Strategy

Thursday, May 7, 2020 1:30 PM

#1. Section one: Historical background

What is most important here?

- Committees of the Constituent Assembly

What is moderately important?

- Composition of the Constituent Assembly
- Rest can be ignored or given a mild read.

Read MPS003

#2. Section two: Fundamental Rights, Duties, DPSP, Preamble (Very important)

General Comments

UPSC asks 5-6 Questions every year from this section. In UPSC 2017 most of the polity Questions were asked from this section. You have to read this section multiple times.

Specific Suggestions

1. Salient features of the Indian Constitution (Moderately important. The topics mentioned in this chapters are covered extensively in later chapters)
2. Preamble to the Constitution (Very important) UPSC simply loves Preamble. It has asked questions on the preamble in 2015 and this year also. Read carefully about different words mentioned in the preamble (example fraternity) and what do they exactly mean.
3. Union and its territory (Moderately important). Aspirants should be aware of the process through which states are created and also they should be aware of the sequence of new states creation).
4. Fundamental rights, DPSP and Fundamental duties (Very important) FR, FD, DPSP etc. are difficult as they have laws and bylaws. Some are explicit while others are implicit. It is thus important to get the *concept and soul of them*. UPSC won't ask petty details or facts. It will *exploit the conceptual part*.
   You should be able to connect dots with recent happenings. For example, in 2017 UPSC asked a question related to privileges after use of red beacons was abolished by the government for ministers/officers.
5. Amendment of the constitution (Read carefully about different types of majorities and which majority is used in which case for example in which cases two-third majority is required and in which cases simple majority is required.)
6. Read very carefully about basic terms of polity like Cabinet form of Government, Judicial review, President System, Prime Minister System, Federalism, First past the post system, Proportional representation, rights and duties etc.
   In last few years UPSC has been asking lots of questions to test the conceptual clarity of the aspirant.

#3. Section three: Similar topics

Union and state Executive

Almost 90% of powers and functions of President and Governor are same.

If you cover topics which are similar like President and governor, Prime Minister and Chief Minister, Parliament and state legislature, supreme court and high court together it will save your time and will be easy to memorize and link them. Smart work!

How President and Vice President are elected and removed

- Read very carefully Comparison table of powers of Governor and President mentioned in the Governor Chapter in Laxmikanth.
- Always read trivial information very carefully, you can also make notes of the titbits information mentioned in any chapter since UPSC loves to ask trivia based questions, for example, President can pardon a death convict, however, Governor cannot.

Parliament and state legislature

Every year 2-3 questions are asked from it in prelims

What is most important in this chapter?

- Read both chapters simultaneously. Look for differences between the powers of parliament and state legislature example privilege power of parliament is much wider than state legislature. (Very important)
- Different committees and its composition and various kinds of motions and resolutions.
- Different types of bills
- Different types of discussions
- Powers of speakers, deputy speakers, Chairman and Vice Chairman.
- Comparison between powers of Lok Sabha and Rajya Sabha and Rajya Sabha and legislative council.
- Budget.

Supreme court and High court

What is most important here?

- Comparison between writ powers of High court and Supreme court
- Appointment and removal process of SC and HC judges(There is some trivial differences in that process)
- Original powers of SC and HC

Section 4: Constitutional/statutory and Executive bodies

What should you read very carefully?

- Whether the body is constitutional, statutory or executive. Example SC/ST commission is constitutional body but backward commission and women commission are Statutory Bodies.
- Who appoints the chairman and member of the commission and how they are removed.

- Focus on trivial issues
- Usually except appointment and removal, most of the functions and details of Central commissions and state commissions are similar. Revise all these through Titbits

1. Functions/powers of legislature
2. Functions/powers of executive
3. Functions/powers of Judiciary

Section 5: Special status of different states and union territories

What should you read very carefully?

- Read carefully the role of Governor and president in these states
- Read carefully the powers of L.G. and president in union territories. President has some extraordinary power in some union territories.

Section 6: Local Bodies

- Read carefully different committees of Panchayati raj.
- Regarding powers and functions of local bodies read carefully about which clause is mandatory (mandated by 73rd and 74th amendment) and which is optional (depends on whims and fancies of state government).
- Example SC/ST reservation in local bodies is mentioned in 73rd and 74th amendment but OBC reservation is optional.

Section 7: Miscellaneous items

- This will include remaining topics
- In this most important chapters are anti-defection law, the official language, political parties and elections.
- In the anti-defection chapter closely read about differences in the 52nd amendment and 85th amendment (it is bit tricky).
- In the political party chapter extensively read about criteria for granting any political party national or regional status.
- Rest of the chapters should be read but they are not very important from exam perspective.

Laxmikanth Strategy

- Start with the chapters on **President, Vice President and then read the one on Governor**. Then you read the **Emergency Provisions** chapter as it consists of powers directly related to the President etc. - 17,18,30
- Then, read chapters on **PM and Cabinet, after that take up CM and State Council of Ministers**. - 19,20,21,31,32
- Then, read chapter on **Parliamentary System and then to the chapter on Parliament**. However, don't read the whole chapter. Put a **pause after the budget topic in that chapter** (it is a very long chapter) and then read **CAG chapter**. Return to Parliament and finish it. -12, 22..51
- Read **State Legislative Assembly** chapter after this. -33
- Read **Supreme Court followed by High court and then Tribunals. Read Attorney General and Advocate General**. - 26, 34, 35
- Read **UPSC and SPSC chapters**
- Read **Finance Commission, Planning Commission, National Development Council chapters**.
- Read **Centre State and Interstate relations**.
- Read **Election Commission, Election and then Anti-defection**
- You can cover these together in one go: **National Commissions on SC, ST, OBC, Women, CVC, Lokpal** etc.

Finally :

- Citizenship, Fundamental Rights, DPSP, Fundamental Duties.
- Amendment of Constitution
- Preamble
- Jammu Kashmir
- Scheduled and Tribal Areas.
- UTs, Panchayati Raj Institutions, and Municipalities

History

Wednesday, May 6, 2020 10:48 AM

THE COMPANY RULE (1773–1858)

Regulating Act of 1773

This act was of great constitutional importance as

(a) it was the first step taken by the British Government to control and regulate the affairs of the East India Company in India;
(b) it recognized, for the first time, the political and administrative functions of the Company; and
(c) it laid the foundations of central administration in India.

The features of this Act were as follows:

1. It designated the Governor of Bengal as the 'Governor- General of Bengal' and created an Executive Council of four members to assist him. The first such Governor general was Lord Warren Hastings.
2. It made the governors of Bombay and Madras presidencies subordinate to the governor-general of Bengal, unlike earlier, when the three presidencies were independent of one another.
3. It provided for the establishment of a Supreme Court at Calcutta (1774) comprising one chief justice and three other judges.
4. It prohibited the servants of the Company from engaging in any private trade or accepting presents or bribes from the 'natives'.
5. It strengthened the control of the British Government over the Company by requiring the Court of Directors (governing body of the Company) to report on its revenue, civil, and military affairs in India.

In a bid to rectify the defects of the Regulating Act of 1773, the British Parliament passed the Amending Act of 1781, also known as the Act of Settlement.

Pitt's India Act of 1784

The next important act was the Pitt's India Act of 1784.

The features of this Act were as follows:

1. It distinguished between the commercial and political functions of the Company.
2. It allowed the Court of Directors to manage the commercial affairs, but created a new body called Board of Control to manage the political affairs. Thus, it established a system of double government.
3. It empowered the Board of Control to supervise and direct all operations of the civil and military government or revenues of the British possessions in India.

Thus, the act was significant for two reasons: first, the Company's territories in India were for the first time called the 'British possessions in India'; and second, the British Government was given the supreme control over Company's affairs and its administration in India.

In 1786, Lord Cornwallis was appointed as the Governor-General of Bengal, an act was passed and he was made commander-in-chief.

Charter Act of 1813

The features of this Act were as follows:

1. It abolished the trade monopoly of the company in India i.e., the Indian trade was thrown open to all British merchants. However, it continued the monopoly of the company over trade in tea and trade with China.
2. It asserted the sovereignty of the British Crown over the Company's territories in India.
3. It allowed the Christian missionaries to come to India for the purpose of enlightening the people.
4. It provided for the spread of western education among the inhabitants of the British territories in India.
5. It authorized the Local Governments in India to impose taxes on persons. They could also punish the persons for not paying taxes.

Charter Act of 1833

This Act was the final step towards centralization in British India.

The features of this Act were as follows:

1. **It made the Governor-General of Bengal as the Governor-General of India and vested in him all civil and military powers**. Thus, the act created, for the first time, Government of India having authority over the entire territorial area possessed by the British in India. **Lord William Bentick was the first Governor-General of India.**
2. It deprived the Governor of Bombay and Madras of their legislative powers. The Governor-General of India was given exclusive legislative powers for the entire British India. The laws made under the previous acts were called as Regulations, while laws made under this act were called as Acts.
3. It ended the activities of the East India Company as a commercial body, which became a purely administrative body. It provided that the Company's territories in India were held by it 'in trust for His Majesty, His heirs and successors'.
4. **The Charter Act of 1833 attempted to introduce a system of open competition for selection of civil servants and stated that the Indians should not be debarred from holding any place, office and employment under the Company**. However, this provision was negated after opposition from the Court of Directors.

Charter Act of 1853

This was the last of the series of Charter Acts passed by the British Parliament between 1793 and 1853. It was a significant constitutional landmark.

The features of this Act were as follows:

1. **It separated, for the first time, the legislative and executive functions of the Governor-General's council**. It provided for addition of six new members called legislative councilors to the council. In other words, it established a separate Governor-General's legislative council which came to be known as the Indian (Central) Legislative Council. This legislative wing of the council functioned as a mini- Parliament, adopting the same procedures as the British Parliament. Thus, legislation, for the first time, was treated as a special function of the government, requiring special machinery and special process.

2. It introduced an open competition system of selection and recruitment of civil servants. The covenanted civil service was, thus, thrown open to the Indians also. **Accordingly, the Macaulay Committee (the Committee on the Indian Civil Service) was appointed in 1854.**
3. It extended the Company's rule and allowed it to retain the possession of Indian territories on trust for the British Crown. But, it did not specify any particular period, unlike the previous Charters. This was a clear indication that the Company's rule could be terminated at any time the Parliament liked.
4. **It introduced, for the first time, local representation in the Indian (Central) Legislative Council**. Of the six new legislative members of the Governor-general's council, four members were appointed by the local (provincial) governments of Madras, Bombay, Bengal and Agra.

THE CROWN RULE (1858–1947)

Government of India Act of 1858
This significant Act was enacted in the wake of the Revolt of 1857–also known as the First War of Independence or the 'sepoy-mutiny'.
The features of this Act were as follows:

1**. It provided that India, henceforth, was to be governed by, and in the name of, Her Majesty.** It changed the designation of the Governor-General of India to that of Viceroy of India. He (Viceroy) was the direct representative of the British Crown in India. **Lord Canning, thus, became the first Viceroy of India**.
2. It ended the system of double Government by abolishing the Board of Control and Court of Directors.
3. It created a new office, Secretary of State for India, vested with complete authority and control over Indian administration. The secretary of state was a member of the British Cabinet and was responsible ultimately to the British Parliament.
4. It established a 15-member council of India to assist the Secretary of State for India. The council was an advisory body. The secretary of state was made the Chairman of the council.
5. It constituted the Secretary of State-in-Council as a body corporate, capable of suing and being sued in India and in England.

Indian Councils Act of 1861
After the great revolt of 1857, the British Government felt the necessity of seeking the cooperation of the Indians in the administration of their country. In pursuance of this policy of association, three acts were enacted by the British Parliament in 1861, 1892 and 1909.
The features of this Act were as follows:

1. It made a beginning of the representative institutions by associating Indians with the law-making process. It, thus, provided that the Viceroy should nominate some Indians as non-official members of his expanded council. **In 1862, Lord Canning, the then Viceroy, nominated three Indians to his legislative council–the Raja of Banaras, the Maharaja of Patiala and Sir Dinkar Rao.**
2. It initiated the process of decentralization by restoring the legislative powers to the Bombay and Madras Presidencies. It, thus, reversed the centralizing tendency that started from the Regulating Act of 1773 and reached its climax under the Charter Act of 1833. This policy of legislative devolution resulted in the grant of almost complete internal autonomy to the provinces in 1937.
3. It also provided for the establishment of new legislative councils for Bengal, North-Western Provinces and Punjab, which were established in 1862, 1886 and 1897, respectively.

Indian Councils Act of 1892 - In this act only there were increase in the number of representatives and few more subordinate support.

Indian Councils Act of 1909
This Act is also known as **Morley-Minto Reforms (Lord Morley was the then Secretary of State for India and Lord Minto was the then Viceroy of India).**
The features of this Act were as follows:

1. It considerably increased the size of the legislative councils, both Central and provincial. The number of members in the Central legislative council was raised from 16 to 60. The number of members in the provincial legislative councils was not uniform.
2. It retained official majority in the Central legislative council, but allowed the provincial legislative councils to have nonofficial majority.
3. It enlarged the deliberative functions of the legislative councils at both the levels. For example, members were allowed to ask supplementary questions, move resolution on the budget and so on.
4. **It provided (for the first time) for the association of Indians with the executive councils of the Viceroy and Governors. Satyendra Prasad Sinha became the first Indian to join the Viceroy's executive council. He was appointed as the Law Member.**
5. It introduced a system of communal representation for Muslims by accepting the concept of 'separate electorate'. Under this, the Muslim members were to be elected only by Muslim voters. Thus, **the Act 'legalized communalism' and Lord Minto came to be known as the Father of Communal Electorate.**
6. It also provided for the separate representation of presidency corporations, chambers of commerce, universities and zamindars.

Government of India Act of 1919
On August 20, 1917, the British Government declared, for the first time, that its objective was the gradual introduction of responsible Government in India.

The Government of India Act of 1919 was thus enacted, which came into force in 1921. This Act is also known as Montagu -Chelmsford Reforms (Montagu was the Secretary of State for India and Lord Chelmsford was the Viceroy of India).

The features of this Act were as follows:

1. It relaxed the central control over the provinces by demarcating and separating the central and provincial subjects. The central and provincial legislatures were authorized to make laws on their respective list of subjects. However, the structure of government continued to be centralized and unitary.
2. It further divided the **provincial subjects into two parts–transferred and reserved**. The transferred subjects were to be administered by the Governor with the aid of Ministers responsible to the legislative council. The reserved subjects, on the other hand, were to be administered by the Governor and his executive council without being responsible to the legislative council. This dual scheme of governance was known as 'diarchy'–a term derived from the Greek word diarche which means double rule. However, this experiment was largely unsuccessful.
3. **It introduced, for the first time, bicameralism and direct elections in the country.** Thus, **the Indian legislative council was replaced by a bicameral legislature consisting of an Upper House (Council of State) and a Lower House (Legislative Assembly). The majority of members of both the Houses were chosen by direct election.**
4. It required that the three of the six members of the Viceroy's executive Council (other than the Commander-in-Chief) were to be Indian.
5. It extended the principle of communal representation by providing separate electorates for Sikhs, Indian Christians, Anglo-Indians and Europeans.
6. It granted franchise to a limited number of people on the basis of property, tax or education.

7. It created a new office of the High Commissioner for India in London and transferred to him some of the functions hitherto performed by the Secretary of State for India.
8. It provided for the establishment of a public service commission. Hence, a **Central Public Service Commission was set up in 1926 for recruiting civil servants.**
9. It separated, **for the first time, provincial budgets from the Central budget and authorized the provincial legislatures to enact their budgets.**
10. It provided for the appointment of a statutory commission to inquire into and report on its working after ten years of its coming into force.

Simon Commission
In November 1927 itself the British Government announced the appointment a seven-member statutory commission under the chairmanship of Sir John Simon to report on the condition of India under its new Constitution. All the members of the commission were British and hence, all the parties boycotted the commission. The commission submitted its report in 1930 and recommended the abolition of dyarchy, extension of responsible Government in the provinces, establishment of a federation of British India and princely states, continuation of communal electorate and so on. To consider the proposals of the commission, the British Government convened three round table conferences of the representatives of the British Government, British India and Indian princely states.

Communal Award
In August 1932, Ramsay MacDonald, the British Prime Minister, announced a scheme of representation of the minorities, which came to be known as the Communal Award. The award not only continued separate electorates for the Muslims, Sikhs, Indian Christians, Anglo-Indians and Europeans but also extended it to the depressed classes (Scheduled Castes).
Gandhi Ji was unhappy with the inclusion of distressed classes and went into fast till death and at last they came up with The agreement, known as **Poona Pact**, retained the Hindu joint electorate and gave reserved seats to the depressed classes.

Government of India Act of 1935
The Act marked a second milestone towards a completely responsible government in India. It was a **lengthy and detailed document having 321 Sections and 10 Schedules.**

The features of this Act were as follows:
1. It provided for the establishment of an All-India Federation consisting of provinces and princely states as units. **The Act divided the powers between the Centre and units in terms of three lists–Federal List (for Centre, with 59 items), Provincial List (for provinces, with 54 items) and the Concurrent List (for both, with 36 items).** Residuary powers were given to the Viceroy. However, the federation never came into being as the princely states did not join it.
2. It abolished dyarchy in the provinces and introduced 'provincial autonomy' in its place. The provinces were allowed to act as autonomous units of administration in their defined spheres. Moreover, the Act introduced responsible Governments in provinces, that is, the Governor was required to act with the advice of ministers responsible to the provincial legislature. This came into effect in 1937 and was discontinued in 1939.
3. It provided for the adoption of dyarchy at the Centre. Consequently, the federal subjects were divided into reserved subjects and transferred subjects. However, this provision of the Act did not come into operation at all.
4. **It introduced bicameralism in six out of eleven provinces**. Thus, the legislatures of Bengal, Bombay, Madras, Bihar, Assam and the United Provinces were made bicameral consisting of a legislative council (upper house) and a legislative assembly (lower house). However, many restrictions were placed on them.
5. It further extended the principle of communal representation by providing separate electorates for depressed classes (Scheduled Castes), women and labor (workers).
6. It abolished the Council of India, established by the Government of India Act of 1858. The secretary of state for India was provided with a team of advisors.
7. It extended franchise. About 10 per cent of the total population got the voting right.
8. I**t provided for the establishment of a Reserve Bank of India to control the currency and credit of the country.**
9. **It provided for the establishment of not only a Federal Public Service Commission, but also a Provincial Public Service Commission and Joint Public Service Commission for two or more provinces**.
10. **It provided for the establishment of a Federal Court, which was set up in 1937.**

Indian Independence Act of 1947
On February 20, 1947, the British Prime Minister Clement Atlee declared that the British rule in India would end by June 30,1948; after which the power would be transferred to responsible Indian hands. This announcement was followed by the agitation by the Muslim League demanding partition of the country. Again on June
3, 1947, **the British Government made it clear that any Constitution framed by the Constituent Assembly of India (formed in 1946) cannot apply to those parts of the country which were unwilling to accept it**. On the same day **(June 3, 1947), Lord Mountbatten, the Viceroy of India, put forth the partition plan, known as the Mountbatten Plan. The plan was accepted by the Congress and the Muslim League. Immediate effect was given to the plan by enacting the Indian Independence Act (1947).**

The features of this Act were as follows:
1. It ended the British rule in India and declared India as an independent and sovereign state from August 15, 1947.
2. It provided for the partition of India and creation of two independent dominions of India and Pakistan with the right to secede from the British Commonwealth.
3. It abolished the office of Viceroy and provided, for each dominion, a governor-general, who was to be appointed by the British King on the advice of the dominion cabinet. His Majesty's Government in Britain was to have no responsibility with respect to the Government of India or Pakistan.
4. It empowered the Constituent Assemblies of the two dominions to frame and adopt any constitution for their respective nations and to repeal any act of the British Parliament, including the Independence act itself.
5. It empowered the Constituent Assemblies of both the dominions to legislate for their respective territories till the new constitutions were drafted and enforced. No Act of the British Parliament passed after August 15, 1947 was to extend to either of the new dominions unless it was extended thereto by a law of the legislature of the dominion.
6. It abolished the office of the Secretary of State for India and transferred his functions to the Secretary of State for Commonwealth Affairs.
7. It proclaimed the lapse of British paramountcy over the Indian princely states and treaty relations with tribal areas from August 15, 1947.
8. It granted freedom to the Indian princely states either to join the Dominion of India or Dominion of Pakistan or to remain independent.
9. It provided for the governance of each of the dominions and the provinces by the Government of India Act of 1935, till the new Constitutions were

framed. The dominions were however authorized to make modifications in the Act.

10. It deprived the British Monarch of his right to veto bills or ask for reservation of certain bills for his approval. But, this right was reserved for the Governor-general. The Governor- General would have full power to assent to any bill in the name of His Majesty.

11. It designated the Governor-General of India and the provincial governors as constitutional (nominal) heads of the states. They were made to act on the advice of the respective council of ministers in all matters.

12. It dropped the title of Emperor of India from the royal titles of the King of England.

13. It discontinued the appointment to civil services and reservation of posts by the secretary of state for India. The members of the civil services appointed before August 15, 1947 would continue to enjoy all benefits that they were entitled to till that time.

At the stroke of midnight of 14-15 August, 1947, the British rule came to an end and power was transferred to the two new independent Dominions of India and Pakistan10. **Lord Mountbatten became the first Governor-general of the new Dominion of India**.

He swore in Jawaharlal Nehru as the first Prime Minister of independent India. The Constituent Assembly of India formed in 1946 became the Parliament of the Indian Dominion.

Preamble

Tuesday, April 28, 2020 11:33 AM

Preamble

WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC and to secure to all its citizens:

JUSTICE, social, economic and political;

LIBERTY of thought, expression, belief, faith and worship;

EQUALITY of status and of opportunity;

and to promote among them all

FRATERNITY assuring the dignity of the individual and the unity and integrity of the Nation;

IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November, 1949, DO HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION.

K. M. Munshi referred to it as the Horoscope of Indian Constitution.
Pandit Thakur Bhargava has quoted; "Preamble is a very valuable part of our Constitution, this is the Soul of and Key to the Constitution.

Socialism, Secularism and Integrity were not a part of Original Preamble and were included by the 42nd Amendment of Constitut ion in 1976.

H. V. Kamath wanted to include the word; "In The Name of Lord "instead and some other members supported him as well

It declares India as a Sovereign, Socialist, Secular, and Democratic Republic.

Word Sovereign gives the Indian State power of Sovereignty both internally and externally. It further reaffirms that Indian S tate if Free to act in all Internal and External matters and is not dependent /under any External Power.
Prof. Ramaswamy correctly quotes as; India being a part of **Commonwealth is only Goodwill intent and it has got no Constitutional Importance.**

Socialism depicts that the State if India is committed to end exploitation by doing equal distribution of Income, Resources a nd Wealth and is further committed to bring the people of India Social, Economic and Political Justice.
Literary meaning of Socialist Nation in Indian context is that, India is a Democratic Socialist State, which further confirms its commitment towards bringing Social, Economic justice to the masses by adopting Democratic means. India is committed to bringing Social, Economic and Political Equality and to bri ng Universal Welfare and Development to the nation.

State of India does not approve the use of Red-Taoism to attain this goal. India is open to Political and Economic Liberalization to attain the objective of Socialist State . But 1991 liberalization has put a question mark on the future of Socialism in India.

To Protect Human Rights, **Parliament passed Human Rights Bill in 1993 and a Human Rights Commission too was established.**

It has been registered in the historic last section of the Preamble that Constitution has been adopted on November 26, 1949. Same very day, head of the Constitution making Committee signed it and declared it as Enacted.

While opining on suggestion asked by President concerning transfer of **Berubari union** and some other areas, Supreme Court said; "Preamble is a key to the thought process of its makers, but not a part of Constitution. But later on while giving verdict on **Keshavanand vs. Government of India**, it changed its decision and ruled that Preamble is part of the Constitution even if it is not implementable, yet it is a part. **Actually it is an integral and vital part of Constitutional fundamental structure.**

Indian Constitution is a Written and Extensive Document. There are 395 Articles which are divided in to 22 parts and it inclu des 12 Schedules and it has been amended 124 times as well.

This Committee was constituted in December 1946 under the aegis of Cabinet Mission. First Convention took place on December 9 , 1946 and passed its Objective proposal on January 22, 1947.

Federal Structure of India
Scholars sometimes refer India as Quasi Federation (KC where) or Federation with Unity base or Federal Unitary system. As a F ederal State, Indian Constitution ensures the following: (a) balance of power between Centre and States (b) written and strong constitution (c) supremeness of constitution (d) independent judicial system which has the right to resolution in case of center state dispute (e) Dual Housed parliament.

The mixture of Federal and Unitary system has been done keeping in view the National Interest/Integrity and due to the divers ity in nature and regions of the country. The first point forced it to adopt Federal Structure and second one made it essential to have Unitary Spirit alive. Thus Indian Constit ution neither is totally Federal nor Unitary, rather a mixture of two. It is partially Federal and partially Unitary (D.N. Banerjee).

Rigidity
In some cases, parliament can amend a particular part of the constitution by only passing a Bill for example; creation of new state, increasing /decreasing area of an existing State, rules related with citizenship, rules concerned with establishing or dissolving Legislative council of any State. Unde r Article 249, it can bring any State Subject under the purview of Centre (national importance) with a simple majority of 2/3rd in Rajya Sabha and center can have the authority to m ake laws/pass bills for it for a period of 1 year. Similarly, under Article 312, it can introduce/terminate any National Level Service. This particular quality of Constitution reflects its Flexible aspect.

Bi-Cameral Union Parliament
Constitution provides for Bi-Cameral (two house) at Federal Level and names it as Federal parliament. It has two houses: Lok Sabha and Rajya Sabha. Lok Sa bha is the Lower House of parliament and is directly elected by the people of India. It represents Indian People. Maximum Number of members for it h as been fixed at 545. People from each State elect their representative in the ratio of their population.
Lok Sabha elections are held under these fundamentals: (a) direct election (b) secret voting (c) one voter one vote (d) simpl e majority victory system (e) common adult voting

system (qualifying age for men/women to vote is 18 years now, before it was 21). Voters ageing 25 years and above are eligibl e to contest Lok Sabha election. Lok Sabha tenure is normally 5 years but President can dissolve it on the recommendation of the Prime Minister before the expiry of its tenure al so

Rajya Sabha is the Upper house of parliament and is indirectly elected. It represents member states of the Federation of Indi a. Its maximum number of members are 250 out of which 238 are elected on the basis of Proportional Representation by Rajya Vidhan Sabha and rest 12 (accomplished personaliti es) are nominated by the President from the fields of Literature, Art and Science.

Lok Sabha is the more powerful of the two houses. It possesses financial powers and only it can remove the cabinet. Cabinet i s collectively accountable to Lok Sabha. But Rajya Sabha is not that weak as that of British House of Lord nor is Lok Sabha more powerful as that of British House of Common.

Parliamentary System
Indian Constitution provides for parliamentary system at Centre and State. It is based on British parliamentary model. Presid ent of India is the Constitutional Head of the State and he merely is symbolic head. Cabinet under the leadership of Prime Minister is the actual Executive. To be a member of parliam ent is essential for Ministers.

Adult Suffrage
Under Government of India Act, 1935 only 14% of the population had the right to vote and the share of women was almost negligible. Now under Indian Constitution, Men and Women enjoy equal voting rights. Minimum age to vote has been reduced to 18 from 21. Every Indian aged 18 and above has right to vote in every election.

Single Integrated Polity with single Citizenship
Indian Constitution makes each State a component of Indian Federation equally. Our Federation is not an amalgamation of Sultanates but it is a real Federation, whic h has been created by the people of the nation on the basis of equality and keeping in view the fundamental commitment of sovereignty. E ach citizen has been allotted equal citizenship, which in turn provides them with equal rights, liberties and equal protection from the State administration.

Government of India is considering offering citizenship to people of Indian Origin who have settled in other countries after January 26, 1950 or have taken other countries citizenship. They can now get Dual Citizenship. They shall be able to attain Indian citizenship along with their current citi zenship of other country. They shall be eligible to Dual Citizenship. They shall be getting Civil and Economic rights in India, but not Political rights.

Single Integrated Judiciary
Where the American Constitution has the provision of only Federal Judiciary and leaves State judicial system on its individual State constitution,

Indian Constitution in contrast provides for Integrated Judiciary, in which Supreme Court functions at Apex level, High Courts work at State level a nd rest of the Courts operate under the State High Courts. Supreme Court is the final and last door of justice in India. It administers judicial system of the country and keeps a control over it.

Independence Of Judiciary
Independence of Judiciary with -

- (a) Judges are appointed by the President
- (b) people with exemplary legal knowledge and experience can only be appointed Judge
- (c) Judges of Supreme Court can be removed by a very complexed process only
- (d) Judges and Judicial officials salary is drawn from the Consolidate Fund of India and Legislative voting is not require for this
- (e) Supreme Court has the right to administer its Judicial System to maintain its Autonomy.
- (f) All the officials and staff of the Supreme Court are appointed by the Chief Justice or any other Judge or any designated authority empowered by Chief Justice. Indian Judiciary has always worked as an Independent

Emergency Provisions
Similar to the Weimar Republic (Germany), Indian Constitution also provides for Emergency situations. It identifies three types of Emergency and accords President of India, the power to face them. Therefore, they are known as Emergency Powers of President.

Constitution mentions three types of Emergency Situation:

- National Emergency under Article 352, it implies war or foreign invasion, threat of foreign attack on India or threat cause by Armed Rebellion within any part or whole of India and emergency situation thus created.
- State Level Emergency under Article 356, it implies failure of State Machinery and Emergency Situation thus created.
- Financial Emergency under Article 360, it implies financial instability arisen in the financial structure and Emergency Situation thus created.

Indian President has Rights to take appropriate steps to fight with these Emergency Situations.
But in practice, these rights of President are the rights of Prime Minister and it's Cabinet.

Sources of Indian Constitution:

	Sources	Features Borrowed
1.	Government of India Act of 1935	Federal Scheme, Office of governor, Judiciary, Public Service Commissions, Emergency provisions and administrative details.
2.	British Constitution	Parliamentary government, Rule of Law, legislative procedure, single citizenship, cabinet system, prerogative writs, parliamentary privileges and bicameralism.
3.	US Constitution	Fundamental rights, independence of judiciary, judicial review, impeachment of the president, removal of Supreme Court and high court judges and post of vice-president.
4.	Irish Constitution	Directive Principles of State Policy, nomination of members to Rajya Sabha and method of election of president.
5.	Canadian Constitution	Federation with a strong Centre, vesting of residuary powers in the Centre, appointment of state governors by the Centre, and advisory jurisdiction of the Supreme Court.
6.	Australian Constitution	Concurrent List, freedom of trade, commerce and inter-course, and joint sitting of the two Houses of Parliament.
7.	Weimar Constitution of Germany	Suspension of Fundamental Rights during Emergency.
8.	Soviet Constitution (USSR, now Russia)	Fundamental duties and the ideal of justice (social, economic and political) in the Preamble.
9.	French Constitution	Republic and the ideals of liberty, equality and fraternity in the Preamble.
10.	South African Constitution	Procedure for amendment of the Constitution and election of members of Rajya Sabha.
11.	Japanese Constitution	Procedure established by Law.

