Term J.R. : → not mentioned in Indian Constitution U.S

## Why J.R. needed :

- 1) To Maintain Supremacy of Constitution
- 2) To protect Fundamental Rights
- 3) To ensure Federal Equilibrium

## → What is J.R.?

→ J.R. Reviews the constitutionality of

- a) Constitutional Amendments
- b) Ordinary Laws enacted by
  - Parliament
  - State legislatures
- c) Administrative Actions of the Executive

→ Although, the Term J.R. is NOT MENTIONED in Constitution explicitly,

Yet, the Idea of J.R. can be interpreted in following Articles :

1) [ARTICLE 13] :

→ Declaring that inconsistent / contravening Laws shall be declared void.

2) [ARTICLE 32] :

→ S.C issues writs for enforcement of FR.

3) [ARTICLE 131] :

→ Federal Disputes [Original & exclusive jurisdiction of S.C]

- 4) ARTICLE 132 : Appellate jurisdiction on Constitutional Matters
- 5) ARTICLE 133 : " " Civil Matters
- 6) ARTICLE 134 : " " " Criminal Matter
- 7) ARTICLE 136 : Special Leave Petition
- 8) ARTICLE 143 : Advisory Jurisdiction of Supreme Court
- 9) ARTICLE 226 : Writ jurisdiction of High court  
→ Declared Basic Structure in L.ChandraKumar Case
- 10) ARTICLE 227 :  
→ High court's Supremacy over all courts except military Courts.

## OBSERVATIONS BY S.C ON J.R

### 1) A.K Gopalan Vs State of Madras:

→ The Constitution is supreme.

And for a Statute to be valid, the Law must be in Conformity with Constitutional requirements.

And the judiciary shall decide, whether any enactment is Constitutional or Not.

### 2) State of Madras Vs V.G. Row:

→ Constitution of India provides for express provisions for judicial review of legislation to ensure conformity with the Constitution

### 3) Keshvananda Bharti Vs State of Kerala

→ Justice Khanna;

As long as F.R exist and are part of the Constitution, the power of judicial review has to be exercised with a view that these Rights are not contravened.

4) Rajasthan Vs Union of India:

- Constitution is Supreme Lex (=Law)  
No branch of government is above it.  
S.C is the ultimate interpreter of constitution.

5) S.S. BOLA VS B.D. SHARMA:

- Constitution provides for Judicial Review to maintain the Balance of federalism
  - Protect Fundamental Rights
  - Ensure Equality, Liberty
  - Create "Healthy Nationalism"

U.S Supreme Court = 3<sup>rd</sup> Law Making Chamber

Jurisprudence = wisdom of Law  
Law wisdom

## CRITICAL ANALYSIS of J.R :

- Constitution of India has used the Term: Procedure established by Law as against Due process of Law mentioned in USA Constitution

### → In Due process of Law:

Judicial review is exercised through prism of   
Procedural Ground  
Substantive Ground (Reasonableness / justness)

### → In Procedure established by Law:

Gives less powers of Judicial Review, because the courts cannot go into Reasonableness / justness / rationality of Law

- Constitution of India adopted Hybrid model where-in U.S Judicial Supremacy was incorporated in a diluted sense

And

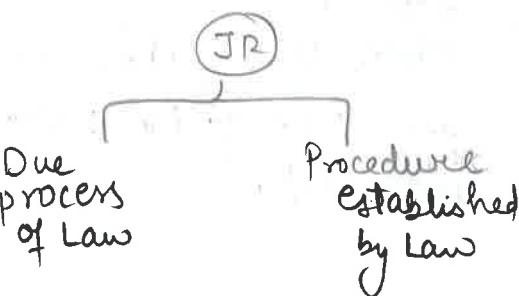
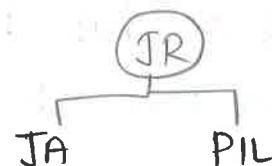
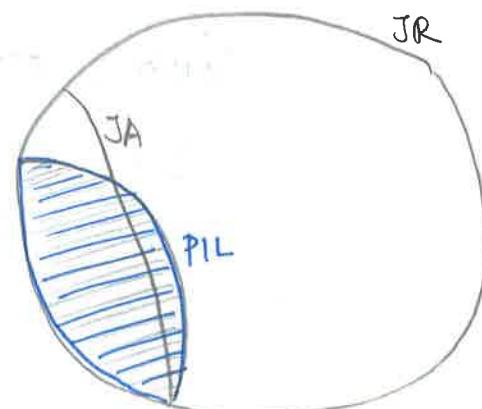
British parliamentary supremacy has not been incorporated by Powers of Judicial Review (Written Constitution) Federal Division of powers