Till 2019, the erstwhile State of Jammu and Kashmir had its own constitution and thus enjoyed a special status by virtue of A rticle 370 of the Constitution of India. In 2019, this special status was abolished by a presidential order known as “The Constitution (Application to Jammu and Kashmir) Order, 201 9”. This order superseded the earlier order known as “The Constitution (Application to Jammu and Kashmir) Order, 1954”. The 2019 order extended all the provisions of the Const itution of India to Jammu and Kashmir also.

However, the inoperative Article 370 continue to remain in the text of the Constitution of India.

Further, the Jammu and Kashmir Reorganisation Act, 2019, bifurcated the erstwhile State of Jammu and Kashmir into two separat e Union territories, namely, the Union territory of Jammu & Kashmir and the Union territory of Ladakh.

Union and Its Territory

Thursday, May 7, 2020 11:08 AM

Articles 1 to 4 under Part-I of the Constitution deal with the Union and its territory.

UNION OF STATES

Article 1 describes India, that is, Bharat as a 'Union of States' rather than a 'Federation of States'. This provision deals with two things: one, name of the country; and two, type of polity.

The country is described as 'Union' although its Constitution is federal in structure. According to Dr. B.R. Ambedkar, the phrase 'Union of States' has been preferred to
'Federation of States' for **two reasons: one**, the Indian Federation is not the result of an agreement among the states like the American Federation; and **two**, the states have no right to secede from the federation. The federation is an Union because it is indestructible. The country is an integral whole and divided into different states only for the convenience of administration.

According to Article 1, the territory of India can be classified into three categories:

1. Territories of the states
2. Union territories
3. Territories that may be acquired by the Government of India at any time.

The names of states and union territories and their territorial extent are mentioned in the first schedule of the Constitution. At present, there are 28 states and 9 union territories.

Notably, the **'Territory of India' is a wider expression than the 'Union of India'** because the **latter includes only states** while the **former includes not only the states, but also union territories and territories that may be acquired by the Government of India at any future time**.

Being a sovereign state, India can acquire foreign territories according to the modes recognized by international law, i.e., cession (following treaty, purchase, gift, lease or plebiscite), occupation (hitherto unoccupied by a recognized ruler), conquest or subjugation. For example, **India acquired several foreign territories such as Dadra and Nagar Haveli; Goa, Daman and Diu; Puducherry; and Sikkim since the commencement of the Constitution.**

Article 2 empowers the Parliament to 'admit into the Union of India, or establish, new states on such terms and conditions as it thinks fit'. Thus, Article 2 grants two powers to the Parliament: **(a) the power to admit into the Union of India new states; and (b) the power to establish new states.** The first refers to the admission of states which are already in existence, while the second refers to the establishment of states which were not in existence before.
Notably, Article 2 relates to the admission or establishment of new states that are not part of the Union of India.

Article 3, on the other hand, relates to the formation of or changes in the existing states of the Union of India. In other words, **Article 3 deals with the internal re-adjustment inter se of the territories of the constituent states of the Union of India.**

PARLIAMENT'S POWER TO REORGANISE THE STATES

Article 3 authorizes the Parliament to:

(a) form a new state by separation of territory from any state or by uniting two or more states or parts of states or by uniting any territory to a part of any state;
(b) increase the area of any state;
(c) diminish the area of any state;
(d) alter the boundaries of any state; and
(e) alter the name of any state.

However, Article 3 lays down two conditions in this regard:
one, a bill contemplating the above changes can be introduced in the Parliament only with the prior recommendation of the President; and
two, before recommending the bill, the President has to refer the same to the state legislature concerned for expressing its views within a specified period.

The Parliament can redraw the political map of India according to its will. Hence, the territorial integrity or continued existence of any state is not guaranteed by the Constitution. Therefore, India is rightly described as '**an indestructible union of destructible states**'.

The Constitution (Article 4) itself declares that laws made for admission or establishment of new states (under Article 2) and formation of new states and alteration of areas, boundaries or names of existing states (under Articles 3) are not to be considered as amendments of the Constitution under Article 368.

However, Supreme Court held that **the power of Parliament to diminish the area of a state (under Article 3) does not cover cession of Indian territory to a foreign country. Hence, Indian territory can be ceded to a foreign state only by amending the Constitution under Article 368.**
Consequently, the decision of the Central Government to cede part of a territory known as Berubari Union (West Bengal) to Pakistan was done by the 9th Constitutional Amendment Act (1960).

On the other hand, the Supreme Court in 1969 ruled that, settlement of a boundary dispute between India and another country does not require a constitutional amendment. It can be done by executive action as it does not involve cession of Indian territory to a foreign country.

EXCHANGE OF TERRITORIES WITH BANGLADESH

The 100th Constitutional Amendment Act (2015) was enacted to give effect to the acquiring of certain territories by India and transfer of certain other territories to Bangladesh in pursuance of the agreement and its protocol entered into between the Governments of India and Bangladesh. Under this deal, India transferred 111 enclaves to Bangladesh, while Bangladesh transferred 51 enclaves to India. In addition, the deal also involved the transfer of adverse possessions and the demarcation of a 6.1 km un-demarcated border stretch. For these three purposes, **the amendment modified the provisions relating to the**

territories of four states (Assam, West Bengal, Meghalaya and Tripura) in the First Schedule of the Constitution.

EVOLUTION OF STATES AND UNION TERRITORIES

Integration of Princely States
At the time of independence, **India comprised two categories of political units**, namely, **the British provinces (under the direct rule of British government) and the princely states (under the rule of native princes but subject to the paramountcy of the British Crown).**
The Indian Independence Act (1947) created two independent and separate dominions of India and Pakistan and gave three options to the princely states viz., joining India, joining Pakistan or remaining independent. Of the 552 princely states situated within the geographical boundaries of India, 549 joined India and the remaining 3 (Hyderabad, Junagarh and Kashmir) refused to join India. However, in course of time, they were also integrated with India–Hyderabad by means of police action, Junagarh by means of referendum and Kashmir by the Instrument of Accession.

In 1950, the Constitution contained a four-fold classification of the states and territories of the **Indian Union–Part A, Part B and Part C states and Part D territories**. In all, they numbered 29.
Part A states comprised **nine erstwhile governor's provinces** of British India. **Part B** states consisted of **nine erstwhile princely states** with legislatures. **Part C** states consisted of **erstwhile chief commissioner's provinces** of British India and **some of the erstwhile princely state**s. **These Part C states (in all 10 in number) were centrally administered**. **The Andaman and Nicobar Islands were kept as the solitary Part D territories**.

In June 1948, the Government of India appointed the **Linguistic Provinces Commission under the chairmanship of S.K. Dhar** to examine the feasibility of this. They submitted the report in December, 1948, and recommended the reorganization of states on the basis of administrative convenience rather than linguistic factor.

JVP Committee which consisted of Jawaharlal Nehru, Vallahbhai Patel and Pattabhi Sitaramayya, submitted their report on 1949 about reorganization.
Territory of India in 1950:

States in Part A	States in Part B	States in Part C	Territories in Part D
1. Assam	1. Hyderabad	1. Ajmer	1. Andaman and Nicobar Islands
2. Bihar	2. Jammu and Kashmir	2. Bhopal	
3. Bombay	3. Madhya Bharat	3. Bilaspur	
4. Madhya Pradesh	4. Mysore	4. Cooch-Behar	
5. Madras	5. Patiala and East Punjab	5. Coorg	
6. Orissa	6. Rajasthan	6. Delhi	
7. Punjab	7. Saurashtra	7. Himachal Pradesh	
8. United Provinces	8. Travancore-Cochin	8. Kutch	
9. West Bengal	9. Vindhya Pradesh	9. Manipur	
		10. Tripura	

However, in October, 1953, the Government of India was forced to create the first linguistic state, known as Andhra state, by separating the Telugu speaking areas from the Madras state.

Fazl Ali Commission, in December, 1953, under the chairmanship of Fazl Ali to re-examine the whole question. Its other two members were K.M. Panikkar and H.N. Kunzru. It
submitted its report in September 1955 and **broadly accepted language as the basis of reorganization of states**. **But, it rejected the theory of 'one language-one state'**.

Factors that can be taken into account in any scheme of reorganization of states:
(a) Preservation and strengthening of the unity and security of the country.
(b) Linguistic and cultural homogeneity.
(c) Financial, economic and administrative considerations.
(d) Planning and promotion of the welfare of the people in each state as well as of the nation as a whole.

The commission suggested the abolition of the four-fold classification of states and territories under the original Constitution and creation of 16 states and 3 centrally administered territories. The Government of India accepted these recommendations with certain minor modifications. **By the States Reorganization Act (1956) and the 7th Constitutional Amendment Act (1956), the distinction between Part A and Part B states was done away with and Part C states were abolished. Some of them were merged with adjacent states and some other were designated as union territories. As a result, 14 states and 6 union territories were created on November 1, 1956.**

New States and Union Territories Created After 1956

Maharashtra and Gujarat
In 1960, the bilingual state of Bombay was divided8 into two separate states–Maharashtra for Marathi-speaking people and Gujarat for Gujarati-speaking people. **Gujarat was established as the 15th state of the Indian Union.**

Dadra and Nagar Haveli
The Portuguese ruled this territory until its liberation in 1954. Subsequently, the administration was carried on till 1961 by an administrator chosen by the people themselves. I**t was converted into a union territory of India by the 10th Constitutional Amendment Act, 1961.**

Goa, Daman and Diu
India acquired these three territories from the Portuguese by means of a police action in 1961. **They were constituted as a union territory by the 12th Constitutional Amendment Act, 1962. Later, in 1987, Goa was conferred a statehood**. Consequently, Daman and Diu was made a separate union territory.

Puducherry
The territory of Puducherry comprises the former French establishments in India known as Puducherry, Karaikal, Mahe and Yanam. The French handed over this territory to India in 1954. Subsequently, it was administered as an 'acquired territory', till 1962 when it was made a union territory by the 14th Constitutional Amendment Act.

Nagaland
In 1963, the State of Nagaland was formed10 by taking the Naga Hills and Tuensang area out of the state of Assam. This was done to satisfy the movement of the hostile Nagas. However, before giving Nagaland the status of the 16th state of the Indian Union, it was placed under the control of governor of Assam in 1961.

Haryana, Chandigarh and Himachal Pradesh
In 1966, the State of Punjab was bifurcated11 to create Haryana, the 17th state of the Indian Union, and the union territory of Chandigarh. This followed the demand for a separate 'Sikh Homeland' (Punjabi Subha) raised by the Akali Dal under the leadership of Master Tara Singh. On the recommendation of the **Shah Commission (1966)**, the Punjabi-speaking areas were constituted into the unilingual state of Punjab, the Hindi-speaking areas were constituted into the State of Haryana and the hill areas were merged with the adjoining union territory of Himachal Pradesh. **In 1971, the union territory of Himachal Pradesh was elevated12 to the status of a state (18th state of the India)**.

Manipur, Tripura and Meghalaya
In 1972, the political map of Northeast India underwent a major change. Thus, the two union territories of Manipur and Tripura and the sub-state of Meghalaya got statehood and the two union territories of Mizoram and Arunachal Pradesh (originally known as North-East Frontier Agency–NEFA) came into being. With this, the number of states of the Indian Union increased to 21 (Manipur 19th, Tripura 20th and Meghalaya 21st).

Sikkim
Till 1947, Sikkim was an Indian princely state ruled by Chogyal. In 1947, after the lapse of British paramountcy, Sikkim became a **'protectorate'** of India, whereby the Indian Government assumed responsibility for the defense, external affairs and communications of Sikkim. **In 1974, Sikkim expressed its desire for greater association with India. Accordingly, the 35th Constitutional Amendment Act (1974) was enacted by the parliament. This amendment introduced a new class of statehood under the constitution by conferring on Sikkim the status of an 'associate state' of the Indian Union.**
The 36th Constitutional Amendment Act (1975) was enacted to make Sikkim a full-fledged state of the Indian Union (the 22nd state). This amendment amended the First and the Fourth Schedules to the Constitution and added a new Article 371-F to provide for certain special provisions with respect to the administration of Sikkim.

Mizoram, Arunachal Pradesh and Goa
In 1987, three new States of Mizoram,14 Arunachal Pradesh15 and Goa came into being as the 23rd, 24th and 25th states of the Indian Union respectively. **The union territory of Mizoram was conferred the status of a full state as a sequel to the signing of a memorandum of settlement (Mizoram Peace Accord) in 1986 between the Central government and the Mizo National Front, ending the two-decade-old insurgency.** Arunachal Pradesh had also been a union territory from 1972. The State of Goa was
created by separating the territory of Goa from the Union Territory of Goa, Daman and Diu.

Chhattisgarh, Uttarakhand and Jharkhand
In 2000, three more new States of Chhattisgarh, Uttarakhand and Jharkhand were created out of the territories of Madhya Pradesh, Uttar Pradesh and Bihar, respectively. These became the 26th, 27th and 28th states of the Indian Union, respectively.

Telangana
In 2014, the new state of Telangana came into existence as the 29th state of the Indian Union. It was carved out of the territories of Andhra Pradesh.

Jammu & Kashmir and Ladakh
Till 2019, the erstwhile State of Jammu and Kashmir had its own constitution and thus enjoyed a special status by virtue of Article 370 of the Constitution of India.
In 2019, this special status was abolished by a presidential order known as "The Constitution (Application to Jammu and Kashmir) Order, 2019". This order superseded the earlier order known as "The Constitution (Application to Jammu and Kashmir) Order, 1954". The 2019 order extended all the provisions of the Constitution of India to
Jammu and Kashmir also. However, the inoperative Article 370 continue to remain in the text of the Constitution of India.

Further, the Jammu and Kashmir Reorganization Act, 2019, bifurcated the erstwhile State of Jammu and Kashmir into two separate union territories, namely, the union territory of Jammu & Kashmir and the union territory of Ladakh.
The union territory of Jammu and Kashmir comprises all the districts of the erstwhile State of Jammu and Kashmir except the Kargil and Leh districts which have

gone to the union territory of Ladakh.
Thus, the number of states and union territories increased from 14 and 6 in 1956 to 28 and 9 in 2019, respectively.

Change of Names

The United Provinces was the first state to have a new name. It was renamed 'Uttar Pradesh' in 1950.
In 1969, Madras was renamed 'Tamil Nadu'.
Similarly, in 1973, Mysore was renamed 'Karnataka'. In the same year, Laccadive, Minicoy and Amindivi Islands were renamed 'Lakshadweep'.
In 1992, the Union Territory of Delhi was redesignated as the National Capital Territory of Delhi (without being conferred the status of a full-fledged state) by the 69th Constitutional Amendment Act, 1991.
In 2006, Uttaranchal was renamed as 'Uttarakhand'. In the same year, Pondicherry was renamed26 as 'Puducherry'.
In 2011, Orissa was renamed as 'Odisha'.

Citizenship

Thursday, May 7, 2020 12:38 PM

Like any other modern state, India has two kinds of people–citizens and aliens. Citizens are full members of the Indian State and owe allegiance to it. They enjoy all civil and political rights.
Aliens are of two categories–friendly aliens or enemy aliens.
Friendly aliens are the subjects of those countries that have cordial relations with India. Enemy aliens, on the other hand, are the subjects of that country that is at war with India. They enjoy lesser rights than the friendly aliens, e.g. they do not enjoy protection against arrest and detention (Article 22).

In India both a citizen by birth as well as a naturalized citizen are eligible for the office of President while in USA, only a citizen by birth and not a naturalized citizen is eligible for the office of President.

CONSTITUTIONAL PROVISIONS
The Constitution deals with the citizenship from Articles 5 to 11 under Part II. However, it contains neither any permanent nor any elaborate provisions in this regard. **It only identifies the persons who became citizens of India at its commencement (i.e., on January 26, 1950). It does not deal with the problem of acquisition or loss of citizenship subsequent to its commencement.** It empowers the Parliament to enact a law to provide for such matters and any other matter relating to citizenship.
Accordingly, the Parliament has enacted the Citizenship Act (1955), which has been amended from time to time.

According to the Constitution, the following four categories of persons became the citizens of India at its commencement i.e., on January 26, 1950:

1. A person who had his domicile in India and also fulfilled any one of the three conditions, viz., if he was born in India; or if either of his parents was born in India; or if he has been ordinarily resident in India for five years immediately before the commencement of the Constitution, became a citizen of India.
2. A person who migrated to India from Pakistan became an Indian citizen if he or either of his parents or any of his grandparents was born in undivided India and also fulfilled any one of the two conditions viz., in case he migrated to India before July 19, 1948, he had been ordinarily resident in India since the date of his migration; or in case he migrated to India on or after July 19, 1948, he had been registered as a citizen of India. But, a person could be so registered only if he had been resident in India for six months preceding the date of his application for registration.
3. A person who migrated to Pakistan from India after March 1, 1947, but later returned to India for resettlement could become an Indian citizen. For this, he had to be resident in India for six months preceding the date of his application for registration.
4. A person who, or any of whose parents or grandparents, was born in undivided India but who is ordinarily residing outside India shall become an Indian citizen if he has been registered as a citizen of India by the diplomatic or consular representative of India in the country of his residence, whether before or after the commencement of the Constitution. Thus, this provision covers the overseas Indians who may want to acquire Indian citizenship.

To sum up, **these provisions deal with the citizenship of (a) persons domiciled in India; (b) persons migrated from Pakistan; (c) persons migrated to Pakistan but later returned; and (d) persons of Indian origin residing outside India.**

The other constitutional provisions with respect to the citizenship are as follows:
1. No person shall be a citizen of India or be deemed to be a citizen of India, if he has voluntarily acquired the citizenship of any foreign state.
2. Every person who is or is deemed to be a citizen of India shall continue to be such citizen, subject to the provisions of any law made by Parliament.
3. Parliament shall have the power to make any provision with respect to the acquisition and termination of citizenship and all other matters relating to citizenship.

CITIZENSHIP ACT, 1955
The Citizenship Act (1955) provides for acquisition and loss of citizenship after the commencement of the Constitution.
Originally, the Citizenship Act (1955) also provided for the Commonwealth Citizenship. But, this provision was repealed by the Citizenship (Amendment) Act, 2003.

Acquisition of Citizenship
The Citizenship Act of 1955 prescribes five ways of acquiring citizenship, viz, birth, descent, registration, naturalization and incorporation of territory:
1. By Birth

- A person born in India on or after January 26, 1950 but before July 1, 1987 is a citizen of India by birth irrespective of the nationality of his parents.
- A person born in India on or after July 1, 1987 is considered as a citizen of India only if either of his parents is a citizen of India at the time of his birth.
- Further, those born in India on or after December 3, 2004 are considered citizens of India only if both of their parents are citizens of India or one of whose parents is a citizen of India and the other is not an illegal migrant at the time of their birth.

The children of foreign diplomats posted in India and enemy aliens cannot acquire Indian citizenship by birth.

2. By Descent

- A person born outside India on or after January 26, 1950 but before December 10, 1992 is a citizen of India by descent, if his father was a citizen of India at the time of his birth.
- A person born outside India on or after December 10, 1992 is considered as a citizen of India if either of his parents is a citizen of India at the time of his birth.
- December 3, 2004 onwards, a person born outside India shall not be a citizen of India by descent, unless his birth is registered at an Indian consulate within one year of the date of birth or with the permission of the Central Government, after the expiry of the said period. An application, for registration of the birth of a minor child, to an Indian consulate shall be accompanied by an undertaking in writing from the parents of such minor child that he or she does not hold the passport of another country.
- Further, a minor who is a citizen of India by virtue of descent and is also a citizen of any other country shall cease to be a citizen of India if he does not renounce the citizenship or nationality of another country within six months of his attaining full age.

3. By Registration
The Central Government may, on an application, register as a citizen of India any person (not being an illegal migrant) given that they satisfy certain criteria.

4. By Naturalization
The Central Government may, on an application, grant a certificate of naturalization to any person (not being an illegal migrant) given that they meet the required conditions.

5. By Incorporation of Territory
If any foreign territory becomes a part of India, the Government of India specifies the persons who among the people of the territory shall be the citizens of India. Such persons become the citizens of India from the notified date. For example, when Pondicherry became a part of India, the Government of India issued the Citizenship (Pondicherry) Order (1962), under the Citizenship Act (1955).

6. Special Provisions as to Citizenship of Persons Covered by the Assam Accord
The Citizenship (Amendment) Act, 1985, added the following special provisions as to citizenship of persons covered by the Assam Accord.

Loss of Citizenship
The Citizenship Act (1955) prescribes three ways of losing citizenship whether acquired under the Act or prior to it under the Constitution, viz, **renunciation, termination and deprivation**.

Note : Must Read 1955 Citizenship Act

OVERSEAS CITIZENSHIP OF INDIA
In September 2000, the Government of India (Ministry of External Affairs) had set-up a High Level Committee on the Indian Diaspora under the Chairmanship of L.M. Singhvi. The mandate of the Committee was to make a comprehensive study of the global Indian Diaspora and to recommend measures for a constructive relationship with them.
The committee submitted its report in January, 2002. **It recommended the amendment of the Citizenship Act (1955) to provide for grant of dual citizenship to the Persons of Indian Origin (PIOs) belonging to certain specified countries**.
Accordingly, **the Citizenship (Amendment) Act, 2003, made provision for acquisition of Overseas Citizenship of India (OCI) by the PIOs of 16 specified countries other than Pakistan and Bangladesh**. It also omitted all provisions recognizing, or relating to the Commonwealth Citizenship from the Principal Act.
Later, **the Citizenship (Amendment) Act, 2005, expanded the scope of grant of OCI for PIOs of all countries except Pakistan and Bangladesh as long as their home countries all dual citizenship under their local laws. It must be noted here that the OCI is not actually a dual citizenships as the Indian Constitution forbids dual citizenship or dual nationality (Article 9).**
Again, **the Citizenship (Amendment) Act, 2015, has modified the provisions pertaining to the OCI in the Principal Act. It has introduced a new scheme called "Overseas Citizen of India Cardholder" by merging the PIO card scheme and the OCI card scheme.**
The PIO card scheme was introduced on August 19, 2002 and thereafter the OCI card scheme was introduced w.e.f. December 2, 2005.
Both the schemes were running in parallel even though the OCI card scheme had become more popular.

The Citizenship (Amendment) Act, 2015, replaced the nomenclature of "Overseas Citizen of India" with that of "Overseas Citizen of India Cardholder".

Fundamental Rights

Tuesday, April 28, 2020 12:35 PM

'Magna Carta' is the Charter of Rights issued by **King John** of England in **1215** under pressure from the barons. **This is the first written document relating to the Fundamental Rights of citizens.**

French National Assembly by including the Declaration of the Rights for Men in the new constitution of 1789 started the process of providing a constitutional shape to some of individual rights. Later on in the constitution of United States of America the rights of individuals was ma de a part of the constitution through the first ten amendments in 1791. These amendments were collectively called "Bill of Rights".

Established in 1945, the international body, United Nations Organization on 10th Dec. 1948 accepted the International rights letter in the name of "Un iversal Declaration of Human Rights.

Features of Fundamental Rights in India

a. Rights are extensively billed
b. Rights are not absolute and unlimited
c. Equal right to all Some of them are negative in character, that is, place limitations on the authority of the State, while ot hers are positive in nature, conferring certain privileges on the persons.

Other Important Features

Difference between citizens and Aliens: Indian constitution on the basis of fundamental rights differentiates between citizens and aliens. There are some fundamental rights which are provided to Indian citizens only and not to foreign nationals for example. Freedom of speech and expression, freedom of movement and freedom to live in any part of the country.

Rights can be suspended: Our constitution provides provision to suspend the fundamental rights during emergency.
They can be suspended during the operation of a National Emergency except the rights guaranteed by Articles 20 and 21. Furthe r, the six rights guaranteed by Article 19 can be suspended only when emergency is declared on the grounds of war or external aggression (i.e., external emer gency) and not on the ground of armed rebellion (i.e., internal emergency).
Their scope of operation is limited by Article 31A (saving of laws providing for acquisition of estates, etc.), Article 31B (validation of certain acts and regulations included in the 9th Schedule) and Article 31C (saving of laws giving effect to certain directive principles).
Their application to the members of armed forces, para-military forces, police forces, intelligence agencies and analogous services can be restricted or abrogated by the Parliament (Article 33).

Fundamental Rights are Justiciable: Fundamental rights are implemented by the court. For the implementation of fundamental rights, constitution has several provisions. Right to constitutional remedies is included in the fundamental rights in a special way. This implies that any ci tizen whose fundamental rights have been violated can appeal in High court or Supreme Court for the safety of his fundamental rights. High Court and Supreme Cour t provides a variety of writs for the protection
of citizen's rights.

Parliament can curtail the Fundamental Rights: According to the constitution, Parliament along with the section of Fundamental Rights can amend the entire constitution. It is worth mentioning here that the Parliament cannot make any amendment in the Fundamental Rights through ord inary law. If the Parliament makes any such rule, then it will be cancelled by the Supreme Court. This implies that it can amend the fundamental rights on ly through the constitutional amendment. State Legislatures are not allowed to curtail the fundamental rights. Fundamental rights can be amended by the pro cedure given in Clause 368. For this it is necessary to have the majority of all the members and 2/3rd majority of members present and voting in each of the two Houses.

In 1952 the Chief Justice of Supreme Court, Shastri, had said that "Article 368 grants the right to the Parliament without an y restriction to amend the constitution". But in 1967 in the case of Golaknath, the Supreme Court had given the judgment that the Parliament does not ha ve the right to curtail or abolish the fundamental rights. By the 24th amendment, the Parliament gave approval to this power and on 24th April, 1973, in the cas e of Keshavanand Bharti, the Supreme Court directed that the parliament can make amendments in the fundamental rights.

Absence of Social and Economic Rights: In the Indian Bill of Rights, social and economic rights like Right to Work, Right of Rest and Leisure, Right to Social Security, etc. have not been included. Yes, these rights have been written under the Directive Principles.

Special Constitutional Provision for the Enforcement of Fundamental Rights: According to Article Notes 226 of the Indian Constitution, for the reinforcement of our Fundamental Rights, we can approach the High Court of our State through special procedure and as per section 32, can a pproach the Supreme Court through special provision. We can fi le a Writ in this context. For e.g.. Habeas Carpus, Mandamus, Prohibition, Quo-Warranto and Certiotari.

Note : The right to property was deleted from the list of Fundamental Rights by the 44th Amendment Act, 1978. It is made a legal rig ht under Article 300-A in Part XII of the Constitution. So at present, there are only six Fundamental Rights.

DEFINITION OF STATE

The term 'State' has been used in different provisions concerning the fundamental rights. Hence, Article 12 has defined the t erm for the purposes of Part III. According to it, the State includes the following:

(a) Government and Parliament of India, that is, executive and legislative organs of the Union government.
(b) Government and legislature of states, that is, executive and legislative organs of state government.

(c) All local authorities, that is, municipalities, panchayats, district boards, improvement trusts, etc.
(d) All other authorities, that is, statutory or non-statutory authorities like LIC, ONGC, SAIL, etc.

Thus, State has been defined in a wider sense so as to include all its agencies. It is the actions of these agencies that can be challenged in the courts as violating the Fundamental Rights. According to the Supreme Court, even a private body or an agency working as an instrument of the State falls within the meaning of the 'State' under Article 12.

LAWS INCONSISTENT WITH FUNDAMENTAL RIGHTS

Article 13 declares that all laws that are inconsistent with or in derogation of any of the fundamental rights shall be void. In other words, it expressively provides for the doctrine of judicial review. This power has been conferred on the Supreme Court (Article 32) and the high courts (Article 226) that can declare a law unconstitutional and
invalid on the ground of contravention of any of the Fundamental Rights.
The term 'law' in Article 13 has been given a wide connotation so as to include the following:
(a) Permanent laws enacted by the Parliament or the state legislatures;
(b) Temporary laws like ordinances issued by the president or the state governors;
(c) Statutory instruments in the nature of delegated legislation (executive legislation) like order, bye-law, rule, regulation or notification; and
(d) Non-legislative sources of law, that is, custom or usage having the force of law.

Thus, not only a legislation but any of the above can be challenged in the courts as violating a Fundamental Right and hence, can be declared as void. Further, **Article 13 declares that a constitutional amendment is not a law and hence cannot be challenged**. However, the Supreme Court held in the Kesavananda Bharati case (1973) that **a Constitutional amendment can be challenged on the ground that it violates a fundamental right that forms a part of the 'basic structure' of the Constitution and hence, can be declared as void.**

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Article and Fundamental Rights

Right to Equality (Article 14 to 18): Right to Equality is the pillar of Democracy, hence every individual has been granted Equality before Law, Equality of Employment under the government and social equality by the Indian Constitution and abolition of titles has been made for the establishment of equality.

Equality before Law and Equal Protection of Laws

Article 14 says that the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. **This provision confers rights on all persons whether citizens or foreigners.** Moreover, the word 'person' includes legal persons, viz, statutory corporations, companies, registered societies or any other type of legal person.

The concept of '**equality before law**' is of British origin while the concept of '**equal protection of laws**' has been taken from the American Constitution.
The first concept connotes: (a) the absence of any special privileges in favor of any person, (b) the equal subjection of all persons to the ordinary law of the land administered by ordinary law courts, and (c) no person (whether rich or poor, high or low, official or non-official) is above the law.
The second concept, on the other hand, connotes: (a) the equality of treatment under equal circumstances, both in the privileges conferred and liabilities imposed by the laws, (b) the similar application of the same laws to all persons who are similarly situated, and (c) the like should be treated alike without any discrimination.

Thus, the former is a negative concept while the latter is a positive concept. However, both of them aim at establishing equality of legal status, opportunity and justice. The Supreme Court held that where equals and unequals are treated differently, Article 14 does not apply. **While Article 14 forbids class legislation, it permits reasonable classification of persons, objects and transactions by the law. But the classification should not be arbitrary, artificial or evasive. Rather, it should be based on an intelligible differential and substantial distinctio**n.

Exceptions to Equality :
The rule of equality before law is not absolute and there are constitutional and other exceptions to it. These are mentioned below:

- The President of India and the Governor of States enjoy the immunities (Article 361) such as non-answerability, no criminal or civil proceedings, no arrest or imprisonment.
- No person shall be liable to any civil or criminal proceedings in any court in respect of the publication in a newspaper (or by radio or television) of a substantially true report of any proceedings of either House of Parliament or either House of the Legislature of a State (Article 361-A).
- No member of Parliament shall be liable to any proceedings in any court in respect of anything said or any vote given by him in Parliament or any committee thereof (Article 105).
- No member of the Legislature of a state shall be liable to any proceedings in any court in respect of anything said or any vote given by him in the Legislature or any committee thereof (Article 194).
- Article 31-C is an exception to Article 14. It provides that the laws made by the state for implementing the Directive Principles contained in clause (b) or clause (c) of Article 39 cannot be challenged on the ground that they are violative of Article 14. The Supreme Court held that "**where Article 31-C comes in, Article 14 goes out**".
- The foreign sovereigns (rulers), ambassadors and diplomats enjoy immunity from criminal and civil proceedings.
- The UNO and its agencies enjoy the diplomatic immunity.

Prohibition of Discrimination on Certain Grounds

Article 15 provides that the State shall not discriminate against any citizen on grounds only of religion, race, caste, sex or place of birth.
The two crucial words in this provision are **'discrimination' and 'only'**. The word **'discrimination' means 'to make an adverse distinction with regard to' or 'to distinguish unfavorably from others'.** The use of the word **'only' connotes that discrimination on other grounds is not prohibited.**

The second provision of Article 15 says that no citizen shall be subjected to any disability, liability, restriction or condition on grounds only of religion, race, caste, sex, or place of birth with regard to

(a) access to shops, public restaurants, hotels and places of public entertainment; or
(b) the use of wells, tanks, bathing ghats, road and places of public resort maintained wholly or partly by State funds or dedicated to the use of general public.

Note : This provision prohibits discrimination both by the State and private individuals, while **the former provision prohibits discrimination only by the State**.

There are **four exceptions to this general rule of non-discrimination**:

(a) The state is permitted to make any special provision for women and children. For example, reservation of seats for women in local bodies or provision of free education for children.
(b) The state is permitted to make any special provision for the advancement of any socially and educationally backward classes of citizens or for the scheduled castes and scheduled tribes. For example, reservation of seats or fee concessions in public educational institutions.
(c) The state is empowered to make any special provision for the advancement of any socially and educationally backward classes of citizens or for the scheduled castes or the scheduled tribes regarding their admission to educational institutions including private educational institutions, whether aided or unaided by the state, except the minority educational institutions.
(d) The state is empowered to make any special provision for the advancement of any economically weaker sections of citizens. Further, the state is allowed to make a provision for the reservation of up to 10% of seats for such sections in admission to educational institutions including private educational institutions, whether aided or unaided by the state, except the minority educational institutions. **This reservation of up to 10% would be in addition to the existing reservations.** For this purpose, **the economically weaker sections would be notified by the state from time to time on the basis of family income and other indicators of economic disadvantage.**

Reservation for OBCs in Educational Institutions
The above exception(c) was added by the 93rd Amendment Act of 2005. In order to give effect to this provision, the Centre enacted the Central Educational Institutions (Reservation in Admission) Act, 2006, providing a quota of 27% for candidates belonging to the **Other Backward Classes (OBCs) in all central higher educational** institutions including the Indian Institutes of Technology (IITs) and the Indian Institutes of Management (IIMs).
In April 2008, the Supreme Court upheld the validity of both, the Amendment Act and the OBC Quota Act. But, the Court directed the central government to **exclude the 'creamy layer' (advanced sections) among the OBCs while implementing the law.**

The children of the following different categories of people belong to 'creamy layer' among OBCs and thus will not get the quota benefit :

1. Persons holding constitutional posts like President, Vice- President, Judges of SC and HCs, Chairman and Members of UPSC and SPSCs, CEC, CAG and so on.
2. Group 'A' / Class I and Group 'B' / Class II Officers of the All India, Central and State Services; and Employees holding equivalent posts in PSUs, Banks, Insurance Organizations, Universities etc., and also in private employment.
3. Persons who are in the rank of colonel and above in the Army and equivalent posts in the Navy, the Air Force and the Paramilitary Forces.
4. Professionals like doctors, lawyers, engineers, artists, authors, consultants and so on.
5. Persons engaged in trade, business and industry.
6. People holding agricultural land above a certain limit and vacant land or buildings in urban areas.
7. Persons having gross annual income of more than ₹8 lakh or possessing wealth above the exemption limit. In 1993, when the "creamy layer" ceiling was introduced, it was ₹1 lakh. It was subsequently revised to ₹2.5 lakh in 2004, ₹4.5 lakh in 2008, ₹6 lakh in 2013 and ₹8 lakh in 2017.

Reservation for EWSs in Educational Institutions
The above exception (d) was added by the 103rd Amendment Act of 2019. In order to give effect to this provision, the central government issued an order (in 2019) providing 10% reservation to the Economically Weaker Sections (EWSs) in admission to educational institutions. The benefit of this reservation can be availed by the
persons belonging to EWSs who are not covered under any of the existing schemes of reservations for SCs, STs and OBCs.
Eligibility criteria are as follows:

1. Persons whose family has gross annual income below ₹8 lakh are to be identified as EWSs for the benefit of reservation. The income would include income from all sources i.e., salary, agriculture, business, profession etc. and it would be income for the financial year prior to the year of application.
2. Persons whose family owns or possesses any one of the following assets are to be excluded from being identified as EWSs, irrespective of the family income:
   (a) 5 acres of Agricultural land and above.
   (b) Residential flat of 1000 sq.ft. and above.
   (c) Residential plot of 100 sq.yards and above in notified municipalities.
   (d) Residential plot of 200 sq.yards and above in areas other than the notified municipalities.

Land include aggregation of all lands at all locations.

Equality of Opportunity in Public Employment

Article 16 provides for **equality of opportunity for all citizens in matters of employment or appointment to any office under the State.** No citizen can be discriminated against or be ineligible for any employment or office under the State on grounds of only religion, race, caste, sex, descent, place of birth or residence.
There are **four exceptions** to this general rule of equality of opportunity in public employment:

- Parliament can prescribe residence as a condition for certain employment or appointment in a state or union territory or loca l authority or other authority. As the Public Employment (Requirement as to Residence) Act of 1957 expired in 1974, there is no such provision for any state except Andhra Pradesh and Telangana.
- The State can provide for reservation of appointments or posts in favor of any backward class that is not adequately represen ted in the state services.
- A law can provide that the incumbent of an office related to religious or denominational institution or a member of its gover ning body should belong to the particular religion or denomination.
- The state is permitted to make a provision for the reservation of up to 10% of appointments or posts in favor of any economic ally weaker sections of citizens. This reservation of up to 10% would be in addition to the existing reservation.

Mandal Commission and Aftermath
In 1979, the Morarji Desai Government appointed the Second6 Backward Classes Commission under the chairmanship of B.P. Mandal , a Member of Parliament, in terms of Article 340 of the Constitution to investigate the conditions of the socially and educationally backward classes and suggest measures for their advancement. The commission submitted **its report in 1980** and identified as many as 3743 castes as socially and educationally backward classes. They constitute nearly 52% component of the population, excluding the scheduled castes (SCs) and the scheduled tribes (STs).
The commission **recommended for reservation of 27% government jobs for the Other Backward Classes (OBCs)** so that the total reservation for all ((SCs, STs and OBCs) amounts to 50%.
It was after ten years in **1990 that the V.P. Singh Government declared reservation of 27% government jobs for the OBCs** . Again i**n 1991, the Narasimha Rao Government introduced two changes: (a) preference to the poorer sections among the OBCs in the 27% quota,** i.e., adoption of the economic criteria in granting reservation, and **(b) reservation of another 10% of jobs for poorer (economically backward) sections of higher castes** who are not covered by any existing schemes of reservation.

In the famous Mandal case (1992), the scope and extent of Article 16(4), which provides for reservation of jobs in favor of backward classes, has been examined thoroughly by the Supreme Court. Though **the Court has rejected the additional reservation of 10% for poorer sections of higher castes, it upheld the constitutional validity of 27% reservation for the OBCs with certain conditions**
(a) The advanced sections among the **OBCs (the creamy layer) should be excluded** from the list of beneficiaries of reservation.
(b) **No reservation in promotion**s; reservation should be confined to initial appointments only. Any existing reservation in promotions can continue for five years only (i.e., up to 1997).
(c) **The total reserved quota should not exceed 50%** except in some extraordinary situations. This rule should be applied every year.
(d) The 'carry forward rule' in case of unfilled (backlog) vacancies is valid. But it should not violate 50% rule.
(e) **A permanent statutory body should be established to examine complaints of over-inclusion and under-inclusion in the list of OBCs.**

Ram Nandan Committee was appointed **to identify the creamy layer among the OBCs**. It submitted its report in 1993, which was accepted.
So, National Commission for Backward Classes was established in 1993 by an act of Parliament. Later, **the 102nd Amendment Act of 2018** conferred a constitutional status on the commission and also enlarged its functions. For this purpose, the amendment inserted a new Artic le 338-B in the constitution.

The ruling with regard to backlog vacancies was nullified by the 81st Amendment Act of 2000. It added another new provision in Article 16 that empowers the State to consider the unfilled reserved vacancies of a year as a separate class of vacancies to be filled up in any succe eding year or years. Such class of vacancies are not to be combined with the vacancies of the year in which they are being filled up to determine the ceiling of 50% reservation on total number of vacancies of that year. **In brief, it ends the 50% ceiling on reservation in backlog vacancies.**

Reservation for EWSs in Public Employment
The above exception was added by the 103rd Amendment Act of 2019. In order to give effect to this provision, the central gove rnment issued an order (in 2019) providing 10% reservation to the Economically Weaker Sections (EWSs) in civil posts and services in the Government of I ndia.

Abolition of Untouchability

Article 17 abolishes 'untouchability' and forbids its practice in any form. The enforcement of any disability arising out of untouchabil ity shall be an offence punishable in accordance with law.
In 1976, the Untouchability (Offences) Act, 1955 has been comprehensively amended and **renamed as the Protection of Civil Rights Act, 1955** to enlarge the scope and make penal provisions more stringent. The act defines civil right as any right accruing to a person by reason of th e abolition of untouchability by Article 17 of the
Constitution.

The term 'untouchability' has not been defined either in the Constitution or in the Act. However, **the Mysore High Court held that the subject matter of Article 17** is not **untouchability in its literal or grammatical** sense **but the 'practice as it had developed historically in the country**'.

Abolition of Titles
Article 18 abolishes titles and makes four provisions in that regard:

(a) It prohibits the state from conferring any title (except a military or academic distinction) on anybody, whether a citizen or a foreigner.
(b) It prohibits a citizen of India from accepting any title from any foreign state.
(c) A foreigner holding any office of profit or trust under the state cannot accept any title from any foreign state without the consent of the president.
(d) No citizen or foreigner holding any office of profit or trust under the State is to accept any present, emolument or office from or under any foreign State without the consent of the president.

In 1996 , the Supreme Court upheld the constitutional validity of the National Awards–Bharat Ratna, Padma Vibhushan, Padma Bhushan and Padma Sri. **It ruled that these awards do not amount to 'titles' within the meaning of Article 18 that prohibits only hereditary titles of n obility.**

These National Awards were instituted in 1954. The **Janata Party government headed by Morarji Desai discontinued them in 1977**. But they were again **revived in 1980 by the Indira Gandhi government.**

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Right to Freedom (Articles 19–22)

Protection of six rights regarding freedom of: (Article 19).

(i) speech and expression,
(ii) assembly,
(iii) association,
(iv) movement,
(v) residence, and
(vi) profession.

Originally, Article 19 contained seven rights. But, the **right to acquire, hold and dispose of property was deleted by the 44th Amendment Act of 1978**.

These six rights are protected against only state action and not private individuals. Moreover, **these rights are available only to the citizens and to shareholders of a company but not to foreigners or legal persons like companies or corporations, etc.**
The State can impose 'reasonable' restrictions on the enjoyment of these six rights only on the grounds mentioned in the Arti cle 19 itself and not on any other grounds.

Freedom of Speech and Expression
It implies that every citizen has the right to express his views, opinions, belief and convictions freely by word of mouth, w riting, printing, picturing or in any other manner. Supreme Court has prepared a list of allowed rights (source Lakxmikant)

Freedom of Assembly
Every citizen has the right to assemble peaceably and without arms. It includes the right to hold public meetings, demonstrat ions and take out processions. **This freedom can be exercised only on public land and the assembly must be peaceful and unarmed**. This provision does not protect violent, disorderly, riotous assemblies, or one that causes breach of public peace or one that involves arms. **This right does not include the right to strike.**

Under Section 144 of Criminal Procedure Code (1973), a magistrate can restrain an assembly, meeting or procession if there is a risk of obstruction, annoyance or danger to human life, health or safety or a disturbance of the public tranquility or a riot or any affray.
Under Section 141 of the Indian Penal Code, as assembly of five or more persons becomes unlawful if the object is (a) to resist the execution of any law or legal process; (b) to forcibly occupy the property of some person; (c) to commit any mischief or criminal trespass; (d) to fo rce some person to do an illegal act; and (e) to threaten the government or its officials on exercising lawful powers.

Freedom of Association
All citizens have the right to form associations or unions or cooperative societies. It includes the right to form political parties, companies, partnership firms, societies, clubs, organizations, trade unions or anybody of persons.

Freedom of Movement
This freedom entitles every citizen to move freely throughout the territory of the country. He can move freely from one state to another or from one place to another within a state. This right underline the idea that India is one unit so far as the citizens are concerned. Thus, the purpose is to promote national feeling and not parochialism.
The grounds of imposing reasonable restrictions on this freedom are two, namely, the interests of general public and the prot ection of interests of any scheduled tribe.
The **Supreme Court held that the freedom of movement of prostitutes can be restricted on the ground of public health and in the in terest of public morals.**
The **freedom of movement has two dimensions, internal** (right to move inside the country) and **external** (right to move out of the country and right to come back to the country). **Article 19 protects only the first dimension.** The **second dimension is dealt by Article 21** (right to life and personal liberty).

Freedom of Residence
Every citizen has the right to reside and settle in any part of the territory of the country. This **right has two parts**: (a) the right to reside in any part of the country, which means to **stay at any place temporarily**, and (b) the right to settle in any part of the country, which means to **set up a home or domicile at any place permanently**.

Freedom of Profession
All citizens are given the right to practice any profession or to carry on any occupation, trade or business. This right is v ery wide as it covers all the means of

earning one's livelihood.
The State can impose reasonable restrictions on the exercise of this right in the interest of the general public. Further, th e State is empowered to:
(a) prescribe professional or technical qualifications necessary for practicing any profession or carrying on any occupation, tra de or business; and
(b) carry on by itself any trade, business, industry or service whether to the exclusion (complete or partial) of citizens or oth erwise.

Protection in respect of conviction for offences (Article 20).

Article 20 grants protection against arbitrary and excessive punishment to an accused person, whether citizen or foreigner or legal person like a company or a corporation.
It contains three provisions in that direction:
(a) No ex-post-facto law: No person shall be (i) convicted of any offence except for violation of a law in force at the time of the commission of the act, nor (ii) subjected to a penalty greater than that prescribed by the law in force at the time of the commission of the act.
(b) No double jeopardy: No person shall be prosecuted and punished for the same offence more than once.
(c) No self-incrimination: No person accused of any offence shall be compelled to be a witness against himself.

An ex-post-facto law is one that imposes penalties retrospectively (retroactively), that is, upon acts already done or which increases the penalties for such acts. The enactment of such a law is prohibited by the first provision of Article 20. However, this **limitation is imposed only on criminal laws** and **not on civil laws or tax laws**. Further, this provision prohibits only conviction or sentence under an ex-post-facto criminal law and not the trial thereof. Finally, the protection (immunity) under this provision cannot be claimed in case of preventive detention or demanding security from a person.

The protection against **double jeopardy is available only in proceedings before a court of law** or a judicial tribunal.

Th**e protection against self-incrimination extends to both oral evidence and documentary evidence**. However, it does not extend to (i) compulsory production of material objects, (ii) compulsion to give thumb impression, specimen signature, blood specimens, and (iii) compulsory exhi bition of the body. Further, **it extends only to criminal proceedings and not to civil proceedings or proceedings which are not of criminal nature.**

Protection of life and personal liberty (Article 21).

Article 21 declares that no person shall be deprived of his life or personal liberty except according to procedure established by law. This right is available to both citizens and non-citizens.
In the **famous Gopalan case (1950)**, the Supreme Court has taken a narrow interpretation of the Article 21. It held that the protection under Article 21 is available only against arbitrary executive action and not from arbitrary legislative action. This means that the State can de prive the right to life and personal liberty of a person based on a law.
Secondly, the **Supreme Court held that the 'personal liberty' means only liberty relating to the person or body of the individual**.

In Menaka case (1978), the Supreme Court overruled its judgement in the Gopalan case.
It has introduced the American expression **'due process of law**'. In effect, the protection under Article 21 should be available **not only against arbitrary executive action but also against arbitrary legislative action.** Further, the court held that the 'right to life' as embodied in **Article 21 includes within its ambit the right to live with human dignity and all those aspects of life which go to make a man's life meaningful, complete and wor th living.** It also ruled that the expression '**Personal Liberty'** in Article 21 is of the widest amplitude and it covers a variety of rights that go to constitute the personal liberties of a man.

Right to elementary education (Article 21A).

Article 21 A declares that the State shall provide free and compulsory education to all children of the age of six to fourteen years in such a manner as the State may determine. Thus, **this provision makes only elementary education a Fundamental Right and not higher or professional education.**

This provision was added by the 86th Constitutional Amendment Act of 2002. This amendment is a major milestone in the country's aim to achieve 'Education for All'.
Even before this amendment, **the Constitution contained a provision for free and compulsory education for children under Article 45 in Part IV.**
In 1993 itself, the Supreme Court recognized a Fundamental Right to primary education in the right to life under Article 21. It held that every child or citizen of this country has a right to free education until he completes the age of 14 years.
In pursuance of Article 21A, the Parliament enacted the Right of Children to Free and Compulsory Education (RTE) Act, 2009.

Protection against arrest and detention in certain cases (Article 22).

Article 22 grants protection to persons who are arrested or detained. **Detention is of two types, namely, punitive and preventive**. **Punitive detention** is to

punish a person for an offence committed by him after trial and conviction in a court. **Preventive detention**, on the other hand, means detention of a person without trial and conviction by a court. Its purpose is not to punish a person for a past offence but to prevent him from com mitting an offence in the near future. Thus, preventive detention is only a precautionary measure and based on suspicion.

The Article 22 has two parts–the first part deals with the cases of ordinary law and the second part deals with the cases of preventive detention law.

(a) The first part of Article 22 confers the following rights on a person who is arrested or detained under an ordinary law:
(i) Right to be informed of the grounds of arrest.
(ii) Right to consult and be defended by a legal practitioner.
(iii) Right to be produced before a magistrate within 24 hours including the journey time.
(iv) Right to be released after 24 hours unless the magistrate authorizes further detention.

These safeguards are not available to an enemy alien or a person arrested or detained under a preventive detention law.
The Supreme Court also ruled that the arrest and detention in the first part of Article 22 do not cover arrest under the orders of a court, civil arrest, arrest on failure to pay the income tax, and deportation of an alien. **They apply only to an act of a criminal or quasi-criminal nature or some activity prejudicial to public interest.**

(b) The second part of Article 22 grants protection to persons who are arrested or detained under a preventive detention law. This protection is available to both citizens as well as aliens and includes the following:
(i) The detention of a person cannot exceed three months unless advisory board reports sufficient cause for extended detention The board is to consist of judges of a high court.
(ii) The grounds of detention should be communicated to the detention However, the facts considered to be against the public interest need not be disclosed.
(iii) The detention should be afforded an opportunity to make representation against the detention order.

Article 22 also authorizes the Parliament to prescribe (a) the circumstances and the classes of cases in which a person can be detained for more than three months under a preventive detention law without obtaining the opinion of an advisory board; (b) the maximum period for which a person can be detained in any classes of cases
under a preventive detention law; and (c) the procedure to be followed by an advisory board in an inquiry.

The 44th Amendment Act of 1978 has reduced the period of detention without obtaining the opinion of an advisory board from three to two months.

The Constitution has divided the legislative power with regard to preventive detention between the Parliament and the state legislatures. The Parliament has exclusive authority to make a law of preventive detention for reasons connected with defense, foreign affairs and the securit y of India.
Both the Parliament as well as the state legislatures can concurrently make a law of preventive detention for reasons connected with the security of a state, the maintenance of public order and the maintenance of supplies and services essential to the community.

It is unfortunate to know that no democratic country in the world has made preventive detention as an integral part of the Constitution as has been done in India.

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Right Against Exploitation (Articles 23–24)

Prohibition of traffic in human beings and forced labor (Article 23).

Article 23 prohibits traffic in human beings, **begar** (forced labor) and other similar forms of forced labor. Any contravention of this provision shall be an offence punishable in accordance with law. This right is available to both citizens and non-citizens. It protects the individual not only against the State but also against private persons.
The expression '**traffic in human beings**' include (a) selling and buying of men, women and children like goods; (b) immoral traffic in women and children, including prostitution; (c) devadasis; and (d) slavery. To punish these acts, **the Parliament has made the Immoral Traffic (Prevention) Act , 1956.**
The term **'begar**' means compulsory work without remuneration.
The Bonded Labor System (Abolition) Act, 1976; the Minimum Wages Act, 1948; the Contract Labor Act, 1970 and the Equal Remune ration Act, 1976 were made.

Exception : It permits the State to impose compulsory service for public purposes, as for example, military service or social service, for which it is not bound to pay. However, in imposing such service, the State is not permitted to make any discrimination on grounds only of religion, ra ce, caste or class.

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Prohibition of Employment of Children in Factories, etc.

Article 24 prohibits the employment of children below the age of 14 years in any factory, mine or other hazardous activities like constr uction work or railway.

But it does not prohibit their employment in any harmless or innocent work.
The Child Labor (Prohibition and Regulation) Act, 1986, is the most important law in this direction.

In 1996, the Supreme Court directed the establishment of Child Labor Rehabilitation Welfare Fund in which the offending employer should deposit a fine of ₹20,000 for each child employed by him.
The Child Labor (Prohibition and Regulation) Amendment Act, 2016, amended the Child Labor (Prohibition and Regulation) Act, 1986. **It has renamed the Principal Act as the Child and Adolescent Labor (Prohibition and Regulation) Act, 1986.**

Right to Freedom of Religion (Article 25–28)

Freedom of conscience and free profession, practice and propagation of religion (Article 25).

Article 25 says that all persons are equally entitled to freedom of conscience and the right to freely profess, practice and propagate religion. The implications of these are:

(a) **Freedom of conscience:** Inner freedom of an individual to mold his relation with God or Creatures in whatever way he desires.
(b) **Right to profess**: Declaration of one's religious beliefs and faith openly and freely.
(c) **Right to practice:** Performance of religious worship, rituals, ceremonies and exhibition of beliefs and ideas.
(d) **Right to propagate**: Transmission and dissemination of one's religious beliefs to others or exposition of the tenets of one's religion. But, it does not include a right to convert another person to one's own religion. Forcible conversions impinge on the 'freedom of conscience' guaranteed to all the persons alike.

From the above, it is clear that **Article 25** covers not only religious beliefs (doctrines) but also religious practices (rituals). Moreover, these rights are available to all persons–citizens as well as **noncitizens**.

Article 25 also contains **two explanations: one, wearing and carrying of kirpans is to be included in the profession of the Sikh religion; and two, the Hindus, in this context, include Sikhs, Jains and Buddhists.**

Freedom to manage religious affairs (Article 26).

According to Article 26, every religious denomination or any of its section shall have the following rights:

(a) Right to establish and maintain institutions for religious and charitable purposes;
(b) Right to manage its own affairs in matters of religion;
(c) Right to own and acquire movable and immovable property; and
(d) Right to administer such property in accordance with law.

Article 25 guarantees rights of individuals, while Article 26 guarantees rights of religious denominations or their sections. In other words, Article 26 protects collective freedom of religion.
The Supreme Court held that a religious denomination must satisfy three conditions:
(a) It should be a collection of individuals who have a system of beliefs (doctrines) which they regard as conducive to their spiritual well-being;
(b) It should have a common organization; and
(c) It should be designated by a distinctive name.

Under the above criteria, the **Supreme Court held that the 'Ramakrishna Mission' and 'Ananda Marga' are religious denominations within the Hindu religion.** It also held that Aurobindo Society is not a religious denomination.

Freedom from payment of taxes for promotion of any religion (Article 27).

Article 27 lays down that no person shall be compelled to pay any taxes for the promotion or maintenance of any particular religion or religious denomination. In other words, the State should not spend the public money collected by way of tax for the promotion or maintenance of any particular religion.
This provision prohibits only levy of a tax and not a fee. This is because the purpose of a fee is to control secular administration of religious institutions and not to promote or maintain religion.

Freedom from attending religious instruction or worship in certain educational institutions (Article 28).

Under Article 28, no religious instruction shall be provided in any educational institution wholly maintained out of State funds. However, this provision shall not apply to an educational institution administered by the State but established under any endowment or trust, requiring imparting of religious instruction in such institution.

Thus, Article 28 distinguishes between four types of educational institutions:
(a) Institutions wholly maintained by the State.
(b) Institutions administered by the State but established under any endowment or trust.
(c) Institutions recognized by the State.
(d) Institutions receiving aid from the State.

In (a), religious instruction is completely prohibited while in (b), religious instruction is permitted. In (c) and (d), religious instruction is permitted on a voluntary basis.

Cultural and educational rights (Articles 29–30)

Protection of language, script and culture of minorities (Article 29).

Article 29 provides that any section of the citizens residing in any part of India having a distinct language, script or culture of its own, shall have the right to conserve the same. Further, no citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, or language.
The first provision protects the right of a group while the second provision guarantees the right of a citizen as an individual irrespective of the community to which he belongs.
Article 29 grants protection to both religious minorities as well a linguistic minorities. However, the Supreme Court held that the scope of this article is not necessarily restricted to minorities only, as it is commonly assumed to be. This is because of the use of word 'section of citizens' in the Article that include minorities as well as majority.

Right of minorities to establish and administer educational institutions (Article 30).

Article 30 grants the following rights to minorities, whether religious or linguistic:
(a) All minorities shall have the right to establish and administer educational institutions of their choice.
(b) The compensation amount fixed by the State for the compulsory acquisition of any property of a minority educational institution shall not restrict or abrogate the right guaranteed to them. **This provision was added by the 44th Amendment Act of 1978 to protect the right of minorities in this regard. The Act deleted the right to property as a Fundamental Right (Article 31).**
(c) In granting aid, the State shall not discriminate against any educational institution managed by a minority.

Thus, **the protection under Article 30 is confined only to minorities (religious or linguistic)** and does not extend to any section of citizens (as under Article 29). However, the **term 'minority' has not been defined anywhere in the Constitution.**

In a judgement delivered in the Secretary of Malankara Syrian Catholic College case (2007), the Supreme Court has summarized the general principles relating to establishment and administration of minority educational institutions in the following way :
1. The right of minorities to establish and administer educational
institutions of their choice comprises the following rights :
(i) To choose its governing body in whom the founders of institution have faith and confidence to conduct and manage affairs of the institution;
(ii) To appoint teaching staff (teachers/ lecturers and he masters/principals) as also non-teaching staff; and to take ac if there is dereliction of duty on the part of any of its employees
(iii) To admit eligible students of their choice and to set u reasonable fee structure; and
(iv) To use its properties and assets for the benefit of the institution
2. The right conferred on minorities under Article 30 is only to ensure equality with the majority and not intended to place the minorities in a more advantageous position vis-a-vis the majority. There is no reverse discrimination in favor of minorities.

Right to constitutional remedies (Article 32)

Right to move the Supreme Court for the enforcement of fundamental rights including the writs of (i) habeas corpus, (ii) mandamus, (iii) prohibition, (iv) certiorari, and (v) quo war-rento (Article 32).

Article 32 confers the right to remedies for the enforcement of the fundamental rights of an aggrieved citizen.
The Supreme Court has ruled that Article 32 is a basic feature of the Constitution.

It cannot be abridged or taken away even by way of an amendment to the Constitution. It contains the following four provisions:

(a) The right to move the Supreme Court by appropriate proceedings for the enforcement of the Fundamental Rights is guaranteed.
(b) The Supreme Court shall have power to issue directions or orders or writs for the enforcement of any of the fundamental rights. The writs issued may include habeas corpus, mandamus, prohibition, certiorari and quo-warranto.
(c) Parliament can empower any other court to issue directions, orders and writs of all kinds. However, this can be done without prejudice to the above powers conferred on the Supreme Court. Any other court here does not include high courts because Article 226 has already conferred these powers on the high courts.
(d) The right to move the Supreme Court shall not be suspended except as otherwise provided for by the Constitution. **Thus the Constitution provides that the President can suspend the right to move any court for the enforcement of the fundamental rights during a national emergency (Article 359).**

WRITS–TYPES AND SCOPE
The Supreme Court (under Article 32) and the high courts (under Article 226) can issue the writs of habeas corpus, mandamus, prohibition, certiorari and quo-warranto.
Before 1950, only the High Courts of Calcutta, Bombay and Madras had the power to issue the writs. **Article 226 now empowers all the high courts to issue the writs.**

The writ jurisdiction of the Supreme Court differs from that of a high court in three respects:

1. **The Supreme Court can issue writs only for the enforcement of fundamental rights whereas a high court can issue writs not only for the enforcement of Fundamental Rights but also for any other purpose.** The expression 'for any other purpose' refers to the enforcement of an ordinary legal right. Thus, the writ jurisdiction of the Supreme Court, in this respect, is narrower than that of high court.
2. The Supreme Court can issue writs against a person or government throughout the territory of India whereas a high court can issue writs against a person residing or against a government or authority located within its territorial jurisdiction only or outside its territorial jurisdiction only if the cause of action arises within its territorial jurisdiction.15 Thus, **the territorial jurisdiction of the Supreme Court for the purpose of issuing writs is wider than that of a high court.**
3. A remedy under Article 32 is in itself a Fundamental Right and hence, the Supreme Court may not refuse to exercise its writ jurisdiction. On the other hand, a remedy under Article 226 is discretionary and hence, a high court may refuse to exercise its writ jurisdiction. Article 32 does not merely confer power on the Supreme Court as Article 226 does on a high court to issue writs for the enforcement of fundamental rights or other rights as part of its general jurisdiction. **The Supreme Court is thus constituted as a defender and guarantor of the fundamental rights.**

Habeas Corpus
This writ is a bulwark of individual liberty against arbitrary detention.
The writ of habeas corpus can be issued against both public authorities as well as private individuals. The writ, on the other hand, **is not issued where** the (a) detention is lawful, (b) the proceeding is for contempt of a legislature or a court, (c) detention is by a competent court, and (d) detention is outside the jurisdiction of the court.