→ India = USA  
Judicial Supremacy + MIX OF British Parliamentary Supremacy

### In Maneka Gandhi Case

Power of S.C to exercise J.R. was expanded by use of "Due process of Law for Article - 21"

MIX OF  
∴ India = USA Judicial supremacy +  
British parliamentary supremacy



T J.A.

- Vishaka Case [Guidelines on Prevention of Sexual Harassment @ workplace]
- Guidelines on passive euthanasia

↳ citing we are part of UN convention to Eliminate all forms of Discrimination against q

## JUDICIAL ACTIVISM

: legislative vacuum  
is filled by J.A.

- Arthur Schlesinger coined the term judicial activism.
- Doctrine of Judicial Activism in INDIA is attributed to efforts of:
  - Justice Bhagvati
  - Justice Iyer
  - Justice Reddy
  - Justice Desai
- J.A. has been under intense Debate & has been differently defined:
  - A) J.A. is the judicial decision making where the judges are seen as exercising their own policy preferences for the overall betterment.
  - B) J.A. is aka Law making by Judges.
  - C) J.A. witness the Breach | Dilution of Separation of Power

## Judicial Activism - Judicial Review Relation :

→ Judicial Review is the Mother of Judicial Activism where the thin difference lies in the fact that

"In J.R., the courts uphold the law through the Prism of Constitution,

While in J.A., they exercise policy preferences and expand the ambit of Laws. (i.e. suggest reforms for Betterment)

→ J.A. is derived from Powers of J.R.

When used? → Scholars say that Rise of JA is due to :

- Fulfillment of legislative Vacuum
  - Failure of legislature/ Executive to discharge Duties
  - Citizens hoping judiciary as saviour of last resort
- co-alition  
Caretaker Govt.  
Unstable

### JA :- GOOD OR BAD:

→ Constitution clearly calls for Principle of SoP except that the Executive is derived from Legislature

→ SOP is an important principle to uphold Democracy.

(Rationale): To  $\ominus$  concentration of powers

→ Technically, it can't be argued in a Bipolar way, whether J.A. is good or Bad?

### POSITIVES

J.A has resulted in :

- a) Expansion of Rights
- b) Environmental Betterment
- c) Consumer Protection
- d) Gender Equality
- e) Decriminalization of politics etc.

These reforms have far-reaching effects on society

### NEGATIVES

But, it is equally important to acknowledge that J.A is exercise of powers by unselected Judges, which if left free, may result in

- a) Dilution of SOP
- b) Exercise of extra jurisdiction
- c) Discretionary powers exercised may affect Policy Domain
- d) Fears of one organ usurping power of others

→ Apex Court has itself come down on Judiciary and time and again observed that "One organ must not transgress the Boundaries to enter into other's Domain" [Not to cross Laxman Rekha]

→ JA when breaches the limits of SOP in a far too stretched way

↓ It Becomes

Judicial overReach / Adventurism

→ Doctrine of Judicial Restraint: (from USA)

↓

- focuses on Healthy separation of power
- promotes judiciary to exercise jurisdiction in its allotted arena

→ H.C derive their power from Constitution  
not subordinate to S.C

USA

- No concurrent list  
Clear List of subjects for Centre & State
- U.S.A federal S.C ⇒ only crime against USA come under it  
(other crimes come under state S.C)

INDIA → federalism in Exec-Legisl.  
Integration in Judiciary

(Under A-142) → Rajiv Gandhi assassins  
(to do justice) ↳ Set free Babri-Masjid-Ramji Case

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