Mandamus
It literally means 'we command'. It is a command issued by the court to a public official asking him to perform his official duties that he has failed or refused to perform. It can also be issued against any public body, a corporation, an inferior court, a tribunal or government for the same purpose.

The writ of mandamus cannot be issued (a) against a private individual or body; (b) to enforce departmental instruction that does not possess statutory force; (c) when the duty is discretionary and not mandatory; (d) to enforce a contractual obligation; (e) against the president of India or the state governors; and (f) against the chief justice of a high court acting in judicial capacity.

Prohibition
It is issued by a higher court to a lower court or tribunal to prevent the latter from exceeding its jurisdiction or usurping a jurisdiction that it does not possess.
Thus, unlike mandamus that directs activity, the prohibition directs inactivity.
The writ of **prohibition can be issued only against judicial and quasijudicial authorities**. It is not available against administrative authorities, legislative bodies, and private individuals or bodies.

Certiorari
In the literal sense, it means 'to be certified' or 'to be informed'. It is issued by a higher court to a lower court or tribunal either to transfer a case pending with the latter to itself or to squash the order of the latter in a case. It is issued on the grounds of excess of jurisdiction or lack of jurisdiction or error of law. **Thus, unlike prohibition, which is only preventive, certiorari is both preventive as well as curative.**
In 1991, the Supreme Court ruled that the certiorari can be issued even against administrative authorities affecting rights of individuals.
Like prohibition, certiorari is also not available against legislative bodies and private individuals or bodies.

Quo-Warranto
In the literal sense, it means 'by what authority or warrant'. It is issued by the court to enquire into the legality of claim of a person to a public office. Hence, it prevents illegal usurpation of public office by a person.
The writ can be issued only in case of a substantive public office of a permanent character created by a statute or by the Constitution. It cannot be issued in cases of ministerial office or private office.
Unlike the other four writs, this can be sought by any interested person and not necessarily by the aggrieved person.

ARMED FORCES AND FUNDAMENTAL RIGHTS

Article 33 empowers the Parliament to restrict or abrogate the fundamental rights of the members of armed forces, para-military forces, police forces, intelligence agencies and analogous forces.
The power to make laws under Article 33 is conferred only on Parliament and not on state legislatures. Any such law made by Parliament cannot be challenged in any court on the ground of contravention of any of the fundamental rights.

Accordingly, **the Parliament has enacted the Army Act (1950), the Navy Act (1950), the Air Force Act (1950), the Police Forces (Restriction of Rights) Act, 1966, the Border Security Force Act and so on.**

MARTIAL LAW AND FUNDAMENTAL RIGHTS
Article 34 provides for the restrictions on fundamental rights while martial law is in force in any area within the territory of India. It empowers the Parliament to indemnify any government servant or any other person for any act done by him in connection with the maintenance or restora tion of order in any area where martial law was in force. The Parliament can also validate any sentence passed, punishment inflicted, forfeiture ordere d or other act done under martial law in such area.
The Act of Indemnity made by the Parliament cannot be challenged in any court on the ground of contravention of any of the fundamental rights.

There is also no specific or express provision in the Constitution that authorizes the executive to declare martial law. However, it is implicit in Article 34 under which martial law can be declared in any area within the territory of India. The martial law is imposed under the extra ordinary circumstances like war, invasion, insurrection, rebellion, riot or any violent resistance to law. Its justification is to repel force by force for ma intaining or restoring order in the society.

The Supreme Court held that the declaration of martial law does not ipso facto result in the suspension of the writ of habeas corpus.
The declaration of a martial law under Article 34 is different from the declaration of a national emergency under Article 352.

Martial Law	National Emergency
1. It affects only Fundamental Rights.	1. It affects not only Fundamental Rights but also Centre-state relations, distribution of revenues and legislative powers between centre and states and may extend the tenure of the Parliament.
2. It suspends the government and ordinary law courts.	2. It continues the government and ordinary law courts.
3. It is imposed to restore the breakdown of law and order due to any reason.	3. I t can be imposed only on three grounds–war, external aggression or armed rebellion.
4. It is imposed in some specific area of the country.	4. It is imposed either in the whole country or in any part

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EFFECTING CERTAIN FUNDAMENTAL RIGHTS

Article 35 lays down that the power to make laws, to give effect to certain specified fundamental rights shall vest only in the Parliament and not in the state legislatures. This provision ensures that there is uniformity throughout India with regard to the nature of those fundamental rights and punishment for their infringement.

It should be noted that Article 35 extends the competence of the Parliament to make a law on the matters specified above, even though some of those matters may fall within the sphere of the state legislatures.

PRESENT POSITION OF RIGHT TO PROPERTY
Since the commencement of the Constitution, the Fundamental Right to Property has been the most controversial. It has caused confrontations between the Supreme Court and the Parliament. It has led to a number of Constitutional amendments, that is, 1st, 4th, 7th, 25th, 39th, 40 th and 42nd Amendments. Through these amendments,
Articles 31A, 31B and 31C have been added and modified from time to time to nullify the effect of Supreme Court judgements and to protect certain laws from being challenged on the grounds of contravention of Fundamental Rights.
Most of the litigation centered around the obligation of the state to pay compensation for acquisition or requisition of private property.
Therefore, the 44th Amendment Act of 1978 abolished the right to property as a Fundamental Right by repealing Article 19(1) (f) and Article 31 from Part III.
Instead, the Act inserted a new Article 300A in Part XII under the heading 'Right to Property'. It provides that no person sh all be deprived of his property except by authority of law.
Thus, the right to property still remains a legal right or a constitutional right, though no longer a fundamental right. It is not a part of the basic structure of the Constitution.

Though the Fundamental Right to Property under Part III has been abolished, the Part III still carries two provisions which provide for the guaranteed right to compensation in case of acquisition or requisition of the private property by the state. These two cases where compensation has to be paid are:

(a) When the State acquires the property of a minority educational institution (Article 30); and
(b) When the State acquires the land held by a person under his personal cultivation and the land is within the statutory ceiling limits (Article 31 A).

The first provision was added by the 44th Amendment Act (1978), while the second provision was added by the 17th Amendment Act (1964).
Further, Articles 31A, 31B and 31C have been retained as exceptions to the fundamental rights.

EXCEPTIONS TO FUNDAMENTAL RIGHTS

Saving of Laws Providing for Acquisition of Estates, etc.

Article 31A saves five categories of laws from being challenged and invalidated on the ground of contravention of the fundamental rights conferred by Article 14 (equality before law and equal protection of laws) and Article 19 (protection of six rights in respect of speech, assembly, movement, etc.). They are related to agricultural land reforms, industry and commerce and include the following:

(a) Acquisition of estates and related rights by the State;
(b) Taking over the management of properties by the State;
(c) Amalgamation of corporations;
(d) Extinguishment or modification of rights of directors or shareholders of corporations; and
(e) Extinguishment or modification of mining leases.

Article 31A does not immunize a state law from judicial review unless it has been reserved for the president's consideration and has received his assent.

Validation of Certain Acts and Regulations

Article 31B saves the acts and regulations included in the Ninth Schedule from being challenged and invalidated on the ground of contravention of any of the fundamental rights. Thus, the scope of Article 31B is wider than Article 31A. Article 31B immunizes any law included in the Ninth Schedule from all the fundamental rights whether or not the law falls under any of the five categories specified in Article 31A.

However, in a significant judgement delivered in **I.R. Coelho case** (2007), the Supreme **Court ruled that there could not be any blanket immunity from judicial review of laws included in the Ninth Schedule**. The court held that judicial review is a 'basic feature' of the constitution and it could not be taken away by putting a law under the Ninth Schedule. **It said that the laws placed under the Ninth Schedule after April 24, 1973, are open to challenge in court if they violated fundamentals rights guaranteed under Articles 14, 15, 19 and 21 or the 'basic structure' of the constitution.**
It was on April 24, 1973, that the Supreme Court first propounded the doctrine of 'basic structure' or 'basic features' of the constitution in its landmark verdict in the Kesavananda Bharati Case.
Originally (in 1951), the Ninth Schedule contained only 13 acts and regulations but at present (in 2016) their number is 282. Of these, the acts and regulations of the state legislature deal with land reforms and abolition of the zamindari system and that of the Parliament deal with other matters.

RIGHTS OUTSIDE PART III

Besides the Fundamental Rights included in Part III, there are certain other rights contained in other parts of the Constitution. These rights are known as constitutional rights or legal rights or non-fundamental rights. They are:

1. No tax shall be levied or collected except by authority of law (Article 265 in Part XII).
2. No person shall be deprived of his property save by authority of law (Article 300-A in Part XII).
3. Trade, commerce and intercourse throughout the territory of India shall be free (Article 301 in Part XIII).

Even though the above rights are also equally justiciable, they are different from the Fundamental Rights. **In case of violation of a Fundamental Right, the aggrieved person can directly move the Supreme Court for its enforcement under Article 32, which is in itself fundamental right**. But, **in case of violation of the above rights, the aggrieved person cannot avail this constitutional remedy. He can move the High Court by an ordinary suit or under Article 226 (writ jurisdiction of high court).**

Fundamental Rights for Foreigners

FR available only to citizens and not to foreigners	FR available to both citizens and foreigners (except enemy aliens)
1. Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth (Article 15).	1. Equality before law and equal protection of laws (Article 14).
2. Equality of opportunity in matters of public employment (Article 16).	2. Protection in respect of conviction for offences (Article 20).
3. Protection of six rights regarding freedom of : (i) speech and expression, (ii) assembly, (iii) association, (iv) movement, (v) residence, and (vi) profession (Article 19).	3. Protection of life and personal liberty (Article 21).
4. Protection of life and personal liberty (Article 21).	4. Right to elementary education (Article 21A).
5. Right of minorities to establish and administer educational institutions (Article 30).	5. Protection against arrest and detention in certain cases (Article 22).
	6. Prohibition of traffic in human beings and forced labour (Article 23).
	7. Prohibition of employment of children in factories etc., (Article 24).
	8. Freedom of conscience and free profession, practice and propagation of religion (Article 25).
	9. Freedom to manage religious affairs (Article 26).
	10. Freedom from payment of taxes for promotion of any religion (Article 27).
	11. Freedom from attending religious instruction or worship in certain educational institutions (Article 28).

DPSP

Monday, May 11, 2020 11:16 AM

The Directive Principles of State Policy are enumerated in **Part IV of the Constitution from Articles 36 to 511. The framers of the Constitution borrowed this idea from the Irish Constitution of 1937, which had copied it from the Spanish Constitution**. Dr. B.R. Ambedkar described these principles as 'novel features' of the Indian Constitution. The Directive Principles along with the Fundamental Rights contain the philosophy of the Constitution and is the soul of the Constitution.

FEATURES OF THE DIRECTIVE PRINCIPLES

- The phrase 'Directive Principles of State Policy' denotes the ideals that the State should keep in mind while formulating policies and enacting laws. These are the constitutional
- instructions or recommendations to the State in legislative, executive and administrative matters.
- The Directive Principles constitute a very comprehensive economic, social and political program for a modern democratic State.
- The Directive Principles are non-justiciable in nature, that is, they are not legally enforceable by the courts for their violation.
- The Directive Principles, though non-justiciable in nature, help the courts in examining and determining the constitutional validity of a law.

CLASSIFICATION OF THE DIRECTIVE PRINCIPLES

The Constitution does not contain any classification of Directive Principles. However, on the basis of their content and direction, they can be classified into three broad categories, viz, socialistic, Gandhian and liberal-intellectual.

Socialistic Principles

These principles reflect the ideology of socialism. They lay down the framework of a democratic socialist state, aim at providing social and economic justice, and set the path towards welfare state.
They direct the state:

1. To promote the welfare of the people by securing a social order permeated by justice–social, economic and political– and to minimize inequalities in income, status, facilities and opportunities **(Article 38)**.
2. To secure (a) the right to adequate means of livelihood for all citizens; (b) the equitable distribution of material resources of the community for the common good; (c) prevention of concentration of wealth and means of production; (d) equal pay for equal work for men and women; (e) preservati on of the health and strength of workers and children against forcible abuse; and (f) opportunities for healthy development of children **(Article 39**).
3. To promote equal justice and to provide free legal aid to the poor **(Article 39 A**).
4. To secure the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement **(Article 41)**.
5. To make provision for just and humane conditions of work and maternity relief (**Article 42**).
6. To secure a living wage , a decent standard of life and social and cultural opportunities for all workers **(Article 43)**.
7. To take steps to secure the participation of workers in the management of indus-tries8 **(Article 43 A**).
8. To raise the level of nutrition and the standard of living of people and to improve public health **(Article 47)**.

Gandhian Principles

These principles are based on Gandhian ideology. They represent the program of reconstruction enunciated by Gandhi during the national movement. In order to fulfil the dreams of Gandhi, some of his ideas were included as Directive Principles. They require the State:

1. To organize village panchayats and endow them with necessary powers and authority to enable them to function as units of self-government **(Article 40**).
2. To promote cottage industries on an individual or cooperation basis in rural areas **(Article 43)**.
3. To promote voluntary formation, autonomous functioning, democratic control and professional management of cooperative societies **(Article 43B)**.
4. To promote the educational and economic interests of SCs, STs, and other weaker sections of the society and to protect them from social injustice and exploitation **(Article 46)**.
5. To prohibit the consumption of intoxicating drinks and drugs which are injurious to health **(Article 47)**.
6. To prohibit the slaughter of cows, calves and others and draught cattle and to improve their breeds **(Article 48).**

Liberal-Intellectual Principles

The principles included in this category represent the ideology of liberalism. They direct the state:

1. To secure for all citizens a uniform civil code throughout the country **(Article 44)**.
2. To provide early childhood care and education for all children until they complete the age of six years **(Article 45)**.
3. To organize agriculture and animal husbandry on modern and scientific lines **(Article 48)**.
4. To protect and improve the environment and to safeguard forests and wild life (**Article 48 A)**.
5. To protect monuments, places and objects of artistic or historic interest which are declared to be of national importance (**Article 49)**.
6. To separate the judiciary from the executive in the public services of the State **(Article 50**).
7. To promote international peace and security and maintain just and honorable relations between nations; to foster respect for international law and treaty obligations, and to encourage settlement of international disputes by arbitration **(Article 51)**.

NEW DIRECTIVE PRINCIPLES

The 42nd Amendment Act of 1976 added four new Directive Principles to the original list. They require the State:

1. To secure opportunities for healthy development of children (Article 39).
2. To promote equal justice and to provide free legal aid to the poor (Article 39 A).
3. To take steps to secure the participation of workers in the management of industries (Article 43 A).
4. To protect and improve the environment and to safeguard forests and wild life (Article 48 A).

The 44th Amendment Act of 1978 added one more Directive Principle, which requires the State to minimize inequalities in income, status, facilities and opportunities (Article 38).
The 86th Amendment Act of 2002 changed the subject-matter of Article 45 and made elementary education a fundamental right under Article 21 A. The amended directive requires the State to provide early childhood care and education for all children until they complete the age of six years.
The 97th Amendment Act of 2011 added a new Directive Principle relating to cooperative societies. It requires the state to promote voluntary formation, autonomous

functioning, democratic control and professional management of co-operative societies (Article 43B).

The framers of the Constitution made the Directive Principles non-justiciable and legally non-enforceable because:

1. The country did not possess sufficient financial resources to implement them.
2. The presence of vast diversity and backwardness in the country would stand in the way of their implementation.
3. The newly born independent Indian State with its many preoccupations might be crushed under the burden unless it was free to decide the order, the time, the place and the mode of fulfilling them.

Constitutional Conflict

K Santhanam has pointed out that the Directives lead to a constitutional conflict (a) between the Centre and the states, (b) between the President and the Prime Minister, and (c) between the governor and the chief minister. According to him, the Centre can give directions to the states with regard to the implementation of these principles, and in case of non-compliance, can dismiss the state government. Similarly, when the Prime Minister gets a bill (which violates the Directive Principles) passed by the Parliament, the president may reject the bill on the ground that these principles are fundamental to the governance of the country and hence, the ministry has no right to ignore them. The same constitutional conflict may occur between the governor and the chief minister at the state level.

CONFLICT BETWEEN FUNDAMENTAL RIGHTS AND DIRECTIVE PRINCIPLES

The justiciability of Fundamental Rights and non-justiciability of Directive Principles on the one hand and the moral obligation of State to implement Directive Principles (Article 37) on the other hand have led to a conflict between the two since the commencement of the Constitution.

In the Champakam Dorairajan case (1951), the **Supreme Court ruled that in case of any conflict between the Fundamental Rights and the Directive Principles, the former would prevail.** It declared that the Directive Principles have to conform to and run as subsidiary to the Fundamental Rights. But, it also held that the Fundamental Rights could be amended by the Parliament by enacting constitutional amendment acts. As a result, **the Parliament made the First Amendment Act (1951), the Fourth Amendment Act (1955) and the Seventeenth Amendment Act (1964) to implement some of the Directives.**

The above situation underwent a major change in 1967 following the Supreme Court's judgement in the Golaknath case (1967)**. In that case, the Supreme Court ruled that the Parliament cannot take away or abridge any of the Fundamental Rights, which are 'sacrosanct' in natur**e. In other words, **the Court held that the Fundamental Rights cannot be amended for the implementation of the Directive Principles.**

Fundamental Rights	Directive Principles
1. These are negative as they prohibit the State from doing certain things.	1. These are positive as they require the State to do certain things.
2. These are justiciable, that is, they are legally enforceable by the courts in case of their violation.	2. These are non-justiciable, that is, they are not legally enforceable by the courts for their violation.
3. They aim at establishing political democracy in the country.	3. They aim at establishing social and economic democracy in the country.
4. These have legal sanctions.	4. These have moral and political sanctions.
5. They promote the welfare of the individual. Hence, they are personal and individualistic.	5. They promote the welfare of the community. Hence, they are societarian and socialistic.
6. They do not require any legislation for their implementation. They are automatically enforced.	6. They require legislation for their implementation. They are not automatically enforced.
7. The courts are bound to declare a law violative of any of the Fundamental Rights as unconstitutional and invalid.	7. The courts cannot declare a law violative of any of the Directive Principles as unconstitutional and invalid. However, they can uphold the validity of a law on the ground that it was enacted to give effect to a directive.

The 42nd Amendment Act (1976) accorded the position of legal primacy and supremacy to the Directive Principles over the Fundamental Rights conferred by Articles 14, 19 and 31. However, **this extension was declared as unconstitutional and invalid by the Supreme Court in the Minerva Mills case** (1980). It means that the Directive Principles were once again made subordinate to the Fundamental Rights. But the Fundamental Rights conferred by Article 14 and Article 19 were accepted as subordinate to the Directive Principles specified in Article 39 (b) and (c).

In the Minerva Mills case (1980), the Supreme Court also held that 'the Indian Constitution is founded on the bedrock of the balance between the Fundamental Rights and the Directive Principles. **The goals set out by the Directive Principles have to be achieved without the abrogation of the means provided by the Fundamental Rights'**.

IMPLEMENTATION OF DIRECTIVE PRINCIPLES

Since 1950, the successive governments at the Centre and in the states have made several laws and formulated various programs for implementing the Directive Principles. These are mentioned below:

1. The Planning Commission was established in 1950 to take up the development of the country in a planned manner. The successive Five Year Plans aimed at securing socioeconomic justice and reducing inequalities of income, status and opportunities**. In 2015, the Planning Commission was replaced by a new body called NITI Aayog (National Institution for Transforming India).**

2. Almost all the states have passed land reform laws to bring changes in the agrarian society and to improve the conditions of the rural masses. These measures include (a) abolition of intermediaries like zamindars, jagirdars, inamdars, etc.; (b) tenancy reforms like security of tenure, fair rents, etc. (c) imposition of ceilings on land holdings; (d) distribution of surplus land among the landless laborers; and (e) cooperative farming.

DIRECTIVES OUTSIDE PART IV

Apart from the Directives included in Part IV, there are some other Directives contained in other Parts of the Constitution. They are:

1**. Claims of SCs and STs to Services:** The claims of the members of the Scheduled Castes and the Scheduled Tribes shall be taken into consideration, consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with the affairs of the Union or a State **(Article 335 in Part XVI**).

2. **Instruction in mother tongue:** It shall be the endeavor of every state and every local authority within the state to provide adequate facilities for instruction in the mother tongue at the primary stage of education to children belonging to linguistic minority groups **(Article 350-A in Part XVII)**.

3. **Development of the Hindi Language**: It shall be the duty of the Union to promote the spread of the Hindi language and to develop it so that it may serve as a medium of expression for all the elements of the composite culture of India **(Article 351 in Part XVII).**

The above Directives are also non-justiciable in nature. However, they are also given equal importance and attention by the judiciary on the ground that all parts of the constitution must be read together.

Fundamental Duties

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The framers of the Constitution did not feel it necessary to incorporate the fundamental duties of the citizens in the Constitution. However, they incorporated the duties of the State in the Constitution in the form of Directive Principles of State Polity. **Later in 1976, the fundamental duties of citizens were added in the Constitution. In 2002, one more Fundamental Duty was added.**

The Fundamental Duties in the Indian Constitution are inspired by the Constitution of erstwhile USSR.
Japanese Constitution is, perhaps, the only democratic Constitution in world which contains a list of duties of citizens.

In 1976, the Congress Party set up the Sardar Swaran Singh Committee to make recommendations about fundamental duties, the need and necessity of which was felt during the operation of the internal emergency (1975–1977).
The Congress Government at Centre accepted these recommendations and enacted the 42nd Constitutional Amendment Act in 1976. T his amendment added a new part, namely, Part IVA to the Constitution. This new part consists of only one Article, that is **, Article 51A which for the first time specified a code of ten fundamental dutie** s of the citizens.
Though the **Swaran Singh Committee suggested the incorporation of eight Fundamental Duties** in the Constitution, the 42nd Constitutional Amendment Act (1976) included ten Fundamental Duties.

To provide opportunities for education to his child or ward between the age of six and fourteen years. This was added by the 86th Constitutional Amendment Act, 2002.

FEATURES OF THE FUNDAMENTAL DUTIES

- Some of them are moral duties while others are civic duties.
- Fundamental Duties are confined to citizens
- Like the Directive Principles, the fundamental duties are also non-justiciable.
- The Parliament is free to enforce them by suitable legislation.

In 1992, the Supreme Court ruled that in determining the constitutionality of any law , if a court finds that the law in question seeks to give effect to a fundamental duty, it may consider such law to be 'reasonable' in relation to Article 14 (equality before law) or Article 19 (six freedoms) and thu s save such law from unconstitutionality.

VERMA COMMITTEE OBSERVATIONS
The Verma Committee on Fundamental Duties of the Citizens (1999) identified the existence of legal provisions for the impleme ntation of some of the Fundamental Duties.

Amendment of the Constitution

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Article 368 in Part XX of the Constitution deals with the powers of Parliament to amend the Constitution and its procedure. It states that the Parliament may, in exercise of its constituent power, **amend by way of addition, variation or repeal any provision** of the Constitution in accordance with the procedure laid down for the purpose. However, **the Parliament cannot amend those provisions which form the 'basic structure' of the Constitution**. This was **ruled by the Supreme Court in the Kesavananda Bharati case (1973**).

PROCEDURE FOR AMENDMENT

The procedure for the amendment of the Constitution as laid down in Article 368 is as follows:

1. An amendment of the Constitution can be initiated only by the introduction of a bill for the purpose in either House of Parliament and not in the state legislatures.
2. The bill can be introduced either by a minister or by a private member and does not require prior permission of the president.
3. The bill must be passed in each House by a special majority, that is, a majority of the total membership of the House and a majority of two-thirds of the members of the House present and voting.
4. Each House must pass the bill separately. In case of a disagreement between the two Houses, there is no provision for holding a joint sitting of the two Houses for the purpose of deliberation and passage of the bill.
5. If the bill seeks to amend the federal provisions of the Constitution, it must also be ratified by the legislatures of half of the states by a simple majority, that is, a majority of the members of the House present and voting.
6. After duly passed by both the Houses of Parliament and ratified by the state legislatures, where necessary, the bill is presented to the president for assent.
7. The president must give his assent to the bill. He can neither withhold his assent to the bill nor return the bill for reconsideration of the Parliament.
8. After the president's assent, the bill becomes an Act (i.e., a constitutional amendment act) and the Constitution stands amended in accordance with the terms of the Act.

TYPES OF AMENDMENTS

Article 368 provides for two types of amendments, that is, by a special majority of Parliament and also through the ratification of half of the states by a simple majority. Therefore, the Constitution can be amended in three ways:
(a) Amendment by simple majority of the Parliament,
(b) Amendment by special majority of the Parliament, and
(c) Amendment by special majority of the Parliament and the ratification of half of the state legislatures.

By Simple Majority of Parliament

A number of provisions in the Constitution can be amended by a simple majority of the two Houses of Parliament outside the scope of Article 368. These provisions include:
1. Admission or establishment of new states.
2. Formation of new states and alteration of areas, boundaries or names of existing states.
3. Abolition or creation of legislative councils in states.
4. Second Schedule–emoluments, allowances, privileges and so on of the president, the governors, the Speakers, judges, etc.
5. Quorum in Parliament.
6. Salaries and allowances of the members of Parliament.
7. Rules of procedure in Parliament.
8. Privileges of the Parliament, its members and its committees.
9. Use of English language in Parliament.
10. Number of puisne judges in the Supreme Court.
11. Conferment of more jurisdiction on the Supreme Court.
12. Use of official language.
13. Citizenship–acquisition and termination.
14. Elections to Parliament and state legislatures.
15. Delimitation of constituencies.
16. Union territories.
17. Fifth Schedule–administration of scheduled areas and scheduled tribes.
18. Sixth Schedule–administration of tribal areas.

By Special Majority of Parliament

The majority of the provisions in the Constitution need to be amended by a special majority of the Parliament, that is, a **majority of the total membership of each House and a majority of two-thirds of the members of each House present and voting**. The expression **'total membership' means the total number of members comprising the House irrespective of fact whether there are vacancies or absentees.**

The provisions which can be amended by this way includes:
(i) Fundamental Rights;
(ii) Directive Principles of State Policy; and
(iii) All other provisions which are not covered by the first and third categories.

By Special Majority of Parliament and Consent of States

Those provisions of the Constitution which are related to the federal structure of the polity can be amended by a special majority of the Parliament and also with the consent of half of the state legislatures by a simple majority. If one or some or all the remaining states take no action on the bill, it does not matter; the moment half of the states give their consent, the formality is completed. There is no time limit within which the states should give their consent to the bill.

The following provisions can be amended in this way:
1. Election of the President and its manner.
2. Extent of the executive power of the Union and the states.
3. Supreme Court and high courts.

4. Distribution of legislative powers between the Union and the states.
5. Goods and Services Tax Council.
6. Any of the lists in the Seventh Schedule.
7. Representation of states in Parliament.
8. Power of Parliament to amend the Constitution and its procedure (Article 368 itself).

Basic Structure of the Constitution

Tuesday, May 12, 2020 12:24 PM

ELEMENTS OF THE BASIC STRUCTURE

The present position is that the Parliament under Article 368 can amend any part of the Constitution including the Fundamental Rights but without affecting the 'basic structure' of the Constitution. However, the Supreme Court is yet to define or clarify as to what constitutes the 'basic structure' of the Constitution. From the various judgements, the following have emerged as 'basic features' of the Constitution or elements of the 'basic structure' of the constitution:

1. Supremacy of the Constitution
2. Sovereign, democratic and republican nature of the Indian polity
3. Secular character of the Constitution
4. Separation of powers between the legislature, the executive and the judiciary
5. Federal character of the Constitution
6. Unity and integrity of the nation
7. Welfare state (socio-economic justice)
8. Judicial review
9. Freedom and dignity of the individual
10. Parliamentary system
11. Rule of law
12. Harmony and balance between Fundamental Rights and Directive Principles
13. Principle of equality
14. Free and fair elections
15. Independence of Judiciary
16. Limited power of Parliament to amend the Constitution
17. Effective access to justice
18. Principles (or essence) underlying fundamental rights
19. Powers of the Supreme Court under Articles 32, 136, 141 and 142
20. Powers of the High Courts under Articles 226 and 227

Evolution of the Basic Structure of the Constitution

Sl. No.	Name of the Case (Year)	Elements of the Basic Structure (As Declared by the Supreme Court)
1.	Kesavananda Bharati case[3] (1973) (popularly known as the Fundamental Rights Case)	1. Supremacy of the Constitution 2. Separation of powers between the legislature, the executive and the judiciary 3. Republic and democratic form of government 4. Secular character of the constitution 5. Federal character of the constitution 6. Sovereignty and unity of India 7. Freedom and dignity of the individual 8. Mandate to build a welfare state 9. Parliamentary System
2.	Indira Nehru Gandhi case[3a] (1975) (popularly known as the Election Case)	1. India as a sovereign democratic republic 2. Equality of status and opportunity of an individual 3. Secularism and freedom of conscience and religion 4. Government of laws and not of men (i.e., Rule of Law) 5. Judicial review 6. Free and fair elections

2.	Indira Nehru Gandhi case[3a] (1975) (popularly known as the Election Case)	1. India as a sovereign democratic republic 2. Equality of status and opportunity of an individual 3. Secularism and freedom of conscience and religion 4. Government of laws and not of men (i.e., Rule of Law) 5. Judicial review 6. Free and fair elections which is implied in democracy
3.	Minerva Mills case[4] (1980)	1. Limited power of Parliament to amend the constitution 2. Judicial review 3. Harmony and balance between fundamental rights and directive principles
4.	Central Coal Fields Ltd. Case[8] (1980)	Effective access to justice
5.	Bhim Singhji Case[9] (1981)	Welfare State (Socio-economic justice)
6.	S.P. Sampath Kumar Case[10] (1987)	1. Rule of law 2. Judicial review
7.	P. Sambamurthy Case[11] (1987)	1. Rule of law 2. Judicial review
8.	Delhi Judicial Service Association Case[12] (1991)	Powers of the Supreme Court under Articles 32, 136, 141 and 142
9.	Indra Sawhney Case[13] (1992) (popularly known as the Mandal Case)	Rule of law
10.	Kumar Padma Prasad Case[14] (1992)	Independence of judiciary
11.	Kihoto Hollohon Case[15] (1993) (popularly known as Defection case)	1. Free and fair elections 2. Sovereign, democratic, republican structure
12.	Raghunath Rao Case[16] (1993)	1. Principle of equality 2. Unity and integrity of India
13.	S.R. Bommai Case[17] (1994)	1. Federalism 2. Secularism 3. Democracy

		4. Unity and integrity of the nation 5. Social justice 6. Judicial review
14.	L. Chandra Kumar Case[18] (1997)	Powers of the High Courts under Articles 226 and 227
15.	Indra Sawhney II Case[19] (2000)	Principle of equality
16.	All India Judge's Association Case[20] (2002)	Independent judicial system
17.	Kuldip Nayar Case[21] (2006)	1. Democracy 2. Free and fair elections
18.	M. Nagaraj Case[22] (2006)	Principle of equality
19.	I.R. Coelho Case[23] (2007) (popularly known as IX Schedule Case)	1. Rule of law 2. Separation of powers 3. Principles (or essence) underlying fundamental rights 4. Judicial review 5. Principle of equality
20.	Ram Jethmalani Case[24] (2011)	Powers of the Supreme Court under Article 32
21.	Namit Sharma Case[25] (2013)	Freedom and dignity of the individual
22.	Madras Bar Association Case[26] (2014)	1. Judicial review 2. Powers of the High Courts under Articles 226 and 227

Parliamentary System

Tuesday, May 19, 2020 10:13 AM

The Constitution of India provides for a parliamentary form of government, both at the Centre and in the states. **Articles 74 and 75 deal with the parliamentary system at the Centre and Articles 163 and 164 in the states.**

Modern democratic governments are classified into **parliamentary and presidential on the basis of nature of relations between the executive and the legislative organs of the government**. The **parliamentary system of government is the one in which the executive is responsible to the legislature for its policies and acts. The presidential system of government, on the other hand, is one in which the executive is not responsible to the legislature for its policies and acts, and is constitutionally independent of the legislature in respect of its term of office.**

The parliamentary government is also known as **cabinet government (because the cabinet is the nucleus of power in a parliamentary system)** or **responsible government (as the cabinet (the real executive) is accountable to the Parliament and stays in office so long as it enjoys the latter's confidence)** or **Westminster model (after the location of the British Parliament, where the parliamentary system originated)** of government and is prevalent in **Britain, Japan, Canada, India** among others. The presidential government, on the other hand, is also known as non-responsible or non-parliamentary or fixed executive system of government and is prevalent in **USA, Brazil, Russia, Sri Lanka among others.**

FEATURES OF PARLIAMENTARY GOVERNMENT

Nominal and Real Executives
The President is the **nominal executive (de jure executive or titular executive)** while the Prime Minister is the **real executive (de facto executive)**. Thus, the President is head of the State, while the Prime Minister is head of the government. **Article 74 provides for a council of ministers headed by the Prime Minister to aid and advise the President in the exercise of his functions**.

Majority Party Rule
The political party which secures majority seats in the Lok Sabha forms the government. The leader of that party is appointed as the Prime Minister by the President; other ministers are appointed by the President on the advice of the prime minister. However, when no single party gets the majority, a coalition of parties may be invited by the President to form the government.

Collective Responsibility
This is the bedrock principle of parliamentary government. The ministers are collectively responsible to the Parliament in general and to the Lok Sabha in particular (Article 75). The principle of collective responsibility implies that the Lok Sabha can remove the ministry (i.e., council of ministers headed by the prime minister) from office by passing a vote of no confidence.

Political Homogeneity
Usually members of the council of ministers belong to the same political party, and hence they share the same political ideology.

Double Membership
The ministers are members of both the legislature and the executive. The Constitution stipulates that a minister who is not a member of the Parliament for a period of six consecutive months ceases to be a minister.

Leadership of the Prime Minister
The Prime Minister plays the leadership role in this system of government. He is the leader of council of ministers, leader of the Parliament and leader of the party in power.

Dissolution of the Lower House
The lower house of the Parliament (Lok Sabha) can be dissolved by the President on recommendation of the Prime Minister.

Secrecy
The ministers operate on the principle of secrecy of procedure and cannot divulge information about their proceedings, policies and decisions.

FEATURES OF PRESIDENTIAL GOVERNMENT

The American Constitution provides for the presidential form of government. It has following features:
(a) The American President is both the head of the State and the head of government. As the head of State, he occupies a ceremonial position. As the head of government, he leads the executive organ of government.
(b) The President is elected by an electoral college for a fixed tenure of four years. **He cannot be removed by the Congress except by impeachment for a grave unconstitutional act.**
(c) The President governs with the help of a cabinet or a smaller body called 'Kitchen Cabinet'. It is only an advisory body and consists of non-elected departmental secretaries. They are selected and appointed by him, are responsible only to him, and can be removed by him any time.
(d) The President and his secretaries are not responsible to the Congress for their acts. They neither possess membership in the Congress nor attend its sessions.
(e) The President cannot dissolve the House of Representatives–the lower house of the Congress.
(f) The doctrine of separation of powers is the basis of the American presidential system. The legislative, executive and judicial powers of the government are separated and vested in the three independent organs of the government.

MERITS OF THE PARLIAMENTARY SYSTEM

Harmony Between Legislature and Executive
The greatest advantage of the parliamentary system is that it ensures harmonious relationship and cooperation between the legislative and executive organs of the government. The executive is a part of the legislature and both are interdependent at work.

Responsible Government
By its very nature, the parliamentary system establishes a responsible government. The ministers are responsible to the Parliament for all their acts of omission and commission. **The Parliament exercises control over the ministers through various devices like question hour, discussions, adjournment motion, no confidence motion, etc**.

Prevents Despotism
Under this system, the executive authority is vested in a group of individuals (council of ministers) and not in a single person. This dispersal of authority **checks the dictatorial tendencies of the executive.**

Ready Alternative Government
In case the ruling party loses its majority, the Head of the State can invite the opposition party to form the government. This means an alternative government can be formed without fresh elections.

Wide Representation
In a parliamentary system, the executive consists of a group of individuals (i.e., ministers who are representatives of the people).

DEMERITS OF THE PARLIAMENTARY SYSTEM

Unstable Government
The parliamentary system does not provide a stable government. A no-confidence motion or political defection or evils of multiparty coalition can make the government unstable. The Government headed by Morarji Desai, Charan Singh, V.P. Singh, Chandra Sekhar, Deva Gowda and I.K. Gujral are some such examples.

No Continuity of Policies
The parliamentary system is not conductive for the formulation and implementation of long-term policies. This is due to the uncertainty of the tenure of the government. A change in the ruling party is usually followed by changes in the policies of the government.

Dictatorship of the Cabinet
When the ruling party enjoys absolute majority in the Parliament, the cabinet becomes autocratic and exercises nearly unlimited powers.
This phenomena was witnessed during the era of Indira Gandhi and Rajiv Gandhi.

Government by Amateurs
The parliamentary system is not conducive to administrative efficiency as the ministers are not experts in their fields. The Prime Minister has a limited choice in the selection of ministers; his choice is restricted to the members of Parliament alone and does not extend to external talent.

FEDERAL SYSTEM

Federal Government	Unitary Government
1. Dual Government (that is, national government and regional government)	1. Single government, that is, the national government which may create regional governments
2. Written Constitution	2. Constitution may be written (France) or unwritten (Britain)
3. Division of powers between the national and regional government	3. No division of powers. All powers are vested in the national government
4. Supremacy of the Constitution	4. Constitution may be supreme (Japan) or may not be supreme (Britain)
5. Rigid Constitution	5. Constitution may be rigid (France) or flexible (Britain)
6. Independent judiciary	6. Judiciary may be independent or may not be independent
7. Bicameral legislature	7. Legislature may be bicameral (Britain) or unicameral (China)

A federation can be formed in two ways, that is, by way of integration or by way of disintegration.
The US is the first and the oldest federation in the world. It was formed in 1787 following the American Revolution (1775–83). It comprises 50 states (originally 13 states) and is taken as the model of federation. The Canadian Federation, comprising 10 provinces (originally 4 provinces) is also quite old–formed in 1867.

The Constitution of India, **The framers adopted the federal system due to two main reasons–the large size of the country and its sociocultural diversity**. They realized that the federal system not only ensures the efficient governance of the country but also reconciles national unity with regional autonomy.
Article 1 of the Constitution describes India as a 'Union of States'. According to Dr. B.R. Ambedkar, the phrase '**Union of States' has been preferred to 'Federation**

of States' to indicate two things: (i) the Indian federation is not the result of an agreement among the states like the American federation; and (ii) the states have no right to secede from the federation.

The Indian federal system is based on the 'Canadian model' and not on the 'American model'.
KC Wheare described the Constitution of India as "**quasi-federal**".

K Santhanam, the two factors have been responsible for increasing the unitary bias (tendency of centralization) of the Constitution. These are:
(i) the dominance of the Centre in the financial sphere and the dependence of the states upon the Central grants; and
(ii) the emergence of a powerful erstwhile planning commission which controlled the developmental process in the states.

President

Monday, November 16, 2020 12:11 PM

Articles 52 to 78 in Part V of the Constitution deal with the Union executive.
The **Union executive consists of the President, the Vice-President, the Prime Minister, the council of ministers and the attorney general of India.**
The President is the head of the Indian State. He is the first citizen of India and acts as the symbol of unity, integrity and solidarity of the nation.

Election of President

The President is elected not directly by the people but by members of electoral college consisting of:
1. the elected members of both the Houses of Parliament;
2. the elected members of the legislative assemblies of the states; and
3. the elected members of the legislative assemblies of the Union Territories of Delhi and Puducherry .

The Constitution provides that there shall be uniformity in the scale of representation of different states as well as parity between the states as a whole and the Union at the election of the President. To achieve this, **the number of votes which each elected member of the legislative assembly of each state and the Parliament is entitled to cast at such election shall be determined in the following manner** :

1. Every elected member of the legislative assembly of a state shall have as many votes as there are multiples of one thousand in the quotient obtained by dividing the population of the state by the total number of the elected members of the assembly.

$$Value\ of\ Vote\ of\ an\ MLA = \frac{Total\ Population\ of\ State}{No\ of\ elected\ members\ in\ Legislative\ Assembly} * \frac{1}{1000}$$

2. Every elected member of either House of Parliament shall have such number of votes as may be obtained by dividing the total number of votes assigned to members of the legislative assemblies of the states by the total number of the elected members of both the Houses of Parliament.

$$Value\ of\ Vote\ of\ an\ MP = \frac{Total\ Value\ of\ Votes\ of\ All\ MLA\ of\ All\ States}{Total\ members\ of\ elected\ members\ of\ Parliament}$$

The President's election is held in accordance with the system of proportional representation by means of the single transfer able vote and the voting is by secret ballot. This system ensures that the successful candidate is returned by the absolute majority of votes.
For a presidential candidate, **The quota of votes is determined by dividing the total number of valid votes polled by the number of candidates to be elected (here only one candidate is to be elected as President) plus one and adding one to the quotient.**

$$Electoral\ Quota = \frac{Total\ number\ of\ valid\ votes\ polled}{1+1=(2)} + 1$$

Each member of the electoral college is given only one ballot paper. **The voter, while casting his vote, is required to indicate his preferences by marking 1, 2, 3, 4, etc. against the names of candidates. This means that the voter can indicate as many preferences as there are candidates in the fray.**

In the first phase, the first preference votes are counted. In case a candidate secures the required quota in this phase, he is declared elected. Otherwise, the process of transfer of votes is set in motion. The ballots of the candidate securing the least number of first preference votes are cancelled and his second preference votes are transferred to the first preference votes of other candidates. This process continues till a candidate secures the required quota.

The election of a person as President cannot be challenged on the ground that the electoral college was incomplete (i.e., existence of any vacancy among the members of electoral college). If the election of a person as President is declared void by the Supreme Court, acts done by him before the date of such declaration of the Supreme Court are not invalidated and continue to remain in force.

Constitution makers chose the indirect election due to the following reasons:

1. The **indirect election of the President is in harmony with the parliamentary system of government envisaged in the Constitution** . Under this system, the President is only a **nominal executive** and the **real powers are vested in the council of ministers headed by the prime minister** . It would have been anomalous to have the President elected directly by the people and not give him any real power.
2. The direct election of the President would have been very costly and time- and energy-consuming due to the vast size of the electorate. This is unwarranted keeping in view that he is only a symbolic head.

QUALIFICATIONS, OATH AND CONDITIONS

1. He should be a citizen of India.
2. He should have completed 35 years of age.
3. He should be qualified for election as a member of the Lok Sabha.
4. He should not hold any office of profit under the Union government or any state government or any local authority or any other public authority. A sitting President or Vice-president of the Union, the Governor of any state and a minister of the Union or any state is not deemed to hold any office of profit and hence qualified as a presidential candidate.

Further, **the nomination of a candidate for election to the office of President must be subscribed by at least 50 electors as proposers and 50 electors as seconders. Every candidate has to make a security deposit of ₹15,000 in the Reserve Bank of India.** The security deposit is liable to be forfeited in case

the candidate fails to secure one-sixth of the votes polled. Before 1997, number of proposers and seconders was ten each and the amount of security deposit was ₹2,500. In 1997, they were increased to discourage the non-serious candidates.

Oath or Affirmation by the President

Before entering upon his office, the President has to make and subscribe to an oath or affirmation. In his oath, the President swears:

1. to faithfully execute the office;
2. to preserve, protect and defend the Constitution and the law; and
3. to devote himself to the service and well-being of the people of India.

The oath of office to the President is administered by the Chief Justice of India and in his absence, the senior most judge of the Supreme Court available.

Conditions of President's Office

1. He should not be a member of either House of Parliament or a House of the state legislature. If any such person is elected as President, he is deemed to have vacated his seat in that House on the date on which he enters upon his office as President.
2. He should not hold any other office of profit.
3. He is entitled, **without payment of rent**, to the use of his official residence (the Rastrapathi Bhavan).
4. He is entitled to such emoluments, allowances and privileges as may be determined by Parliament.
5. **His emoluments and allowances cannot be diminished during his term of office.**

In 2018, the Parliament increased the salary of the President from ₹1.50 lakh to ₹5 lakh per month4a. Earlier in 2008, the pension of the retired President was increased from ₹3 lakh per annum to 50% of his salary per month.

TERM, IMPEACHMENT AND VACANCY

Term of President's Office

The President holds office for a term of five years from the date on which he enters upon his office. However, **he can resign from his office at any time by addressing the resignation letter to the Vice-President**. Further, **he can also be removed from the office before completion of his term by the process of impeachment**.

The President can hold office beyond his term of five years until his successor assumes charge. He is also eligible for re-election to that office. He may be elected for any number of terms.

Impeachment of President

The President can be removed from office by a process of **impeachment for 'violation of the Constitution'**. However, the Constitution does not define the meaning of the phrase 'violation of the Constitution'.

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

An impeachment is a quasi-judicial procedure in the Parliament. It should be noted:

(a) the nominated members of either House of Parliament can participate in the impeachment of the President though they do not participate in his election;
(b) the elected members of the legislative assemblies of states and the Union Territories of Delhi and Puducherry do not participate in the impeachment of the President though they participate in his election.

POWERS AND FUNCTIONS OF THE PRESIDENT

Executive Powers

The executive powers and functions of the President are:

(a) All executive actions of the Government of India are formally taken in his name.
(b) He can make rules specifying the manner in which the orders and other instruments made and executed in his name shall be authenticated.
(c) He can make rules for more convenient transaction of business of the Union government, and for allocation of the said business among the ministers.
(d) He appoints the prime minister and the other ministers. They hold office during his pleasure.
(e) He appoints the attorney general of India and determines his remuneration. The attorney general holds office during the pleasure of the President.
(f) He appoints the comptroller and auditor general of India, the chief election commissioner and other election commissioners, the chairman and members of the Union Public Service Commission, the governors of states, the chairman and members of finance commission, and so on.
(g) He can seek any information relating to the administration of affairs of the Union, and proposals for legislation from the prime minister.
(h) He can require the Prime Minister to submit, for consideration of the council of ministers, any matter on which a decision has been taken by a minister but, which has not been considered by the council.

Legislative Powers

The President is an integral part of the Parliament of India, and enjoys the following legislative powers.

(a) He can summon or prorogue the Parliament and dissolve the Lok Sabha. He can also summon a joint sitting of both the Houses of Parliament, which is presided over by the Speaker of the Lok Sabha.

(b) He can address the Parliament at the commencement of the first session after each general election and the first session of e ach year.
(c) He can send messages to the Houses of Parliament, whether with respect to a bill pending in the Parliament or otherwise.
(d) **He can appoint any member of the Lok Sabha to preside over its proceedings when the offices of both the Speaker and the Deput y Speaker fall vacant**. Similarly, **he can also appoint any member of the Rajya Sabha to preside over its proceedings when the offices of both the Chairman and the Deputy Chairman fall vacant.**
(e) He nominates 12 members of the Rajya Sabha from amongst persons having special knowledge or practical experience in literatur e, science, art and social service.
(f) He can nominate two members to the Lok Sabha from the Anglo - Indian Community.
(g) He decides on questions as to disqualifications of members of the Parliament, in consultation with the Election Commission.
(h) His prior recommendation or permission is needed to introduce certain types of bills in the Parliament. For example, a bill i nvolving expenditure from the Consolidated Fund of India, or a bill for the alteration of boundaries of states or creation of a new state.

Judicial Powers
The judicial powers and functions of the President are:
(a) He appoints the Chief Justice and the judges of Supreme Court and high courts.
(b) He can seek advice from the Supreme Court on any question of law or fact. However, the advice tendered by the Supreme Court i s not binding on the President.
(c) He can grant pardon, reprieve, respite and remission of punishment, or suspend, remit or commute the sentence of any person c onvicted of any offence:
(i) In all cases where the punishment or sentence is by a court martial;
(ii) In all cases where the punishment or sentence is for an offense against a Union law; and
(iii) In all cases where the sentence is a sentence of death.

Diplomatic Powers
The international treaties and agreements are negotiated and concluded on behalf of the President. However, they are subject to the approval of the Parliament. He represents India in international forums and affairs and sends and receives diplomats like ambassadors, high c ommissioners, and so on.

Military Powers
He is the supreme commander of the defense forces of India. In that capacity, he appoints the chiefs of the Army, the Navy an d the Air Force. He can declare war or conclude peace, subject to the approval of the Parliament.

Emergency Powers
Constitution confers extraordinary powers on the President to deal with the following three types of emergencies:
(a) National Emergency (Article 352);
(b) President's Rule (Article 356 & 365); and
(c) Financial Emergency (Article 360)

VETO POWER OF THE PRESIDENT
A bill passed by the Parliament can become an act only if it receives the assent of the President.
When such a bill is presented to the President for his assent, he has three alternatives (under Article 111 of the Constituti on):
1. He may give his assent to the bill, or
2. He may withhold his assent to the bill, or
3. He may return the bill (**if it is not a Money bill**) for reconsideration of the Parliament. However, **if the bill is passed again by the Parliament with or without amendments and again presented to the President, the President must give his assent to the bill**.

The President of India is vested **absolute veto** (withholding of assent to the bill passed by the legislature), **suspensive veto** (which can be overridden by the legislature with an ordinary majority) and **Pocket veto**, that is, taking no action on the bill passed by the legislature.

Vacancy in President Office
A vacancy in the President's office can occur
1. On the expiry of his tenure of five years.
2. By his resignation.
3. On his removal by the process of impeachment.
4. By his death.
5. Otherwise, for example, when he becomes disqualified to hold office or when his election is declared void.

When a vacancy occurs in the office of the President due to his resignation, removal, death or otherwise, the Vice -President acts as the President until a new President is elected. Further, when the sitting President is unable to discharge his functions due to absence, illness or any other cause, the Vice President discharges his functions until the President resumes his office.

Absolute Veto
It refers to the power of the President to withhold his assent to a bill passed by the Parliament. The bill then ends and doe s not become an act. Usually, this veto is exercised in the following two cases:
(a) With respect to private members' bills (i.e., bills introduced by any member of Parliament who is not a minister); and
(b) With respect to the government bills when the cabinet resigns (after the passage of the bills but before the assent by the Pr esident) and the new cabinet advises the President not to give his assent to such bills.
In 1954, President Dr. Rajendra Prasad withheld his assent to the PEPSU Appropriation Bill.

Pocket Veto
In this case, the President neither ratifies nor rejects nor returns the bill, but simply keeps the bill pending for an indef inite period. This power of the

President not to take any action (either positive or negative) on the bill is known as the pocket veto.

PARDONING POWER OF THE PRESIDENT

Article 72 of the Constitution empowers the President to grant pardons to persons who have been tried and convicted of any offence in all cases where the:

1. Punishment or sentence is for an offence against a Union Law;
2. Punishment or sentence is by a court martial (military court); and
3. Sentence is a sentence of death.

The pardoning power of the President is independent of the Judiciary; it is an executive power. But, the President while exer cising this power, does not sit as a court of appeal. **The object of conferring this power on the President is two-fold**:

(a) to keep the door open for correcting any judicial errors in the operation of law; and,
(b) to afford relief from a sentence, which the President regards as unduly harsh.

The pardoning power of the President includes the following:

- **Pardon -** It removes both the sentence and the conviction and completely.
- **Commutation -** It denotes the substitution of one form of punishment for a lighter form.
- **Remission -** It implies reducing the period of sentence without changing its character **.**
- **Respite -** It denotes awarding a lesser sentence in place of one originally awarded due to some special fact, such as the physical disab ility of a convict or the pregnancy of a woman offender.
- **Reprieve -** It implies a stay of the execution of a sentence (especially that of death) for a temporary period.

Under Article 161 of the Constitution, the governor of a state also possesses the pardoning power. Hence, the governor can also grant pardons, reprieves, respites and remissions of punishment or suspend, remit and commute the sentence of any person convicted of any of fence against a state law.

But - 1. *The President can pardon sentences inflicted by court martial (military courts) while the governor cannot.*
2. *The President can pardon death sentence while governor cannot. However, the governor can suspend, remit or commute a death s entence*.

The Supreme Court examined the pardoning power of the President under different cases and laid down the following principles:

1. The petitioner for mercy has no right to an oral hearing by the President.
2. The President can examine the evidence afresh and take a view different from the view taken by the court.
3. The power is to be exercised by the President on the advice of the union cabinet.
4. The President is not bound to give reasons for his order.

Vice President

Tuesday, November 17, 2020 8:57 AM

The Vice-President occupies the second highest office in the country. He is accorded a rank next to the President in the official warrant of precedence. This office is modelled on the lines of the American Vice-President.

ELECTION
The Vice-President, like the president, is elected not directly by the people but by the method of indirect election.
This electoral college is different from the electoral college for the election of the President in the following two respects:
1. It consists of both elected and nominated members of the Parliament (in the case of president, only elected members).
2. It does not include the members of the state legislative assemblies (in the case of President, the elected members of the state legislative assemblies are included).

Reason "The President is the head of the State and his power extends both to the administration by the Centre as well as to the states. Consequently, it is necessary that in his election, not only members of Parliament should play their part, but the members of the state legislatures should have a voice. But, when we come to the Vice-President, his normal functions are to preside over the council of states. It is only on a rare occasion, and that too for a temporary period, that he may be called upon to assume the duties of the president. That being so, it does not seem necessary that the members of the state legislatures should also be invited to take part in the election of the Vice-President"

Vice-President's election, like that of the President's election, is **held in accordance with the system of proportional representation by means of the single transferable vote and the voting is by secret ballot.**

Qualifications
To be eligible for election as Vice-President, a person should fulfil the following qualifications:
1. He should be a citizen of India.
2. He should have completed 35 years of age.
3. He should be qualified for election as a member of the Rajya Sabha.
4. He should not hold any office of profit under the Union government or any state government or any local authority or any other public authority.

The nomination of a candidate for election to the office of Vice-President must be subscribed by at least 20 electors as proposers and 20 electors as seconders. Every candidate has to make a security deposit of ₹15,000 in the Reserve Bank of India.

Oath or Affirmation
Before entering upon his office, the Vice-president has to make and subscribe to an oath or affirmation. In his oath, the Vice-president swears:
1. to bear true faith and allegiance to the Constitution of India; and
2. to faithfully discharge the duties of his office.

The oath of office to the Vice-President is administered by the President or some person appointed in that behalf by him.

Conditions of Office
The Constitution lays down the following two conditions of the Vice-President's office:
1. He should not be a member of either House of Parliament or a House of the state legislature. If any such person is elected Vice-President, he is deemed to have vacated his seat in that House on the date on which he enters upon his office as Vice-President.
2. He should not hold any other office of profit.

Term of Office
The Vice-President holds office for a term of five years from the date on which he enters upon his office. However, he can resign from his office at any time by addressing the resignation letter to the President. He can also be removed from the office before completion of his term. **A formal impeachment is not required for his removal. He can be removed by a resolution passed by a majority of all the then members of the Rajya Sabha and agreed to by the Lok Sabha. This means that this resolution should be passed in the Rajya Sabha by an effective majority and in the Lok Sabha by a simple majority.** It must be noted here that the effective majority in India is only a type of special majority and not a separate one. Further, this resolution can be introduced only in the Rajya Sabha and not in the Lok Sabha. But, no such resolution can be moved unless at least 14 days' advance notice has been given.

Powers and Functions
The functions of Vice-President are two-fold:
1. He acts as the ex-officio Chairman of Rajya Sabha. In this capacity, his powers and functions are similar to those of the Speaker of Lok Sabha. In this respect, he resembles the American vice-president who also acts as the Chairman of the Senate–the Upper House of the American legislature.
2. He acts as President when a vacancy occurs in the office of the President due to his resignation, impeachment, death or otherwise. **He can act as President only for a maximum period of six months** within which a new President has to be elected.

While acting as President or discharging the functions of President, the Vice-President does not perform the duties of the office of the chairman of Rajya Sabha. During this period, those duties are performed by the Deputy Chairman of Rajya Sabha.

Governor

Tuesday, November 17, 2020 10:44 AM

Part VI of the Constitution deals with the government in the states. **Articles 153 to 167 in Part VI of the Constitution deal with the state executive.** The state executive consists of the governor, the chief minister, the council of ministers and the advocate general of the state. **Thus, there is no office of vice-governor (in the state) like that of Vice-President at the Centre**.

Usually, there is a governor for each state, but the 7th Constitutional Amendment Act of 1956 facilitated the appointment of the same person as a governor for two or more states.

APPOINTMENT OF GOVERNOR

The governor is neither directly elected by the people nor indirectly elected by a specially constituted electoral college as is the case with the president. He is appointed by the president by warrant under his hand and seal.
In a way, he is a nominee of the Central government. But, **as held by the Supreme Court in 1979, the office of governor of a state is not an employment under the Central government. It is an independent constitutional office and is not under the control of or subordinate to the Central government.**

The Draft Constitution provided for the direct election of the governor on the basis of universal adult suffrage. But the **Constituent Assembly opted for the present system of appointment of governor by the president because of the following reasons**:

1. The direct election of the governor is incompatible with the parliamentary system established in the states.
2. The mode of direct election is more likely to create conflicts between the governor and the chief minister.
3. The governor being only a constitutional (nominal) head, there is no point in making elaborate arrangements for his election and spending huge amount of money.
4. The election of a governor would be entirely on personal issues. Hence, it is not in the national interest to involve a large number of voters in such an election.
5. An elected governor would naturally belong to a party and would not be a neutral person and an impartial head.
6. The election of governor would create separatist tendencies and thus affect the political stability and unity of the country.
7. The system of presidential nomination enables the Centre to maintain its control over the states.
8. The direct election of the governor creates a serious problem of leadership at the time of a general election in the state.
9. The chief minister would like his nominee to contest for governorship. Hence, a second rate man of the ruling party is elected as governor.

Canadian model, where the governor of a province (state) is appointed by the Governor-General (Centre), was accepted in the Constituent Assembly.

The Constitution lays down only two qualifications for the appointment of a person as a governor. These are:
1. He should be a citizen of India.
2. He should have completed the age of 35 years.
Additionally, two conventions have also developed in this regard over the years.

- First, he should be an outsider, that is, he should not belong to the state where he is appointed, so that he is free from th e local politics.
- Second, while appointing the governor, the president is required to consult the chief minister of the state concerned, so tha t the smooth functioning of the constitutional machinery in the state is ensured. However, **both the conventions have been violated in some of the cases.**

POWERS OF GOVERNOR

A governor possesses executive, legislative, financial and judicial powers more or less analogous to the President of India. However, he has no diplomatic, military or emergency powers like the president.
The powers and functions of the governor can be studied under the following heads:

1. Executive powers.
2. Legislative powers.
3. Financial powers.
4. Judicial powers.

Executive Powers
The executive powers and functions of the Governor are:

1. All executive actions of the government of a state are formally taken in his name.
2. He can make rules specifying the manner in which the Orders and other instruments made and executed in his name shall be auth enticated.
3. He can make rules for more convenient transaction of the business of a state government and for the allocation among the mini sters of the said business.
4. He appoints the chief minister and other ministers. They also hold office during his pleasure. There should be a Tribal Welfa re minister in the states of Chhattisgarh, Jharkhand, Madhya Pradesh and Odisha appointed by him. The state of Bihar was excluded from this provision by t he 94th Amendment Act of 2006.
5. He appoints the advocate general of a state and determines his remuneration. The advocate general holds office during the ple asure of the governor.
6. He appoints the state election commissioner and determines his conditions of service and tenure of office. However, the state election commissioner can be removed only in like manner and on the like grounds as a judge of a high court.
7. He appoints the chairman and members of the state public service commission. However, they can be removed only by the preside nt and not by a governor.
8. He can seek any information relating to the administration of the affairs of the state and proposals for legislation from the chief minister.
9. He can recommend the imposition of constitutional emergency in a state to the president. During the period of President's rul e in a state, the governor enjoys extensive executive powers as an agent of the President.
10. He acts as the chancellor of universities in the state. He also appoints the vice-chancellors of universities in the state.

Legislative Powers

A governor is an integral part of the state legislature. In that capacity, he has the following legislative powers and functi ons:

1. He can summon or prorogue the state legislature and dissolve the state legislative assembly.
2. He can address the state legislature at the commencement of the first session after each general election and the first sessi on of each year.
3. He can send messages to the house or houses of the state legislature, with respect to a bill pending in the legislature or ot herwise.
4. He can appoint any member of the State legislative assembly to preside over its proceedings when the offices of both the Spea ker and the Deputy Speaker fall vacant. Similarly, he can appoint any member of the state legislature council to preside over its proceedings when the office s of both Chairman and Deputy Chairman fall vacant.
5. He nominates one-sixth of the members of the state legislative council from amongst persons having special knowledge or practical experience i n literature, science, art, cooperative movement and social service.
6. He can nominate one member to the state legislature assembly from the Anglo -Indian Community.
7. He decides on the question the question of disqualification of members of the state legislature in consultation with the Ele ction Commission.
8. When a bill is sent to the governor after it is passed by state legislature, he can:
   (a) Give his assent to the bill, or
   (b) Withhold his assent to the bill, or
   (c) Return the bill (if it is not a money bill) for reconsideration of the state legislature. However, if the bill is passed again by the state
9. He constitutes a finance commission after every five years to review the financial position of the panchayats and the municip alities.

Judicial Powers

The judicial powers and functions of the governor are:

1. He can grant pardons, reprieves, respites and remissions of punishment or suspend, remit and commute the sentence of any pers on convicted of any offence against any law relating to a matter to which the executive power of the state extends.5
2. He is consulted by the president while appointing the judges of the concerned state high court.
3. He makes appointments, postings and promotions of the district judges in consultation with the state high court.
4. He also appoints persons to the judicial service of the state (other than district judges) in consultation with the state hig h court and the State Public Service Commission.

VETO POWERS (veto power, ordinance-making power and pardoning power)

Comparing Veto Powers of President and Governor

President - With Regard to Ordinary Bills	**Governor - With Regard to Ordinary Bills**
Every ordinary bill, after it is passed by both the Houses of the Parliament either singly or at a joint sitting, is presented to the President for his assent. He has three alternatives: 1. He may give his assent to the bill, the bill then becomes an act. 2. He may withhold his assent to the bill, the bill then ends and does not become an act. 3. He may return the bill for reconsideration of the Houses. If the bill is passed by both the Houses again with or without amendments and presented to the President for his assent, the president must give his assent to the bill. Thus the president enjoys only a 'suspensive veto'.	Every ordinary bill, after it is passed by the legislative assembly in case of a unicameral legislature or by both the Houses in case of a bicameral legislature either in the first instance or in the second instance, is presented to the governor for his assent. He has four alternatives: 1. He may give his assent to the bill, the bill then becomes an act. 2. He may withhold his assent to the bill, the bill then ends and does not become an act. 3. He may return the bill for reconsideration of the House or Houses. If the bill is passed by the House or Houses again with or without amendments and presented to the governor for his assent, the governor must give his assent to the bill. Thus, the governor enjoys only a 'suspensive veto'. 4. He may reserve the bill for the consideration of the President.
When a state bill is reserved by the governor for the consideration of the President, the President has three alternatives: (a) He may give his assent to the bill, the bill then becomes an act. (b) He may withhold his assent to the bill, the bill then ends and does not become an Act. (c) He may return the bill for reconsideration of the House or Houses of the state legislature. When a bill is so returned, the House or Houses have to reconsider it within six months. If the bill is passed by the House or Houses again with or without amendments and presented to the president for his assent, the president is not bound to give his assent to the bill. He may give his assent to such a bill or withhold his assent. for the consideration of the President, he will not have any further role in the enactment of the bill. If the bill is returned by the President for the reconsideration of the House or Houses and is passed again, the bill must be presented again for the presidential assent only. If the President gives his assent to the bill, it becomes an act. This means that the assent of the Governor is no longer required. Every money bill after it is passed by the Parliament, is presented to the President for his assent. He has two alternatives: 1. He may give his assent to the bill, the bill then becomes an act. 2. He may withhold his assent to the bill, the bill then ends and does not become an act.	When the governor reserves a bill for the consideration of the President, he will not have any further role in the enactment of the bill. If the bill is returned by the President for the reconsideration of the House or Houses and is passed again, the bill must be presented again for the presidential assent only. If the President gives his assent to the bill, it becomes an act. This means that the assent of the Governor is no longer required. Every money bill, after it is passed by the state legislature (unicameral or bicameral), is presented to the governor for his assent. He has three alternatives: 1. He may give his assent to the bill, the bill then becomes an act. 2. He may withhold his assent to the bill, the bill then ends and does not become an act. 3. He may reserve the bill for the consideration of the president.
Thus, the President cannot return a money bill for the reconsideration of the Parliament. Normally, the president gives his	Thus, the governor cannot return a money bill for the reconsideration of the state legislature. Normally, the governor gives his assent to a money bill as it is

assent to a money bill as it is introduced in the Parliament with his previous permission. When a Money Bill is reserved by the Governor for the consideration of the President, the President has two alternatives: (a) He may give his assent to the bill, the bill then becomes an Act. (b) He may withhold his assent to the bill, the bill then ends and does not become an act. Thus, the President cannot return a money bill for the reconsideration of the state legislature (as in the case of the Parliament).	introduced in the state legislature with his previous permission. When the governor reserves a money bill for the consideration of the President, he will not have any further role in the enactment of the bill. If the President gives his assent to the bill, it becomes an Act. This means that the assent of the governor is no longer required.

Comparing Ordinance-Making Power of President and Governor

President	Governor
• He can promulgate an ordinance only when both the Houses of Parliament are not in session or when either of the two Houses of Parliament is not in session. The second provision implies that an ordinance can also be promulgated by the president when only one House is in session because a law can be passed by both the Houses and not by one House alone. • He can promulgate an ordinance only when he is satisfied that circumstances exist which render it necessary for him to take immediate action. • His ordinance-making power is co-extensive with the legislative power of the Parliament. This means that he can issue ordinances only on those subjects on which the Parliament can make laws. • An ordinance issued by him has the same force and effect as an act of the Parliament. • An ordinance issued by him is subject to the same limitations as an act of Parliament. This means that an ordinance issued by him will be invalid to the extent it makes any provision which the Parliament cannot make. • He can withdraw an ordinance at any time. • His ordinance-making power is not a discretionary power. This means that he can promulgate or withdraw an ordinance only on the advice of the council of ministers of ministers headed by the prime minister. • An ordinance issued by him should be laid before both the Houses of Parliament when it reassembles. • An ordinance issued by him ceases to operate on the expiry of six weeks from the reassembly of Parliament. It may cease to operate even earlier than the prescribed six weeks, if both the Houses of Parliament passes resolutions disapproving it. • He needs no instruction for making an ordinance.	• He can promulgate an ordinance only when the legislative assembly (in case of a unicameral legislature) is not in session or (in case of a bicameral legislature) when both the Houses of the state legislature are not in session or when either of the two Houses of the state legislature is not in session. The last provision implies that an ordinance can be promulgated by the governor when only one House (in case of a bicameral legislature) is in session because a law can be passed by both the Houses and not by one House alone. • He can promulgate an ordinance only when he is satisfied that circumstances exist which render it necessary for him to take immediate action. • His ordinance-making power is co-extensive with the legislative power of the state legislature. This means that he can issue ordinances only on those subjects on which the state legislature can make laws. • An ordinance issued by him has the same force and effect as an act of the state legislature. • An ordinance issued by him is subject to the same limitations as an act of the state legislature. This means that an ordinance issued by him will be invalid to the extent it makes any provision which the state legislature cannot make. • He can withdraw an ordinance at any time. • His ordinance-making power is not a discretionary power. This means that he can promulgate or withdraw an ordinance only on the advice of the council headed by the chief minister. • An ordinance issued by him should be laid before the legislative assembly or both the Houses of the state legislature (in case of a bicameral legislature) when it reassembles. • An ordinance issued by him ceases to operate on the expiry of six weeks from the reassembly of the state legislature. It may cease to operate even earlier than the prescribed six weeks, if a resolution disapproving it is passed by the legislative assembly and is agreed to by the legislative council (in case of a bicameral legislature). • He cannot make an ordinance without the instructions from the President in three cases: (a) If a bill containing the same provisions would have required the previous sanction of the President for its introduction into the state legislature. (b) If he would have deemed it necessary to reserve a bill containing the same provisions for the consideration of the President. (c) If an act of the state legislature containing the same provisions would have been invalid without receiving the President's assent.

Comparing Pardoning Powers of President and Governor

President	Governor
• He can pardon, reprieve, respite, remit, suspend or commute the punishment or sentence of any person convicted of any offence against a Central law. • He can pardon, reprieve, respite, remit, suspend or commute a death sentence. He is the only authority to pardon a death sentence. • He can grant pardon, reprieve, respite, suspension, remission or commutation in respect to punishment or sentence by a court-martial (military court).	• He can pardon, reprieve, respite, remit, suspend or commute the punishment or sentence of any person convicted of any offence against a state law. • He cannot pardon a death sentence. Even if a state law prescribes for death sentence, the power to grant pardon lies with the President and not the governor. But, the governor can suspend, remit or commute a death sentence. • He does not possess any such power.

Prime Minister

Tuesday, November 17, 2020 2:27 PM

In the scheme of parliamentary system provided by the constitution, president is the head of the State while Prime Minister is the head of the government.

APPOINTMENT OF THE PRIME MINISTER

The Constitution does not contain any specific procedure for the selection and appointment of the Prime Minister. **Article 75 says only that the Prime Minister shall be appointed by the president.**
However, this does not imply that the president is free to appoint any one as the Prime Minister. **In accordance with the conventions of the parliamentary system of government, the President has to appoint the leader of the majority party in the Lok Sabha as the Prime Minister.** But, **when no party has a clear majority in the Lok Sabha**, then the President may exercise his personal discretion in the selection and appointment of the Prime Minister. **In such a situation, the President usually appoints the leader of the largest party or coalition in the Lok Sabha as the Prime Minister and asks him to seek a vote of confidence in the House within a month.** This discretion was exercised by the **President, for the first time in 1979, when Neelam Sanjiva Reddy (the then President) appointed**
Charan Singh (the coalition leader) as the Prime Minister after the fall of the Janata Party government headed by Morarji Desai.

In 1980, the Delhi High Court held that the Constitution does not require that a person must prove his majority in the Lok Sabha before he is appointed as the Prime Minister. The President may first appoint him the Prime Minister and then ask him to prove his majority in the Lok Sabha within a reasonable period.
Charan Singh (1979), V.P. Singh (1989), Chandrasekhar (1990), P.V. Narasimha Rao (1991), A.B. Vajyapee (1996), Deve Gowda (1996), I.K. Gujral (1997) and again A.B. Vajpayee (1998) were appointed as Prime Ministers in this way.

In 1997, the Supreme Court held that a person who is not a member of either House of Parliament can be appointed as Prime Minister for six months, within which, he should become a member of either House of Parliament; otherwise, he ceases to be the Prime Minister.
Constitutionally, the Prime Minister may be a member of any of the two Houses of parliament. For example, three Prime Ministers, Indira Gandhi (1966), Deve Gowda (1996) and Manmohan Singh (2004), were members of the Rajya Sabha.

OATH, TERM AND SALARY
The Prime Minister swears:
1. to bear true faith and allegiance to the Constitution of India,
2. to uphold the sovereignty and integrity of India,
3. to faithfully and conscientiously discharge the duties of his office, and
4. to do right to all manner of people in accordance with the Constitution and the law, without fear or favor, affection or ill will.

In his oath of secrecy, the Prime Minister swears that he will not directly or indirectly communicate or reveal to any person(s) any matter that is brought under his consideration or becomes known to him as a Union Minister except as may be required for the due discharge of his duties as such minister.

The term of the Prime Minister is not fixed and he holds office during the pleasure of the president. However, this does not mean that the president can dismiss the Prime Minister at any time. So long as the Prime Minister enjoys the majority support in the Lok Sabha, he cannot be dismissed by the President. However, if he loses the confidence of the Lok Sabha, he must resign or the President can dismiss him.

POWERS AND FUNCTIONS OF THE PRIME MINISTER

In Relation to Council of Ministers
The Prime Minister enjoys the following powers as head of the Union council of ministers:
1. He recommends persons who can be appointed as ministers by the president. The President can appoint only those persons as ministers who are recommended by the Prime Minister.
2. He allocates and reshuffles various portfolios among the ministers.
3. He can ask a minister to resign or advise the President to dismiss him in case of difference of opinion.
4. He presides over the meeting of council of ministers and influences its decisions.
5. He guides, directs, controls, and coordinates the activities of all the ministers.
6. He can bring about the collapse of the council of ministers by resigning from office.

The resignation or death of an incumbent Prime Minister automatically dissolves the council of ministers and thereby generates a vacuum. The resignation or death of any other minister, on the other hand, merely creates a vacancy which the Prime Minister may or may not like to fill.

In Relation to the President
The Prime Minister enjoys the following powers in relation to the President:
1. He is the principal channel of communication between the President and the council of ministers.4 It is the duty of the prime minister:
   (a) to communicate to the President all decisions of the council of ministers relating to the administration of the affairs of th e Union and proposals for legislation;
   (b) to furnish such information relating to the administration of the affairs of the Union and proposals for legislation as the P resident may call for; and
   (c) if the President so requires, to submit for the consideration of the council of ministers any matter on which a decision has been taken by a minister but which has not been considered by the council.
2. **He advises the president with regard to the appointment of important officials like attorney general of India, Comptroller and Auditor General of India, chairman and members of the UPSC, election commissioners, chairman and members of the finance commission and so on.**

In Relation to Parliament

The Prime Minister is the leader of the Lower House. In this capacity, he enjoys the following powers:

1. He advises the President with regard to summoning and proroguing of the sessions of the Parliament.
2. He can recommend dissolution of the Lok Sabha to President at any time.
3. He announces government policies on the floor of the House.

Other Powers & Functions

In addition to the above-mentioned three major roles, the Prime Minister has various other roles. These are:

1. **He is the chairman of the NITI Ayog (which succeeded the planning commission), National Integration Council, Interstate Council, National Water Resources Council and some other bodies.**
2. He plays a significant role in shaping the foreign policy of the country.
3. **He is the chief spokesman of the Union government.**

RELATIONSHIP WITH THE PRESIDENT

Following provisions of constitutions deal with this:

1. **Article 74** - There shall be **a council of ministers with the Prime Minister at the head to aid and advise the President who shall, in the exercise of his functions, act in accordance with such advice.**
2. Article 75
   (a) The Prime Minister shall be appointed by the President and the other ministers shall be appointed by the president on the advice of the Prime Minister;
   (b) The ministers shall hold office during the pleasure of the president; and
   (c) The council of ministers shall be collectively responsible to the House of the People.

3. Article 78 - It shall be the duty of the Prime Minister:
   (a) to communicate to the President all decisions of the council of ministers relating to the administration of the affairs of th e Union and proposals for legislation;
   (b) to furnish such information relating to the administration of the affairs of the Union and proposals for legislation as the P resident may call for; and
   (c) if the President so requires, to submit for the consideration of the council of ministers any matter on which a decision has been taken by a minister but which has not been considered by the council.

Articles Related to Prime Minister at a Glance

Article No.	Subject-matter
74.	Council of Ministers to aid and advise President
75.	Other provisions as to Ministers
77.	Conduct of business of the Government of India
78.	Duties of Prime Minister as respects the furnishing of information to the President, etc.
88.	Rights of Ministers as respects the Houses.

Central Council of Ministers

Tuesday, November 17, 2020 5:46 PM

The principles of parliamentary system of government are not detailed in the Constitution, but two Articles (74 and 75) deal with them in a broad, sketchy and general manner.

- **Article 74 deals with the status of the council of ministers while,**
- **Article 75 deals with the appointment, tenure, responsibility, qualification, oath and salaries and allowances of the ministers.**

Article 74 provides for a council of ministers with the Prime Minister at the head to aid and advise the President in the exercise of his functions. The 42nd and 44th Constitutional Amendment Acts have made the advice binding on the President. This provision emphasizes the intimate and the confidential relationship between the President and the ministers.

In 1971, the Supreme Court held that 'even after the dissolution of the Lok Sabha, the council of ministers does not cease to hold office. Article 74 is mandatory and, therefore, the president cannot exercise the executive power without the aid and advise of the council of ministers.

In 1974, the court held that '*wherever the Constitution requires the satisfaction of the President, the satisfaction is not the personal satisfaction of the President but it is the satisfaction of the council of ministers with whose aid and on whose advice the President exercises his powers and functions*'.

APPOINTMENT OF MINISTERS

The Prime Minister is appointed by the President, while the other ministers are appointed by the President on the advice of the Prime Minister. This means that the President can appoint only those persons as ministers who are recommended by the Prime minister.
Usually, the members of Parliament, either Lok Sabha or Rajya Sabha, are appointed as ministers. A person who is not a member of either House of Parliament can also be appointed as a minister. But, within six months, he must become a member (either by election or by nomination) of either House of Parliament, otherwise, he ceases to be a minister.
A minister who is a member of one House of Parliament has the right to speak and to take part in the proceedings of the other House also, but he can vote only in the House of which he is a member.

OATH AND SALARY OF MINISTERS

Before a minister enters upon his office, the president administers to him the oaths of office and secrecy. In his oath of office, the minister swears:

1. to bear true faith and allegiance to the Constitution of India,
2. to uphold the sovereignty and integrity of India,
3. to faithfully and conscientiously discharge the duties of his office, and
4. to do right to all manner of people in accordance with the Constitution and the law, without fear or favour, affection or ill will.

In his oath of secrecy, the minister swears that he will not directly or indirectly communicate or reveal to any person(s) any matter that is brought under his consideration or becomes known to him as a Union minister except as may be required for the due discharge of his duties as such minister.

The salaries and allowances of ministers are determined by Parliament from time to time. A minister gets the salary and allowances that are payable to a member of Parliament.

RESPONSIBILITY OF MINISTERS

Collective Responsibility

The fundamental principle underlying the working of parliamentary system of government is the principle of collective responsibility.
Article 75 clearly states that the council of ministers is collectively responsible to the Lok Sabha.
The council of ministers can advise the president to dissolve the Lok Sabha on the ground that the House does not represent the views of the electorate faithfully and call for fresh elections.

The principle of collective responsibility also means that the Cabinet decisions bind all cabinet ministers (and other ministers) even if they differed in the cabinet meeting. It is the duty of every minister to stand by cabinet decisions and support them both within and outside the Parliament.

If any minister disagrees with a cabinet decision and is not prepared to defend it, he must resign.
For example, Dr. B.R. Ambedkar resigned because of his differences with his colleagues on the Hindu Code Bill in 1953. C.D. Deshmukh resigned due to his differences on the policy of reorganisation of states.

Individual Responsibility

Article 75 also contains the principle of individual responsibility. It states that the ministers hold office during the pleasure of the president, which means that the President can remove a minister even at a time when the council of ministers enjoys the confidence of the Lok Sabha.
In case of a difference of opinion or dissatisfaction with the performance of a minister, the Prime Minister can ask him to resign or advice the President to dismiss him.

COMPOSITION OF THE COUNCIL OF MINISTERS

The council of ministers consists of three categories of ministers, namely, cabinet ministers, ministers of state, and deputy ministers. The difference between them lies in their respective ranks, emoluments, and political importance. At the top of all these ministers stands the Prime Minister–the supreme governing authority of the country.
The cabinet ministers head the important ministries of the Central government like home, defence, finance, external affairs and so forth. They are members of the cabinet, attend its meetings and play an important role in deciding policies. Thus, their responsibilities extend over the entire gamut of Central government.

The ministers of state can either be given independent charge of ministries/ departments or can be attached to cabinet ministers.
In case of attachment, they may either be given the charge of departments of the ministries headed by the cabinet ministers or allotted specific items of work related to the ministries headed by cabinet ministers. In both the cases, they work under the supervision and guidance as well as under the overall charge and responsibility of the cabinet ministers.
In case of independent charge, they perform the same functions and exercise the same powers in relation to their ministries/departments as cabinet ministers do. However, they are not members of the cabinet and do not attend the cabinet meetings unless specially invited when something related to their ministries/ departments are considered by the cabinet.
Next in rank are the deputy ministers. They are not given independent charge of ministries/departments. They are attached to the cabinet ministers or ministers of state and assist them in their administrative, political, and parliamentary duties. They are not members of the cabinet and do not attend cabinet meetings.
It must also be mentioned here that **there is one more category of ministers, called parliamentary secretaries**. **They are the members of the last category of the council of ministers (which is also known as the 'ministry'). They have no department under their control.** They are attached to the senior ministers and assist them in the discharge of their parliamentary duties.
However, **since 1967, no parliamentary secretaries have been appointed except during the first phase of Rajiv Gandhi Government**. At times, the council of ministers may also include a deputy prime minister. **The deputy prime ministers are appointed mostly for political reasons.**

COUNCIL OF MINISTERS VS CABINET

Council of ministers	Cabinet
• It is a wider body consisting of 60 to 70 ministers. • It includes all the three categories of ministers, that is, cabinet ministers, ministers of state, and deputy ministers. • It does not meet, as a body, to transact government business. It has no collective functions. • It is vested with all powers but in theory. • Its functions are determined by the cabinet. • It is a constitutional body, dealt in detail by the Articles 74 and 75 of the Constitution. Its size and classification are, however, not mentioned in the Constitution. Its size is determined by the prime minister according to the exigencies of the time and requirements of the situation. Its classification into a three-tier body is based on the conventions of parliamentary government as developed in Britain. It has, however, got a legislative sanction. Thus, the Salaries and Allowances Act of 1952 defines a 'minister' as a 'member of the council of ministers, by whatever name called, and includes a deputy minister'. • It is collectively responsible to the Lower House of the Parliament.	• It is a smaller body consisting of 15 to 20 ministers. • It includes the cabinet ministers only. Thus, it is a part of the council of ministers. • It meets, as a body, frequently and usually once in a week to deliberate and take decisions regarding the transaction of government business. • It exercises, in practice, the powers of the council of ministers and thus, acts for the latter. • It directs the council of ministers by taking policy decisions which are binding on all ministers. • It was inserted in Article 352 of the Constitution in 1978 by the 44th Constitutional Amendment Act. Thus, it did not find a place in the original text of the Constitution. Now also, Article 352 only defines the cabinet saying that it is 'the council consisting of the prime minister and other ministers of cabinet rank appointed under Article 75' and does not describe its powers and functions. In other words, its role in our politico-administrative system is based on the conventions of parliamentary government as developed in Britain. • It enforces the collective responsibility of the council of ministers to the Lower House of Parliament.

KITCHEN CABINET
The cabinet, a small body consisting of the prime minister as its head and some 15 to 20 most important ministers, is the highest decision-making body in the formal sense. However, a still smaller body called the 'Inner Cabinet' or 'Kitchen Cabinet' has become the real centre of power. This informal body consists of the Prime Minister and two to four influential colleagues in whom he has faith and with whom he can discuss every problem.

Article No.	Subject Matter
74.	Council of Ministers to aid and advise President
75.	Other provisions as to Ministers
77.	Conduct of business of the Government of India
78.	Duties of Prime Minister as respects the furnishing of information to the President, etc.
88.	Rights of Ministers as respects the Houses.

Notes:
This Article was amended by the 42nd Constitutional Amendment Act of 1976 to the effect that the president shall, in the exercise of his functions, act in accordance with the advice rendered by the council of ministers. The 44th Constitutional Amendment Act of 1978 further added a proviso to this article to the effect that the president may require the council of ministers to reconsider such advice and the president shall act in accordance with the advice tendered after such reconsideration.

Cabinet Committees

FEATURES OF CABINET COMMITTEES
The following are the features of Cabinet Committees:
1. They are extra-constitutional in emergence. In other words, they are not mentioned in the Constitution. However, the Rules of Business provide for their establishment.
2. They are of two types–standing and ad hoc. The former are of a permanent nature while the latter are of a temporary nature. The ad hoc committees are constituted from time to time to deal with special problems. They are disbanded after their task is completed.

3. They are set up by the Prime Minister according to the exigencies of the time and requirements of the situation. Hence, their number, nomenclature, and composition varies from time to time.
4. Their membership varies from three to eight. They usually include only Cabinet Ministers. However, the non-cabinet Ministers are not debarred from their membership.
5. They not only include the Ministers in charge of subjects covered by them but also include other senior Ministers.
6. They are mostly headed by the Prime Minister. Sometimes other Cabinet Ministers, particularly the Home Minister or the Finance Minister, also acts as their Chairman. But, in case the Prime Minister is a member of a committee, he invariably presides over it.
7. They not only sort out issues and formulate proposals for the consideration of the Cabinet, but also take decisions. However, the Cabinet can review their decisions.
8. They are an organizational device to reduce the enormous workload of the Cabinet. They also facilitate in-depth examination of policy issues and effective coordination. They are based on the principles of division of labor and effective delegation.

Parliament

Wednesday, November 18, 2020 11:35 AM

Articles 79 to 122 in Part V of the Constitution deal with the organization, composition, duration, officers, procedures, privileges, powers and so on of the Parliament.

ORGANISATION OF PARLIAMENT

Under the Constitution, the **Parliament of India consists of three parts viz, the President, the Council of States and the House of the People. In 1954, the Hindi names 'Rajya Sabha' and 'Lok Sabha' were adopted by the Council of States and the House of People respectively.** The Rajya Sabha is the Upper House (Second Chamber or House of Elders) and the Lok Sabha is the Lower House (First Chamber or Popular House). **The former represents the states and union territories of the Indian Union, while the latter represents the people of India as a whole.**

A bill passed by both the Houses of Parliament cannot become law without the President's assent. He also performs certain functions relating to the proceedings of the Parliament, for example, he summons and pro-rogues both the Houses, dissolves the Lok Sabha, addresses both the Houses, issues ordinances when they are not in session, and so on.

The parliamentary form of government emphasizes on the interdependence between the legislative and executive organs. Hence, we have the 'President-in-Parliament' like the 'Crown-in-Parliament' in Britain.
The presidential form of government, on the other hand, lays stress on the separation of legislative and executive organs. Hence, the American president is not regarded as a constituent part of the Congress.

COMPOSITION OF THE TWO HOUSES

Composition of Rajya Sabha

The maximum strength of the Rajya Sabha is fixed at 250, out of which, 238 are to be the representatives of the states and union territories (elected indirectly) and 12 are nominated by the president.

The Fourth Schedule of the Constitution deals with the allocation of seats in the Rajya Sabha to the states and union territories.

1. Representation of States

The representatives of states in the Rajya Sabha are elected by the elected members of state legislative assemblies. The election is held in accordance with the system of proportional representation by means of the single transferable vote. The seats are allotted to the states in the Rajya Sabha on the basis of population. Hence, the number of representatives varies from state to state. For example, Uttar Pradesh has 31 members while Tripura has 1 member only. However, in USA, all states are given equal representation in the Senate irrespective of their population. USA has 50 states and the Senate has 100 members–2 from each state.

2. Representation of Union Territories

The representatives of each union territory in the Rajya Sabha are indirectly elected by members of an electoral college specially constituted for the purpose. This election is also held in accordance with the system of proportional representation by means of the single transferable vote. **Out of the nine union territories, only three (Delhi, Puducherry and Jammu & Kashmir) have representation in Rajya Sabha. The populations of other six union territories are too small to have any representative in the Rajya Sabha.**

3. Nominated Members

The president nominates 12 members to the Rajya Sabha from people who have special knowledge or practical experience in art, literature, science and social service. **The rationale behind this principle of nomination is to provide eminent persons a place in the Rajya Sabha without going through the process of election. It should be noted here that the American Senate has no nominated members.**

Composition of Lok Sabha

The maximum strength of the Lok Sabha is fixed at 552. Out of this, 530 members are to be the representatives of the states, 20 members are to be the representatives of the union territories and 2 members are to be nominated by the president from the Anglo-Indian community.

1. Representation of States

The representatives of states in the Lok Sabha are directly elected by the people from the territorial constituencies in the states. The election is based on the principle of universal adult franchise. **The voting age was reduced from 21 to 18 years by the 61st Constitutional Amendment Act, 1988.**

2. Representation of Union Territories

The Constitution has empowered the Parliament to prescribe the manner of choosing the representatives of the union territories in the Lok Sabha. Accordingly, the Parliament has enacted the Union Territories (Direct Election to the House of the People) Act, 1965, by which the members of Lok Sabha from the union territories are also chosen by direct election.

3. Nominated Members

The president can nominate two members from the Anglo-Indian community if the community is not adequately represented in the Lok Sabha. **Originally, this provision was to operate till 1960 but has been extended till 2020 by the 95th Amendment Act, 2009.**

SYSTEM OF ELECTIONS TO LOK SABHA

Territorial Constituencies

For the purpose of holding direct elections to the Lok Sabha, each state is divided into territorial constituencies. In this respect, the Constitution makes the

following two provisions:

1. Each state is allotted a number of seats in the Lok Sabha in such a manner that the ratio between that number and its population is the same for all states. This provision does not apply to a state having a population of less than six millions.
2. Each state is divided into territorial constituencies in such a manner that the ratio between the population of each constituency and the number of seats allotted to it is the same throughout the state.

In brief, the **Constitution ensures that there is uniformity of representation in two respects: (a) between the different states, and b) bet ween the different constituencies in the same state.**
The expression 'population' means the population as ascertained at the preceding census of which the relevant figure have bee n published.

Readjustment after each Census
After every census, a readjustment is to be made in (a) allocation of seats in the Lok Sabha to the states, and (b) division of each state into territorial constituencies. Parliament is empowered to determine the authority and the manner in which it is to be made. Accordingly, the Parliament has enacted the Delimitation Commission Acts in 1952, 1962, 1972 and 2002 for this purpose.
The 42nd Amendment Act of 1976 froze the allocation of seats in the Lok Sabha to the states and the division of each state in to territorial constituencies till the year 2000 at the 1971 level. **This ban on readjustment was extended for another 25 years (ie, upto year 2026) by the 84th Amendment Act of 2001, with the same objective of encouraging population limiting measures. The 84th Amendment Act of 2001 also empowered the government to undertake readjustment and rationalization of territorial constituencies in the states on the basis of the population figures of 1991 c ensus.** Later, the 87th Amendment Act of 2003 provided for the delimitation of constituencies on the basis of 2001 census and not 1991 census. However, this ca n be done without altering the number of seats allotted to each state in the Lok Sabha.

Reservation of Seats for SCs and STs
Though the Constitution has abandoned the system of communal representation, it provides for the reservation of seats for sch eduled castes and scheduled tribes in the Lok Sabha on the basis of population ratios.
Originally, **this reservation was to operate for ten years (i.e., up to 1960), but it has been extended continuously since then by 10 year s each time. Now, under the 95th Amendment Act of 2009, this reservation is to last until 2020.**
The 84th Amendment Act of 2001 provided for re-fixing of the reserved seats on the basis of the population figures of 1991 census as applied to rationalization of the general seats. Later, the 87th Amendment Act of 2003 provided for the re-fixing of the reserved seats on the basis of 2001 census and not 1991 census.

First-Past-The-Post System
Though the Constitution has adopted the system of proportional representation in the case of Rajya Sabha, it has not preferre d the same system in the case of Lok Sabha.
Instead, **it has adopted the system of territorial representation (First-past-the-post system) for the election of members to the Lok Sabha.**

Under territorial representation, every member of the legislature represents a geographical area known as a constituency. Fro m each constituency, only one representative is elected. Hence such a constituency is known as single-member constituency. In this system, a candidate who secures majority of votes is declared elected. This simple majority system of representation does not represent the whole electorate. In other words, it d oes not secure due representation to minorities (small groups).

The system of proportional representation aims at removing the defects of territorial representation. Under this system, all sections of the people get representation in proportion to their number.
There are two kinds of proportional representation, namely, single transferable vote system and list system. In India, the first kind is adopted for the election of members to the Rajya Sabha and state legislative council and for electing the President and the Vice-President.

The Constitution has not adopted PR system due to two reasons.

1. Difficulty for the voters to understand the system (which is complicated) due to low literacy scale in the country.
2. Unsuitability to the parliamentary government due to the tendency of the system to multiply political parties leading to instability in government.

System of proportional representation has the following demerits:

1. It is highly expensive.
2. It does not give any scope for organizing by-elections.
3. It eliminates intimate contacts between voters and representatives.
4. It promotes minority thinking and group interests.
5. It increases the significance of party system and decreases that of voter.

DURATION OF TWO HOUSES

Duration of Rajya Sabha
The Rajya Sabha (first constituted in 1952) is a continuing chamber, that is, it is a permanent body and not subject to disso lution. However, one-third of its members retire every second year. Their seats are filled up by fresh elections and presidential nominations at the beginning of every third year. The retiring members are eligible for re-election and re-nomination any number of times.

The Constitution has not fixed the term of office of members of the Rajya Sabha and left it to the Parliament. Accordingly, t he Parliament in the Representation of the People Act (1951) provided that the term of office of a member of the Rajya Sabha shall be six years. The act also emp owered the president of India to curtail the term of members chosen in the first Rajya Sabha.

Duration of Lok Sabha
Unlike the Rajya Sabha, the Lok Sabha is not a continuing chamber. Its normal term is five years from the date of its first m eeting after the general elections, after which it automatically dissolves. However, the President is authorised to dissolve the Lok Sabha at any time even befor e the completion of five years and this cannot be challenged in a court of law.

Further, **the term of the Lok Sabha can be extended during the period of national emergency be a law of Parliament for one year at a time for any length of time. However, this extension cannot continue beyond a period of six months after the emergency has ceased to operate.**

MEMBERSHIP OF PARLIAMENT

Qualifications

The Constitution lays down the following qualifications for a person to be chosen a member of the Parliament:

1. He must be a citizen of India.
2. He must make and subscribe to an oath or affirmation before the person authorised by the election commission for this purpose. In his oath or affirmation, he swears
   (a) To bear true faith and allegiance to the Constitution of India
   (b) To uphold the sovereignty and integrity of India
3. He must be not less than 30 years of age in the case of the Rajya Sabha and not less than 25 years of age in the case of the Lok Sabha.
4. He must possess other qualifications prescribed by Parliament.

The Parliament has laid down the following additional qualifications in the Representation of People Act (1951).

1. He must be registered as an elector for a parliamentary constituency. This is same in the case of both, the Rajya Sabha and the Lok Sabha. The requirement that a candidate contesting an election to the Rajya Sabha from a particular state should be an elector in that particular state was dispensed with in 2003. In 2006, the Supreme Court upheld the constitutional validity of this change.
2. He must be a member of a scheduled caste or scheduled tribe in any state or union territory, if he wants to contest a seat reserved for them. However, a member of scheduled castes or scheduled tribes can also contest a seat not reserved for them.

Disqualification

1. if he holds any office of profit under the Union or state government (except that of a minister or any other office exempted by Parliament).
2. if he is of unsound mind and stands so declared by a court.
3. if he is an undischarged insolvent.
4. if he is not a citizen of India or has voluntarily acquired the citizenship of a foreign state or is under any acknowledgement of allegiance to a foreign state;
5. if he is so disqualified under any law made by Parliament.

The Parliament has laid down the following additional disqualifications in the **Representation of People Act (1951)**.

Disqualification on Ground of Defection

The Constitution also lays down that a person shall be disqualified from being a member of Parliament if he is so **disqualified on the ground of defection under the provisions of the Tenth Schedule**.

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

The question of disqualification under the Tenth Schedule is decided by the Chairman in the case of Rajya Sabha and Speaker in the case of Lok Sabha (and not by the president of India).

Vacating Seats

In the following cases, a member of Parliament vacates his seat.

1. Double Membership

A person cannot be a member of both Houses of Parliament at the same time. Thus, the Representation of People Act (1951) provides for the following:

(a) If a person is elected to both the Houses of Parliament, he must intimate within 10 days in which House he desires to serve. In default of such intimation, his seat in the Rajya Sabha becomes vacant.
(b) If a sitting member of one House is also elected to the other House, his seat in the first House becomes vacant.
(c) If a person is elected to two seats in a House, he should exercise his option for one. Otherwise, both seats become vacant.

Similarly, a person cannot be a member of both the Parliament and the state legislature at the same time. If a person is so elected, his seat in Parliament becomes vacant if he does not resign his seat in the state legislature within 14 days.

2. Disqualification

If a member of Parliament becomes subject to any of the disqualifications specified in the Constitution, his seat becomes vacant.

3. Resignation

A member may resign his seat by writing to the Chairman of Rajya Sabha or Speaker of Lok Sabha, as the case may be.

4. Absence

A House can declare the seat of a member vacant if he is absent from all its meetings for a period of sixty days without its permission.

5. Other cases

A member has to vacate his seat in the Parliament:

(a) if his election is declared void by the court;
(b) if he is expelled by the House;
(c) if he is elected to the office of President or Vice-President; and
(d) if he is appointed to the office of governor of a state.

PRESIDING OFFICERS OF PARLIAMENT

Each House of Parliament has its own presiding officer. There is a Speaker and a Deputy Speaker for the Lok Sabha and a Chair man and a Deputy Chairman for the Rajya Sabha. A panel of chairpersons for the Lok Sabha and a panel of vice-chairpersons for the Rajya Sabha is also appointed.

Speaker of Lok Sabha

Election and Tenure

The Speaker is elected by the Lok Sabha from amongst its members (as soon as may be, after its first sitting). Whenever the office of the Speaker falls vacant, the Lok Sabha elects another member to fill the vacancy. The date of election of the Speaker is fixed by the President.

Speaker remains in office during the life of the Lok Sabha. However, he has to vacate his office earlier in any of the following three cases:

1. if he ceases to be a member of the Lok Sabha;
2. if he resigns by writing to the Deputy Speaker; and
3. if he is removed by a resolution passed by a majority of all then members of the Lok Sabha. Such a resolution can be moved only after giving 14 days' advance notice.

Role, Powers and Functions

The Speaker is the head of the Lok Sabha, and its representative. He is the guardian of powers and privileges of the members, the House as a whole and its committees. He is the principal spokesman of the House, and his decision in all Parliamentary matters is final.

The Speaker of the Lok Sabha derives his powers and duties from three sources, that is,

- *the Constitution of India,*
- *the Rules of Procedure and Conduct of Business of Lok Sabha, and*
- *Parliamentary Conventions (residuary powers that are unwritten or unspecified in the Rules).*

Powers and Duties:

1. He maintains order and decorum in the House for conducting its business and regulating its proceedings. This is his primary responsibility and he has final power in this regard.
2. He is the final interpreter of the provisions of (a) the Constitution of India, (b) the Rules of Procedure and Conduct of Business of Lok Sabha, and (c) the parliamentary precedents, within the House.
3. He adjourns the House or suspends the meeting in absence of a quorum. The quorum to constitute a meeting of the House is one-tenth of the total strength of the House.
4. He does not vote in the first instance. But he can exercise a casting vote in the case of a tie. In other words, only when the House is divided equally on any question, the Speaker is entitled to vote. **Such vote is called casting vote, and its purpose is to resolve a deadlock.**
5. He presides over a joint setting of the two Houses of Parliament. Such a sitting is summoned by the President to settle a deadlock between the two Houses on a bill.
6. **He can allow a 'secret' sitting of the House at the request of the Leader of the House. When the House sits in secret, no stranger can be present in the chamber, lobby or galleries except with the permission of the Speaker**.
7. **He decides whether a bill is a money bill or not and his decision on this question is final.** When a money bill is transmitted to the Rajya Sabha for recommendation and presented to the President for assent, the Speaker endorses on the bill his certificate that it is a money bill.
8. **He decides the questions of disqualification of a member of the Lok Sabha, arising on the ground of defection under the provisions of the Tenth Schedule. In 1992, the Supreme Court ruled that the decision of the Speaker in this regard is subject to judicial review**.
9. **He acts as the ex-officio chairman of the Indian Parliamentary Group which is a link between the Parliament of India and the various parliaments of the world. He also acts as the ex-officio chairman of the conference of presiding officers of legislative bodies in the country**.
10. **He appoints the chairman of all the parliamentary committees of the Lok Sabha and supervises their functioning. He himself is the chairman of the Business Advisory Committee, the Rules Committee and the General Purpose Committee.**

Deputy Speaker of Lok Sabha

Like the Speaker, the Deputy Speaker is also elected by the Lok Sabha itself from amongst its members. He is elected after th e election of the Speaker has taken place. The date of election of the Deputy Speaker is fixed by the Speaker.

he may vacate his
office earlier in any of the following three cases:

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

It should be noted here that the Deputy Speaker is not subordinate to the Speaker. He is directly responsible to the House .

The Deputy Speaker has one special privilege, that is, whenever he is appointed as a member of a parliamentary committee, he automatically becomes its chairman.

Up to the 10th Lok Sabha, both the Speaker and the Deputy Speaker were usually from the ruling party. Since the 11th Lok Sabh a, there has been a consensus that the Speaker comes from the ruling party (or ruling alliance) and the post of Deputy Speaker goes to the main opposition party.

The institutions of Speaker and Deputy Speaker originated in India in 1921 under the provisions of the Government of India Ac t of 1919 (Montague-Chelmsford Reforms). At that time, the Speaker and the Deputy Speaker were called the President and Deputy President respectively and the same nomenclature continued till 1947.

Before 1921, the Governor-General of India used to preside over the meetings of the Central Legislative Council. *In 1921, the Frederick Whyte and Sachidanand Sinha were appointed by the Governor-General of India as the first Speaker and the first Deputy Speaker (respectively) of the central legislative assembly.*

In 1925, Vithalbhai J. Patel became the first Indian and the first elected Speaker of the central legislative assembly.

The Government of India Act of 1935 changed the nomenclatures of President and Deputy President of the Central Legislative Assembly to the Speaker and Deputy Speaker respectively.

Panel of Chairpersons of Lok Sabha

Under the Rules of Lok Sabha, the Speaker nominates from amongst the members a panel of not more than ten chairpersons. Any of them can preside over the House in the absence of the Speaker or the Deputy Speaker. He has the same powers as the Speaker when so presiding.

It must be emphasized here that a member of the panel of chairpersons cannot preside over the House, when the office of the Speaker or the Deputy Speaker is vacant.

Speaker Pro Tem

As provided by the Constitution, the Speaker of the last Lok Sabha vacates his office immediately before the first meeting of the newly-elected Lok Sabha. Therefore, the President appoints a member of the Lok Sabha as the Speaker Pro Tem. Usually, the senior most member is selected for this. The President himself administers oath to the Speaker Pro Tem.

The Speaker Pro Tem has all the powers of the Speaker. He presides over the first sitting of the newly-elected Lok Sabha. His main duty is to administer oath to the new members. He also enables the House to elect the new Speaker. When the new Speaker is elected by the House, the office of the Speaker Pro Tem ceases to exist.

Chairman of Rajya Sabha

The presiding officer of the Rajya Sabha is known as the Chairman. The vice-president of India is the ex-officio Chairman of the Rajya Sabha. During any period when the VicePresident acts as President or discharges the functions of the President, he does not perform the duties of the office of the Chairman of Rajya Sabha.

The Chairman of the Rajya Sabha can be removed from his office only if he is removed from the office of the Vice-President.

The Speaker has two special powers which are not enjoyed by the Chairman:

1. The Speaker decides whether a bill is a money bill or not and his decision on this question is final.
2. The Speaker presides over a joint sitting of two Houses of Parliament.

Deputy Chairman of Rajya Sabha

The Deputy Chairman is elected by the Rajya Sabha itself from amongst its members. Whenever the office of the Deputy Chairman falls vacant, the Rajya Sabha elects another member to fill the vacancy.

The Deputy Chairman vacates his office in any of the following three cases:

1. if he ceases to be a member of the Rajya Sabha;
2. if he resigns by writing to the Chairman; and
3. if he is removed by a resolution passed by a majority of all the then members of the Rajya Sabha. Such a resolution can be moved only after giving 14 days' advance notice.

Panel of Vice-Chairpersons of Rajya Sabha

Under the Rules of Rajya Sabha, the Chairman nominates from amongst the members a panel of vice-chairpersons. Any one of them can preside over the House in the absence of the Chairman or the Deputy Chairman. He has the same powers as the Chairman when so presiding. He holds office until a new panel of vice-chairpersons is nominated.

Secretariat of Parliament

Each House of Parliament has separate secretarial staff of its own, though there can be some posts common to both the Houses. Their recruitment and service conditions are regulated by Parliament. The secretariat of each House is headed by a secretary-general. He is a permanent officer and is appointed by the presiding officer of the House.

LEADERS IN PARLIAMENT

Leader of the House

Under the Rules of Lok Sabha, the 'Leader of the House' means the prime minister, if he is a member of the Lok Sabha, or a minister who is a member of the Lok Sabha and is nominated by the prime minister to function as the Leader of the House.

There is also a 'Leader of the House' in the Rajya Sabha. He is a minister and a member of the Rajya Sabha and is nominated by the prime minister to function as such.

The leader of the house in either House is an important functionary and exercises direct influence on the conduct of business. He can also nominate a deputy leader of the House. *The same functionary in USA is known as the 'majority leader'.*

Leader of the Opposition

In each House of Parliament, there is the 'Leader of the Opposition'. The leader of the largest Opposition party having not less than one-tenth seats of the total strength of the House is recognized as the leader of the Opposition in that House.

The leader of Opposition in the Lok Sabha and the Rajya Sabha were accorded statutory recognition in 1977.

'Shadow Cabinet' - It is formed by the Opposition party to balance the ruling cabinet and to prepare its members for future ministerial offices. In this shadow cabinet, almost every member in the ruling cabinet is 'shadowed' by a corresponding member in the opposition cabinet.

SESSIONS OF PARLIAMENT

Summoning

The president from time to time summons each House of Parliament to meet. But, the maximum gap between two sessions of Parliament cannot be more than six months. In other words, the Parliament should meet at least twice a year. There are usually three sessions in a year, viz,

1. the Budget Session (February to May);

2. the Monsoon Session (July to September); and
3. the Winter Session (November to December).

*A '**session**' of Parliament is the period spanning between the first sitting of a House and its prorogation (or dissolution in the case of the Lok Sabha).* During a session, the House meets every day to transact business. *The period spanning between the prorogation of a House and its reassembly in a new session is called '**recess**'.*

Adjournment

A session of Parliament consists of many meetings. Each meeting of a day consists of two sittings, that is, a morning sitting from 11 am to 1 pm and post-lunch sitting from 2 pm to 6 pm. **A sitting of Parliament can be terminated by adjournment or adjournment sine die or prorogation or dissolution** (in the case of the Lok Sabha).

An adjournment suspends the work in a sitting for a specified time, which may be hours, days or weeks.

Adjournment Sine Die

Adjournment sine die means terminating a sitting of Parliament for an indefinite period. In other words, when the House is adjourned without naming a day for reassembly, it is called adjournment sine die. The power of adjournment as well as adjournment sine die lies with the presiding officer of the House.

Prorogation

The presiding officer (Speaker or Chairman) declares the House adjourned sine die, when the business of a session is completed. Within the next few days, the President issues a notification for prorogation of the session.

Dissolution

Only the Lok Sabha is subject to dissolution. Unlike a prorogation, *a dissolution ends the very life of the existing House, and a new House is constituted after general elections are held.*

The dissolution of the Lok Sabha may take place in either of two ways:

1. Automatic dissolution, that is, on the expiry of its tenure of five years or the terms as extended during a national emergency; or
2. Whenever the President decides to dissolve the House, which he is authorized to do. *Once the Lok Sabha is dissolved before the completion of its normal tenure, the dissolution is irrevocable.*

However, some pending bills and all pending assurances that are to be examined by the Committee on Government Assurances do not lapse on the dissolution of the Lok Sabha. The position with respect to lapsing of bills is as follows:

1. A bill pending in the Lok Sabha lapses (whether originating in the Lok Sabha or transmitted to it by the Rajya Sabha).
2. A bill passed by the Lok Sabha but pending in the Rajya Sabha lapses.
3. *A bill not passed by the two Houses due to disagreement and if the president has notified the holding of a joint sitting before the dissolution of Lok Sabha, does not lapse.*
4. A bill pending in the Rajya Sabha but not passed by the Lok Sabha does not lapse.
5. A bill passed by both Houses but pending assent of the president does not lapse.
6. A bill passed by both Houses but returned by the president for reconsideration of Houses does not lapse.

Quorum

Quorum is the minimum number of members required to be present in the House before it can transact any business. It is one tenth of the total number of members in each House including the presiding officer. *It means that there must be at least 55 members present in the Lok Sabha and 25 members present in the Rajya Sabha,* if any business is to be conducted. *If there is no quorum during a meeting of the House, it is the duty of the presiding officer either to adjourn the House or to suspend the meeting until there is a quorum.*

Voting in House

All matters at any sitting of either House or joint sitting of both the Houses are decided by a majority of votes of the members present and voting, excluding the presiding officer. *Only a few matters, which are specifically mentioned in the Constitution like impeachment of the President, amendment of the Constitution, removal of the presiding officers of the Parliament and so on, require special majority, not ordinary majority*.

Language in Parliament

The Constitution has declared Hindi and English to be the languages for transacting business in the Parliament. However, the presiding officer can permit a member to address the House in his mother-tongue.

The Official Languages Act (1963) allowed English to be continued along with Hindi.

Rights of Ministers and Attorney General

In addition to the members of a House, every minister and the attorney general of India have the right to speak and take part in the proceedings of either House, any joint sitting of both the Houses and any committee of Parliament of which he is a member, without being entitled to vote.

Lame-duck Session

It refers to the last session of the existing Lok Sabha, after a new Lok Sabha has been elected. Those members of the existing Lok Sabha who could not get re-elected to the new Lok Sabha are called lame-ducks.

DEVICES OF PARLIAMENTARY PROCEEDINGS

Question Hour

The first hour of every parliamentary sitting is slotted for this. During this time, the members ask questions and the ministers usually give answers.

A **starred question** (distinguished by an asterisk) *requires an oral answer and hence supplementary questions can follow.*

An **un-starred question**, on the other hand, *requires a written answer and hence,* supplementary questions cannot follow.

A **short notice question** is one *that is asked by giving a notice of less than ten days.* It is answered orally.
In addition to the ministers, *the questions can also be asked to the private members.*

The list of starred, un-starred, short notice questions and questions to private members are printed in green, white, light pink and yellow color, respectively, to distinguish them from one another.

Zero Hour
It is an *informal device* available to the members of the Parliament to raise matters without any prior notice. *The zero hour starts immediately after the question hour and lasts until the agenda for the day (ie, regular business of the House) is taken up.*

It is an Indian innovation in the field of parliamentary procedures and has been in existence since 1962.

Motions
No discussion on a matter of general public importance can take place except on a motion made with the consent of the presiding officer. The House expresses its decisions or opinions on various issues through the adoption or rejection of motions moved by either ministers or private members.
The motions moved by the members to raise discussions on various matters fall into three principal categories:

1. **Substantive Motion**: It is a self-contained independent proposal dealing with a very important matter like impeachment of the President or removal of Chief Election Commissioner.
2. **Substitute Motion**: It is a motion that is moved in substitution of an original motion and proposes an alternative to it. If adopted by the House, it supersedes the original motion.
3. **Subsidiary Motion**: It is a motion that, by itself, has no meaning and cannot state the decision of the House without reference to the original motion or proceedings of the House. It is divided into three sub-categories:
   (a) **Ancillary Motion**: It is used as the regular way of proceeding with various kinds of business.
   (b) **Superseding Motion**: It is moved in the course of debate on another issue and seeks to supersede that issue.
   (c) **Amendment**: It seeks to modify or substitute only a part of the original motion.

Closure Motion
It is a motion moved by a member to cut short the debate on a matter before the House. If the motion is approved by the House, debate is stopped forthwith and the matter is put to vote.
(a) **Simple Closure**: It is one when a member moves that the 'matter having been sufficiently discussed be now put to vote'.
(b) **Closure by Compartments**: In this case, the clauses of a bill or a lengthy resolution are grouped into parts before the commencement of the debate. The debate covers the part as a whole and the entire part is put to vote.
(c) **Kangaroo Closure**: Under this type, only important clauses are taken up for debate and voting and the intervening clauses are skipped over and taken as passed.
(d) **Guillotine Closure**: It is one when the undiscussed clauses of a bill or a resolution are also put to vote along with the discussed ones due to want of time (as the time allotted for the discussion is over).

Privilege Motion
It is concerned with the breach of parliamentary privileges by a minister. It is moved by a member when he feels that a minister has committed a breach of privilege of the House or one or more of its members by withholding facts of a case or by giving wrong or distorted facts. *Its purpose is to censure the concerned minister.*

Adjournment Motion
It is introduced in the Parliament to draw attention of the House to a definite matter of urgent public importance, and needs the support of 50 members to be admitted. *As it interrupts the normal business of the House, it is regarded as an extraordinary device. Rajya Sabha is not permitted to make use of this device.*

No-Confidence Motion
Article 75 of the Constitution says that the council of ministers shall be collectively responsible to the Lok Sabha. It means that the ministry stays in office so long as it enjoys confidence of the majority of the members of the Lok Sabha.
The Lok Sabha can remove the ministry from office by passing a no-confidence motion. The motion needs the support of 50 members to be admitted.

Confidence Motion
The motion of confidence has come up as a new procedural device to cope with the emerging situations of fractured mandates resulting in hung parliament, minority governments and coalition governments.

Motion of Thanks
The first session after each general election and the first session of every fiscal year is addressed by the president. In this address, the president outlines the policies and programs of the government in the preceding year and ensuing year. *This address of the president, which corresponds to the 'speech from the Throne in Britain', is discussed in both the Houses of Parliament on a motion called the 'Motion of Thanks'.*

Point of Order
A member can raise a point of order when the proceedings of the House do not follow the normal rules of procedure. A point of order should relate to the interpretation or enforcement of the Rules of the House or such articles of the Constitution that regulate the business of the House and should raise a question that is within the cognizance of the Speaker.

Half-an-Hour Discussion
It is meant for discussing a matter of sufficient public importance, which has been subjected to a lot of debate and the answer to which needs elucidation on a matter of fact.

Short Duration Discussion - came in 1953
It is also known as two-hour discussion as the time allotted for such a discussion should not exceed two hours. The members of the Parliament can raise such discussions on a matter of urgent public importance. The Speaker can allot two days in a week for such discussions.

Resolutions
The members can move resolutions to draw the attention of the House or the government to matters of general public interest. The discussion on a resolution is strictly relevant to and within the scope of the resolution.
Resolutions are classified into three categories:

1. **Private Member's Resolution**: It is one that is moved by a private member (other than a minister). It is discussed only on alternate Fridays and in the afternoon sitting.
2. **Government Resolution**: It is one that is moved by a minister. It can be taken up any day from Monday to Thursday.
3. **Statutory Resolution**: It can be moved either by a private member or a minister. It is so called because it is always tabled in pursuance of a provision in the Constitution or an Act of Parliament.

All resolutions come in the category of substantive motions, that is to say, every resolution is a particular type of motion.

Youth Parliament
The scheme of Youth Parliament was started on the recommendation of the Fourth All India Whips Conference.

LEGISLATIVE PROCEDURE IN PARLIAMENT

The legislative procedure is identical in both the Houses of Parliament. Every bill has to pass through the same stages in each House. *A bill is a proposal for legislation and it becomes an act or law when duly enacted.* Bills introduced in the Parliament are of **two kinds: public bills and private bills** (also known as government bills and private members' bills respectively).
The bills introduced in the Parliament can also be classified into four categories:

1. **Ordinary bills**, which are concerned with any matter other than financial subjects.
2. **Money bills**, which are concerned with the financial matters like taxation, public expenditure, etc.
3. **Financial bills**, which are also concerned with financial matters (but are different from money bills).
4. **Constitution amendment bills**, which are concerned with the amendment of the provisions of the Constitution.

Ordinary Bills

Every ordinary bill has to pass through the following five stages:

1. First Reading

An ordinary bill can be introduced in either House of Parliament. Such a bill can be introduced either by a minister or by any other member.
The member who wants to introduce the bill has to ask for the leave of the House.
No discussion on the bill takes place at this stage. Later, the bill is published in the Gazette of India.

2. Second Reading (Most Important Stage)

During this stage, the bill receives not only the general but also the detailed scrutiny and assumes its final shape.

- **Stage of General Discussion** - The printed copies of the bill are distributed to all the members. The principles of the bill and its provisions are discussed generally, but the details of the bill are not discussed.
- **Committee Stage** - The usual practice is to refer the bill to a select committee of the House. This committee examines the bill thoroughly and in detail, clause by clause. It can also amend its provisions, but without altering the principles underlying it.
- **Consideration Stage** - The House, after receiving the bill from the select committee, considers the provisions of the bill clause by clause. Each clause is discussed and voted upon separately.

3. Third Reading

At this stage, the debate is confined to the acceptance or rejection of the bill as a whole and no amendments are allowed, as the general principles underlying the bill have already been scrutinized during the stage of second reading. If the majority of members present and voting accept the bill, the bill is regarded as passed by the House.

4. Bill in the Second House

In the second House also, the bill passes through all the three stages, that is, first reading, second reading and third reading.
There are four alternatives before this House:

(a) it may pass the bill as sent by the first house (ie, without amendments);
(b) it may pass the bill with amendments and return it to the first House for reconsideration;
(c) it may reject the bill altogether; and
(d) it may not take any action and thus keep the bill pending.

If the first House rejects the amendments suggested by the second House or the second House rejects the bill altogether or the second House does not take any action for six months, a deadlock is deemed to have taken place. To resolve such a deadlock, the president can summon a joint sitting of the two Houses.

5. Assent of the President

Every bill after being passed by both Houses of Parliament either singly or at a joint sitting, is presented to the president for his assent. There are three alternatives before the president:

(a) he may give his assent to the bill; or
(b) he may withhold his assent to the bill; or
(c) he may return the bill for reconsideration of the Houses.

Money Bills

Article 110 of the Constitution deals with the definition of money bills. It states that *a bill is deemed to be a money bill if it contains 'only' provisions dealing with all or any of the following matters*:

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

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

1. the imposition of fines or other pecuniary penalties, or
2. the demand or payment of fees for licenses or fees for services rendered; or
3. the imposition, abolition, remission, alteration or regulation of any tax by any local authority or body for local purposes.

If any question arises whether a bill is a money bill or not, the decision of the Speaker of the Lok Sabha is final. His decision in this regard cannot be questioned in any court of law or in the either House of Parliament or even the president.

A money bill can only be introduced in the Lok Sabha and that too on the recommendation of the president. Every such bill is considered to be a government bill and can be introduced only by a minister.

After a money bill is passed by the Lok Sabha, it is transmitted to the Rajya Sabha for its consideration. The Rajya Sabha has restricted powers with regard to a money bill. It cannot reject or amend a money bill. It can only make the recommendations. It must return the bill to the Lok Sabha within 14 days, whether with or without recommendations. The Lok Sabha can either accept or reject all or any of the recommendations of the Rajya Sabha.

Finally, when a money bill is presented to the president, he may either give his assent to the bill or withhold his assent to the bill **but cannot return the bill for reconsideration of the Houses.**

Financial Bills

Financial bills are those bills that deal with fiscal matters, that is, revenue or expenditure. However, the Constitution uses the term 'financial bill' in a technical sense. Financial bills are of three kinds:

1. Money bills–Article 110
2. Financial bills (I)–Article 117 (1)
3. Financial bills (II)–Article 117 (3)

Financial Bills (I)

A financial bill (I) is a bill that contains not only any or all the matters mentioned in Article 110, but also other matters of general legislation. For instance, a bill that contains a borrowing clause, but does not exclusively deal with borrowing. In two respects, a financial bill (I) is similar to a money bill–

(a) both of them can be introduced only in the Lok Sabha and not in the Rajya Sabha, and

(b) both of them can be introduced only on the recommendation of the president.

In all other respects, a financial bill (I) is governed by the same legislative procedure applicable to an ordinary bill.

Financial Bills (II)

A financial bill (II) contains provisions involving expenditure from the Consolidated Fund of India, but does not include any of the matters mentioned in Article 110. **It is treated as an ordinary bill and in all respects**, it is governed by the same legislative procedure which is applicable to an ordinary bill.

JOINT SITTING OF TWO HOUSES

Joint sitting is an extraordinary machinery provided by the Constitution to resolve a deadlock between the two Houses over the passage of a bill. A deadlock is deemed to have taken place under any one of the following three situations after a bill has been passed by one House and transmitted to the other House:

1. if the bill is rejected by the other House;
2. if the Houses have finally disagreed as to the amendments to be made in the bill; or
3. if more than six months have elapsed from the date of the receipt of the bill by the other House without the bill being passed by it.

In the above three situations, the president can summon both the Houses to meet in a joint sitting for the purpose of deliberating and voting on the bill. *It must be noted here that the provision of joint sitting is applicable to ordinary bills or financial bills only and not to money bills or Constitutional amendment bills.*

Since 1950, the provision regarding the joint sitting of the two Houses has been invoked only thrice. The bills that have been passed at joint sittings are:

1. Dowry Prohibition Bill, 1960.
2. Banking Service Commission (Repeal) Bill, 1977.
3. Prevention of Terrorism Bill, 2002.

BUDGET IN PARLIAMENT

The Constitution refers to the budget as the 'annual financial statement'. Budget's popular name for the 'annual financial statement' that has been dealt with in Article 112 of the Constitution.

The budget is a statement of the estimated receipts and expenditure of the Government of India in a financial year, which begins on 1 April and ends on 31 March of the following year.

Overall, the budget contains the following:

1. Estimates of revenue and capital receipts;
2. Ways and means to raise the revenue;

3. Estimates of expenditure;
4. Details of the actual receipts and expenditure of the closing financial year and the reasons for any deficit or surplus in that year; and
5. Economic and financial policy of the coming year, that is, taxation proposals, prospects of revenue, spending program and introduction of new schemes/projects.

Till 2017, the Government of India had two budgets, namely, the Railway Budget and the General Budget. The Railway Budget was separated from the General Budget in 1924 on the recommendations of the Acworth Committee Report (1921).

The reasons or objectives of this separation were as follows:

1. To introduce flexibility in railway finance.
2. To facilitate a business approach to the railway policy.
3. To secure stability of the general revenues by providing an assured annual contribution from railway revenues.
4. To enable the railways to keep their profits for their own development (after paying a fixed annual contribution to the general revenues).

Constitutional Provisions

The Constitution of India contains the following provisions with regard to the enactment of budget:

1. The President shall in respect of every financial year cause to be laid before both the Houses of Parliament a statement of estimated receipts and expenditure of the Government of India for that year.
2. No demand for a grant shall be made except on the recommendation of the President.
3. No money shall be withdrawn from the Consolidated Fund of India except under appropriation made by law.
4. No money bill imposing tax shall be introduced in the Parliament except on the recommendation of the President, and such a bill shall not be introduced in the Rajya Sabha.
5. No tax shall be levied or collected except by authority of law.
6. Parliament can reduce or abolish a tax but cannot increase it.

Charged Expenditure

The budget consists of *two types of expenditure–the expenditure 'charged' upon the Consolidated Fund of India and the expenditure 'made' from the Consolidated Fund of India*. The charged expenditure is non-votable by the Parliament, that is, it can only be discussed by the Parliament, while the other type has to be voted by the Parliament.

Stages in Enactment

The budget goes through the following six stages in the Parliament:

1. Presentation of Budget

Conventionally, the budget is presented to the Lok Sabha by the finance minister on the last working day of February. Since 2017, the presentation of the budget has been advanced to 1st of February.

The finance minister presents the budget with a speech known as the 'budget speech'. At the end of the speech in the Lok Sabha, the budget is laid before the Rajya Sabha, which can only discuss it and has no power to vote on the demands for grants.

2. General Discussion

The general discussion on budget begins a few days after its presentation. It takes place in both the Houses of Parliament and lasts usually for three to four days.

During this stage, the Lok Sabha can discuss the budget as a whole or on any question of principle involved therein but no cut motion can be moved nor can the budget be submitted to the vote of the House.

3. Scrutiny by Departmental Committees

After the general discussion on the budget is over, the Houses are adjourned for about three to four weeks. During this gap period, the 24 departmental standing committees of Parliament examine and discuss in detail the demands for grants of the concerned ministers and prepare reports on them.

4. Voting on Demands for Grants

In the light of the reports of the departmental standing committees, the Lok Sabha takes up voting of demands for grants. The demands are presented ministry-wise. A demand becomes a grant after it has been duly voted.

5. Passing of Appropriation Bill

The Constitution states that 'no money shall be withdrawn from the Consolidated Fund of India except under appropriation made by law'.

6. Passing of Finance Bill

The Finance Bill is introduced to give effect to the financial proposals of the Government of India for the following year. It is subjected to all the conditions applicable to a Money Bill.

Funds

The Constitution of India provides for the following three kinds of funds for the Central government:

1. Consolidated Fund of India (Article 266)
2. Public Account of India (Article 266)
3. Contingency Fund of India (Article 267)

Consolidated Fund of India

It is a fund to which all receipts are credited and all payments are debited. In other words,

(a) all revenues received by the Government of India;
(b) all loans raised by the Government by the issue of treasury bills, loans or ways and means of advances; and

(c) all money received by the government in repayment of loans forms the Consolidated Fund of India.

All the legally authorized payments on behalf of the Government of India are made out of this fund. No money out of this fund can be appropriated (issued or drawn) except in accordance with a parliamentary law.

Public Account of India

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

Contingency Fund of India

The Constitution authorized the Parliament to establish a 'Contingency Fund of India', into which amounts determined by law are paid from time to time. Accordingly, the Parliament enacted the contingency fund of India Act in 1950. This fund is placed at the disposal of the president, and he can make advances out of it to meet unforeseen expenditure pending its authorization by the Parliament. *The fund is held by the finance secretary on behalf of the president. Like the public account of India, it is also operated by executive action.*

MULTIFUNCTIONAL ROLE OF PARLIAMENT

1. **Legislative Powers and Functions**

The primary function of Parliament is to make laws for the governance of the country. *It has exclusive power to make laws on the subjects enumerated in the Union List (which at present has 98 subjects, originally 97 subjects) and on the residuary subjects (that is, subjects not enumerated in any of the three lists).* With regard to Concurrent List (which has at present 52 subjects, originally 47 subjects), the Parliament has overriding powers, that is, the law of Parliament prevails over the law of the state legislature in case of a conflict between the two.

The Constitution also empowers the Parliament to make laws on the subjects enumerated in the State List (which at present has 59 subjects, originally 66 subjects) under the following five abnormal circumstances:

(a) when Rajya Sabha passes a resolution to that effect.
(b) when a proclamation of National Emergency is in operation.
(c) when two or more states make a joint request to the Parliament.
(d) when necessary to give effect to international agreements, treaties and conventions.
(e) when President's Rule is in operation in the state.

The Parliament makes laws in a skeleton form and authorizes the Executive to make detailed rules and regulations within the framework of the parent law. This is known as delegated legislation or executive legislation or subordinate legislation.

2. **Executive Powers and Functions**

The Constitution of India established a parliamentary form of government in which the Executive is responsible to the Parliament for its policies and acts. Hence, *the Parliament exercises control over the Executive through question-hour, zero hour, half-an-hour discussion, short duration discussion, calling attention motion, adjournment motion, no-confidence motion, censure motion and other discussions.* It also supervises the activities of the Executive with the help of its committees like committee on government assurance, committee on subordinate legislation, committee on petitions, etc.

3. **Financial Powers and Functions**

No tax can be levied or collected and no expenditure can be incurred by the Executive except under the authority and with the approval of Parliament. Hence, the budget is placed before the Parliament for its approval. The enactment of the budget by the Parliament legalizes the receipts and expenditure of the government for the ensuing financial year.

The Parliament also scrutinizes government spending and financial performance with the help of its financial committees. These include public accounts committee, estimates committee and committee on public undertakings.

4. **Constituent Powers and Functions**

The Parliament is vested with the powers to amend the Constitution by way of addition, variation or repeal of any provision. *The major part of the Constitution can be amended by the Parliament with **special majority**, that is, a majority of the total membership of each House and a majority of not less than two-thirds of the members present and voting in each House.* Some *other provisions of the Constitution can be amended by the Parliament with **simple majority**, that is, a majority of the members present and voting in each House of Parliament*. Only a few provisions of the Constitution can be amended by the Parliament (by special majority) and with the consent of at least half of the state Legislatures (by simple majority).

However, the power to initiate the process of the amendment of the Constitution (in all the three cases) lies exclusively in the hands of the Parliament and not the state legislature. *There is only one exception, that is, the state legislature can pass a resolution requesting the Parliament for the creation or abolition of the legislative council in the state.*

Parliament can amend the Constitution in three ways:

(a) By simple majority;
(b) By special majority; and
(c) By special majority but with the consent of half of all the state legislatures.

The constituent power of the Parliament is not unlimited; *it is subject to the 'basic structure' of the Constitution.*

5. **Judicial Powers and Functions**

The judicial powers and functions of the Parliament include the following:

(a) It can impeach the President for the violation of the Constitution.
(b) It can remove the Vice-President from his office.
(c) It can recommend the removal of judges (including chief justice) of the Supreme Court and the high courts, chief election commissioner, comptroller and

auditor general to the president.

(d) It can punish its members or outsiders for the breach of its privileges or its contempt.

INEFFECTIVENESS OF PARLIAMENTARY CONTROL

The parliamentary control over government and administration in India is more theoretical than practical. In reality, the control is not as effective as it ought to be.

The following factors are responsible for this:

(a) The Parliament has neither time nor expertise to control the administration which has grown in volume as well as complexity.

(b) Parliament's financial control is hindered by the technical nature of the demands for grants. The parliamentarians being laymen cannot understand them properly and fully.

(c) The legislative leadership lies with the Executive and it plays a significant role in formulating policies.

(d) The very size of the Parliament is too large and unmanageable to be effective.

(e) The majority support enjoyed by the Executive in the Parliament reduces the possibility of effective criticism.

(f) The financial committees like Public Accounts Committee examines the public expenditure after it has been incurred by the Executive. Thus, they do post mortem work.

(g) The increased recourse to 'guillotine' reduced the scope of financial control.

(h) The growth of 'delegated legislation' has reduced the role of Parliament in making detailed laws and has increased the powers of bureaucracy.

POSITION OF RAJYA SABHA

Equal Status with Lok Sabha

In the following matters, the powers and status of the Rajya Sabha are equal to that of the Lok Sabha:

1. Introduction and passage of ordinary bills.
2. Introduction and passage of Constitutional amendment bills.
3. Introduction and passage of financial bills involving expenditure from the Consolidated Fund of India.
4. Election and impeachment of the president.
5. Election and removal of the Vice-President. However, Rajya Sabha alone can initiate the removal of the vice-president. He is removed by a resolution passed by the Rajya Sabha by an effective majority (which is a type of special majority) and agreed to by the Lok Sabha by a simple majority.
6. Making recommendation to the President for the removal of Chief Justice and judges of Supreme Court and high courts, chief election commissioner and comptroller and auditor general.
7. Approval of ordinances issued by the President.
8. Approval of proclamation of all three types of emergencies by the President.

Unequal Status with Lok Sabha

In the following matters, the powers and status of the Rajya Sabha are unequal to that of the Lok Sabha:

1. A Money Bill can be introduced only in the Lok Sabha and not in the Rajya Sabha.
2. Rajya Sabha cannot amend or reject a Money Bill. It should return the bill to the Lok Sabha within 14 days, either with recommendations or without recommendations.
3. The Lok Sabha can either accept or reject all or any of the recommendations of the Rajya Sabha. In both the cases, the money bill is deemed to have been passed by the two Houses.
4. A financial bill, not containing solely the matters of Article 110, also can be introduced only in the Lok Sabha and not in the Rajya Sabha. But, with regard to its passage, both the Houses have equal powers.
5. The final power to decide whether a particular bill is a Money Bill or not is vested in the Speaker of the Lok Sabha.
6. The Speaker of Lok Sabha presides over the joint sitting of both the Houses.
7. The Lok Sabha with greater number wins the battle in a joint sitting except when the combined strength of the ruling party in both the Houses is less than that of the opposition parties.
8. Rajya Sabha can only discuss the budget but cannot vote on the demands for grants (which is the exclusive privilege of the Lok Sabha).
9. A resolution for the discontinuance of the national emergency can be passed only by the Lok Sabha and not by the Rajya Sabha.
10. The Rajya Sabha cannot remove the council of ministers by passing a no-confidence motion. This is because the Council of ministers is collectively responsible only to the Lok Sabha. But, the Rajya Sabha can discuss and criticise the policies and activities of the government.

Special Powers of Rajya Sabha

The Rajya Sabha has been given four exclusive or special powers that are not enjoyed by the Lok Sabha:

1. It can authorize the Parliament to make a law on a subject enumerated in the State List (Article 249).
2. It can authorize the Parliament to create new All-India Services common to both the Centre and states (Article 312).
3. It alone can initiate a move for the removal of the vice-president. In other words, a resolution for the removal of the vice-president can be introduced only in the Rajya Sabha and not in the Lok Sabha (Article 67).
4. If a proclamation is issued by the President for imposing national emergency or president's rule or financial emergency at a time when the Lok Sabha has been dissolved or the dissolution of the Lok Sabha takes place within the period allowed for its approval, then the proclamation can remain effective even if it is approved by the Rajya Sabha alone (Articles 352, 356 and 360).

Sources of Parliamentary Privileges

Originally, the Constitution (Article 105) mentioned two privileges, that is, freedom of speech in Parliament and right of publication of its proceedings. With regard to other privileges, it provided that they were to be the same as those of the British House of Commons, its committees and its members on the date of its commencement (ie, 26 January, 1950), until defined by Parliament. *The 44th Amendment Act of 1978 provided that the other privileges of each House of Parliament, its committees and its members are to be those which they had on the date of its commencement (ie, 20 June, 1979), until defined by Parliament.*

Supreme Court

Tuesday, December 15, 2020 10:03 PM

This single system of courts, adopted from the Government of India Act of 1935, enforces both Central laws as well as the state laws.
There is thus a double system of courts in USA–one for the centre and the other for the states. To sum up, India, although a federal country like the USA, has a unified judiciary and one system of fundamental law and justice.
The Supreme Court of India was inaugurated on January 28, 1950. It succeeded the Federal Court of India, established under the Government of India Act of 1935.

Articles 124 to 147 in Part V of the Constitution deal with the organization, independence, jurisdiction, powers, procedures and so on of the Supreme Court. The Parliament is also authorized to regulate them.

COMPOSITION AND APPOINTMENT

At present, the Supreme Court consists of thirty-four judges (one chief justice and thirty three other judges). In 2019, the center notified an increase in the number of Supreme Court judges from thirty-one to thirty-four, including the Chief Justice of India. This followed the enactment of the Supreme Court (Number of Judges) Amendment Act, 2019.

Appointment of Judges

The judges of the Supreme Court are appointed by the president. The chief justice is appointed by the president after consultation with such judges of the Supreme Court and high courts as he deems necessary. The other judges are appointed by president after consultation with the chief justice and such other judges of the Supreme Court and the high courts as he deems necessary. *The consultation with the chief justice is obligatory in the case of appointment of a judge other than Chief justice.*

Controversy over Consultation

The Supreme Court has given different interpretation of the word 'consultation' in the above provision. In the First Judges case (1982), the Court held that consultation does not mean concurrence and it only implies exchange of views. But, in the Second Judges case (1993), the Court reversed its earlier ruling and changed the meaning of the word consultation to concurrence. Hence, it ruled that the advice tendered by the Chief Justice of India is binding on the President in the matters of appointment of the judges of the Supreme Court.

The 99th Constitutional Amendment Act of 2014 and the National Judicial Appointments Commission Act of 2014 have replaced the collegium system of appointing judges to the Supreme Court and High Courts with a new body called the ***National Judicial Appointments Commission (NJAC)****.* However, *in 2015, the Supreme Court has declared both the 99th Constitutional Amendment as well as the NJAC Act as unconstitutional and void.* Consequently, the earlier collegium system became operative again. This verdict was delivered by the Supreme Court in the Fourth Judges case (2015). The court opined that the new system (i.e., NJAC) would affect the independence of the judiciary.

Appointment of Chief

Justice From 1950 to 1973, the practice has been to appoint the senior most judge of the Supreme Court as the chief justice of India. This established convention was violated in 1973 when A.N. Ray was appointed as the Chief Justice of India by superseding three senior judges.

This discretion of the government was curtailed by the Supreme Court in the Second Judges Case (1993), in which the Supreme Court ruled that the senior-most judge of the Supreme Court should alone be appointed to the office of the chief justice of India.

QUALIFICATIONS, OATH AND SALARIES

Qualifications of Judges

A person to be appointed as a judge of the Supreme Court should have the following qualifications:

1. He should be a citizen of India.
2. (a) He should have been a judge of a High Court (or high courts in succession) for five years; or (b) He should have been an advocate of a High Court (or High Courts in succession) for ten years; or (c) He should be a distinguished jurist in the opinion of the president.

Constitution has not prescribed a minimum age for appointment as a judge of the Supreme Court.

Oath or Affirmation

A person appointed as a judge of the Supreme Court, before entering upon his Office, has to make and subscribe an oath or affirmation before the President, or some person appointed by him for this purpose. In his oath, a judge of the Supreme Court swears:

1. to bear true faith and allegiance to the Constitution of India;
2. to uphold the sovereignty and integrity of India;
3. to duly and faithfully and to the best of his ability, knowledge and judgement perform the duties of the Office without fear or favour, affection or ill-will; and
4. to uphold the Constitution and the laws.

Salaries and Allowances

The salaries, allowances, privileges, leave and pension of the judges of the Supreme Court are determined from time to time by the Parliament. They cannot be varied to their disadvantage after their appointment except during a financial emergency.
The retired chief justice and judges are entitled to 50 per cent of their last drawn salary as monthly pension.

TENURE AND REMOVAL

Tenure of Judges

The Constitution has not fixed the tenure of a judge of the Supreme Court. However, it makes the following three provisions in this regard:

1. He holds office until he attains the age of 65 years. Any question regarding his age is to be determined by such authority and in such manner as provided by Parliament.

2. He can resign his office by writing to the president.
3. He can be removed from his office by the President on the recommendation of the Parliament.

Removal of Judges
A judge of the Supreme Court can be removed from his Office by an order of the president. The President can issue the removal order only after an address by Parliament has been presented to him in the same session for such removal.
The address must be supported by a special majority of each House of Parliament (ie, a majority of the total membership of that House and a majority of not less than two-thirds of the members of that House present and voting).

The Judges Enquiry Act (1968) regulates the procedure relating to the removal of a judge of the Supreme Court by the process of impeachment:
1. A removal motion signed by 100 members (in the case of Lok Sabha) or 50 members (in the case of Rajya Sabha) is to be given to the Speaker/ Chairman.
2. The Speaker/Chairman may admit the motion or refuse to admit it.
3. If it is admitted, then the Speaker/ Chairman is to constitute a three-member committee to investigate into the charges.
4. The committee should consist of (a) the chief justice or a judge of the Supreme Court, (b) a chief justice of a high court, and (c) a distinguished jurist.
5. If the committee finds the judge to be guilty of misbehavior or suffering from an incapacity, the House can take up the consideration of the motion.
6. After the motion is passed by each House of Parliament by special majority, an address is presented to the president for removal of the judge.
7. Finally, the president passes an order removing the judge.

The first case of impeachment is that of Justice V. Ramaswami of the Supreme Court (1991–1993). Though the enquiry Committee found him guilty of misbehavior, he could not be removed as the impeachment motion was defeated in the Lok Sabha. The Congress Party abstained from voting.

ACTING, ADHOC AND RETIRED JUDGES

Acting Chief Justice
The President can appoint a judge of the Supreme Court as an acting Chief Justice of India when:
1. the office of Chief Justice of India is vacant; or
2. the Chief Justice of India is temporarily absent; or
3. the Chief Justice of India is unable to perform the duties of his office.

Ad hoc Judge
When there is a lack of quorum of the permanent judges to hold or continue any session of the Supreme Court, the Chief Justice of India can appoint a judge of a High Court as an ad hoc judge of the Supreme Court for a temporary period.

Retired Judge
At any time, the chief justice of India can request a retired judge of the Supreme Court or a retired judge of a high court (who is duly qualified for appointment as a judge of the Supreme Court) to act as a judge of the Supreme Court for a temporary period. He can do so only with the previous consent of the president and also of the person to be so appointed.

SEAT AND PROCEDURE

Seat of Supreme Court
The Constitution declares Delhi as the seat of the Supreme Court. But, it also authorises the chief justice of India to appoint other place or places as seat of the Supreme Court. He can take decision in this regard only with the approval of the President.

Procedure of the Court
The Supreme Court can, with the approval of the president, make rules for regulating generally the practice and procedure of the Court. The Constitutional cases or references made by the President under Article 143 are decided by a Bench consisting of at least five judges.

INDEPENDENCE OF SUPREME COURT

It should be free from the encroachments, pressures and interferences of the executive (council of ministers) and the Legislature (Parliament). It should be allowed to do justice without fear or favor.
The Constitution has made the following provisions to safeguard and ensure the independent and impartial functioning of the Supreme Court:
1. **Mode of Appointment** - *The judges of the Supreme Court are appointed by the President (which means the cabinet) in consultation with the members of the judiciary itself (ie, judges of the Supreme Court and the high courts)*. This provision curtails the absolute discretion of the executive as well as ensures that the judicial appointments are not based on any political or practical considerations.
2. **Security of Tenure** - The judges of the Supreme Court are provided with the Security of Tenure. *They can be removed from office by the President only in the manner and on the grounds mentioned in the Constitution.*
3. **Fixed Service Conditions** - The salaries, allowances, privileges, leave and pension of the judges of the Supreme Court are determined from time to time by the Parliament. They cannot be changed to their disadvantage after their appointment except during a financial emergency.
4. *Expenses Charged on Consolidated Fund* - They are non-votable by the Parliament
5. **Ban on Practice after Retirement** - The retired judges of the Supreme Court are prohibited from pleading or acting in any Court or before any authority within the territory of India.
6. **Power to Punish for its Contempt** - The Supreme Court can punish any person for its contempt. Thus, its actions and decisions cannot be criticized and opposed by any body.

JURISDICTION AND POWERS OF SUPREME COURT

Alladi Krishnaswamy Ayyar, a member of the Drafting Committee of the Constitution, rightly remarked: "*The Supreme Court of India has more powers than any other Supreme Court in any part of the world.*"

The jurisdiction and powers of the Supreme Court can be classified into the following:

1. **Original Jurisdiction**.
   As a federal court, the Supreme Court decides the disputes between different units of the Indian Federation. More elaborately, any dispute:
   a. Between the Centre and one or more states; or
   b. Between the Centre and any state or states on one side and one or more other states on the other side; or
   c. Between two or more states.

   In the above federal disputes, the Supreme Court has exclusive original jurisdiction. *Exclusive means, no other court can decide such disputes and original means, the power to hear such disputes in the first instance, not by way of appeal.*

2. **Writ Jurisdiction**.
   The Constitution has constituted the Supreme Court as the guarantor and defender of the fundamental rights of the citizens. *The Supreme Court is empowered to issue writs including habeas corpus, mandamus, prohibition, quo warranto and certiorari for the enforcement of the fundamental rights of an aggrieved citizen.* In this regard, the Supreme Court has original jurisdiction in the sense that an aggrieved citizen can directly go to the Supreme Court, not necessarily by way of appeal. However, the writ jurisdiction of the Supreme Court is not exclusive.
   The Supreme Court can issue writs only for the enforcement of the Fundamental Rights and not for other purposes. The high court, on the other hand, can issue writs not only for the enforcement of the fundamental rights but also for other purposes.

3. **Appellate Jurisdiction**.
   The Supreme Court is primarily a court of appeal and hears appeals against the judgements of the lower courts. It enjoys a wide appellate jurisdiction which can be classified under four heads:
   a. Appeals in constitutional matters.
   b. Appeals in civil matters.
   c. Appeals in criminal matters.
   d. Appeals by special leave.

4. **Advisory Jurisdiction.**
   The Constitution (Article 143) authorizes the president to seek the opinion of the Supreme Court in the two categories of matters:
   a. On any question of law or fact of public importance which has arisen or which is likely to arise.
   b. On any dispute arising out of any pre-constitution treaty, agreement, covenant, engagement, sanad or other similar instruments.

5. **A Court of Record.**
   As a Court of Record, the Supreme Court has two powers:
   a. The judgements, proceedings and acts of the Supreme Court are recorded for perpetual memory and testimony. These records are admitted to be of evidentiary value and cannot be questioned when produced before any court. They are recognized as legal precedents and legal references.
   b. It has power to punish for contempt of court, either with simple imprisonment for a term up to six months or with fine up to ₹2,000 or with both. In 1991, the Supreme Court has ruled that it has power to punish for contempt not only of itself but also of high courts, subordinate courts and tribunals functioning in the entire country.

6. **Power of Judicial Review.**
   Judicial review is the power of the Supreme Court to examine the constitutionality of legislative enactments and executive orders of both the Central and state governments. On examination, if they are found to be violates the Constitution (ultra-vires), they can be declared as illegal, unconstitutional and invalid (null and void) by the Supreme Court. Consequently, they cannot be enforced by the Government.

7. **Constitutional Interpretation**
   The Supreme Court is the ultimate interpreter of the Constitution. It can give final version to the spirit and content of the provisions of the constitution and the verbiage used in the constitution.

8. **Other Powers** - dispute regarding election of president, power to review its own judgement.

Constitutional Bodies

Wednesday, December 16, 2020 6:21 PM

Election Commission

The Election Commission is a permanent and an independent body established by the Constitution of India directly to ensure free and fair elections in the country. *Article 324 of the Constitution provides that the power of superintendence, direction and control of elections to parliament, state legislatures, the office of president of India and the office of vice-president of India shall be vested in the election commission.*
It must be noted here that the election commission is not concerned with the elections to panchayats and municipalities in the states. For this, the Constitution of India provides for a separate State Election Commission.

COMPOSITION

Article 324 of the Constitution has made the following provisions with regard to the composition of election commission:

1. The Election Commission shall consist of the chief election commissioner and such number of other election commissioners, if any, as the president may from time to time fix.
2. The appointment of the chief election commissioner and other election commissioners shall be made by the president.
3. When any other election commissioner is so appointed, the chief election commissioner shall act as the chairman of the election commission.
4. The president may also appoint after consultation with the election commission such regional commissioners as he may consider necessary to assist the election commission.
5. The conditions of service and tenure of office of the election commissioners and the regional commissioners shall be determined by the president.

Since its inception in 1950 and till 15 October 1989, the election commission functioned as a single member body consisting of the Chief Election Commissioner. On 16 October 1989, the president appointed two more election commissioners to cope with the increased work of the election commission on account of lowering of the voting age from 21 to 18 years (63rd amendment).
However, the two posts of election commissioners were abolished in January 1990 and the Election Commission was reverted to the earlier position. Again in October 1993, the president appointed two more election commissioners. Since then and till today, the Election Commission has been functioning as a multi-member body consisting of three election commissioners.

What is ECI?

- The Election Commission of India is an autonomous constitutional authority responsible for administering Union and State election processes in India.
- The body administers elections to the Lok Sabha, Rajya Sabha, and State Legislative Assemblies in India, and the offices of the President and Vice President in the country.

Background

- Part XV of the Indian constitution deals with elections, and establishes a commission for these matters.
- The Election Commission was established in accordance with the Constitution on 25th January 1950.
- Article 324 to 329 of the constitution deals with powers, function, tenure, eligibility, etc of the commission and the member.

Articles related to Elections	
324	Superintendence, direction and control of elections to be vested in an Election Commission.
325	No person to be ineligible for inclusion in, or to claim to be included in a special, electoral roll on grounds of religion, race, caste or sex.
326	Elections to the House of the People and to the Legislative Assemblies of States to be on the basis of adult suffrage.
327	Power of Parliament to make provision with respect to elections to Legislatures.
328	Power of Legislature of a State to make provision with respect to elections to such Legislature.
329	Bar to interference by courts in electoral matters.

Structure of the Commission

- Originally the commission had only one election commissioner but after the Election Commissioner Amendment Act 1989, it has been made a multi-member body.
- The commission consists of one Chief Election Commissioner and two Election Commissioners.
- The secretariat of the commission is located in New Delhi.
- At the state level election commission is helped by Chief Electoral Officer who is an IAS rank Officer.
- The President appoints Chief Election Commissioner and Election Commissioners.
- They have a fixed tenure of six years, or up to the age of 65 years, whichever is earlier.
- They enjoy the same status and receive salary and perks as available to Judges of the Supreme Court of India.
- The Chief Election Commissioner can be removed from office only through a process of removal similar to that of a Supreme Court judge for by Parliament.

Procedure of Removal

- Judges of High Courts and Supreme Court, CEC, Comptroller and Auditor General (CAG) may be Removed from office through a motion adopted by Parliament on grounds of 'Proven misbehavior or incapacity'.
- Removal requires special majority of 2/3rd members present and voting supported by more than 50% of the total strength of the house.
- The Constitution does not use the word 'impeachment', for the removal of the judges, CAG, CEC.
- The term 'Impeachment' is only used for removing the President which requires the special majority of 2/3rd members of the total strength of both the houses which is not used elsewhere.

Functions

- Election Commission of India superintendents, direct and control the entire process of conducting elections to Parliament and Legislature of every State and to the offices of President and Vice-President of India.
- The most important function of the commission is to decide the election schedules for the conduct of periodic and timely elections, whether general or bye-elections.
- It prepares electoral roll, issues Electronic Photo Identity Card (EPIC).
- It decides on the location polling stations, assignment of voters to the polling stations, location of counting centres, arrangements to be made in and around polling stations and counting centers and all allied matters.
- It grants recognition to political parties & allot election symbols to them along with settling disputes related to it.
- The Commission also has advisory jurisdiction in the matter of post-election disqualification of sitting members of Parliament and State Legislatures.
- It issues the Model Code of Conduct in election for political parties and candidates so that the no one indulges in unfair practice or there is no arbitrary abuse of powers by those in power.
- It sets limits of campaign expenditure per candidate to all the political parties, and also monitors the same.

Importance of ECI for India

- The ECI has been successfully conducting national as well as state elections since 1952. In recent years, however, the Commission has started to play the more active role to ensure greater participation of people.
- The Commission had gone to the extent of disciplining the political parties with a threat of derecognizing if the parties failed in maintaining inner-party democracy.
- It upholds the values enshrined in the Constitution viz, equality, equity, impartiality, independence; and rule of law in superintendence, direction, and control over the electoral governance.
- It conducts elections with the highest standard of credibility, freeness, fairness, transparency, integrity, accountability, autonomy and professionalism.
- It ensures participation of all eligible citizens in the electoral process in an inclusive voter-centric and voter-friendly environment.
- It engages with political parties and all stakeholders in the interest of the electoral process.
- It creates awareness about the electoral process and electoral governance amongst stakeholders namely, voters, political parties, election functionaries, candidates and people at large; and to enhance and strengthen confidence and trust in the electoral system of this country.

Major Challenges

- Over the years influence of money and criminal elements in politics has increased along with violence and electoral malpractices resulting in criminalization of politics. The ECI has been unable to arrest this deterioration.
- There has been rampant abuse of power by the state government who at times make large-scale transfers on the eve of elections and posts pliable officials in key positions, using official vehicles and buildings for electioneering, flouting the ECI's model code of conduct.
- The ECI is not adequately equipped to regulate the political parties. The ECI has no power in enforcing inner-party democracy and regulation of party finances.
- In the recent years, an impression is gaining ground that the Election Commission is becoming less and less independent of the Executive which has impacted the image of the institution.
- One of the major institutional drawback is non- transparency in election of CEC and other two commissioners and is based on the choice of presiding government.
- There have been allegations of EVMs malfunctioning, getting hacked and not registering votes which corrodes general masses trust from the institution.

Way Forward

- The challenge before the commission is to be vigilant and watchful against the collusion at the lower level of civil and police bureaucracy in favour of the ruling party of the day.
- Until the controversy related to glitches in EVM settles down, commission needs to establish its trust amongst people by installing (Voter Verifiable Paper Audit Trail System) VVPATS in more and more constituencies.
- There is a need to provide more legal support to the commission's mandate and the processes that support that mandate.
- As history shows, inadequate leadership is the bane of our public institutions. Safeguards to ensure that ethical and capable people head them are crucial.

- 2nd ARC report recommended that collegium headed by the Prime Minister with the Speaker of the Lok Sabha, the Leader of Opposition in the Lok Sabha, the Law Minister and the Deputy Chairman of the Rajya Sabha as members should make recommendations for the consideration of the President for appointment of the Chief Election Commissioner and the Election Commissioners.

State Election Commission's Autonomy

Free and fair elections form the bedrock of a democratic country. In India, the constitution envisages an Election Commission of India (ECI) and State Election Commissions (SEC) for every state to safeguard the free and fair election and grants them with certain constitutional safeguards to secure their independent functioning.

However, the recent removal of Andhra Pradesh State Election Commissioner via an ordinance route is an example encroaching upon the independence of the Constitutional body especially in the light of political accusations and vested interests.

This development not only threatens institutional autonomy but also falls foul of the constitutional provisions. Though the Election Commission of India is facing issues of autonomy due to political interference, the situation at the level of state election commission is more grim.

Note:
The ordinance promulgated by Andhra Pradesh Governor reduced the term of State Election Commissioner in the state from five years to three years and altered the qualifications (only those who served as a High Court judge can now occupy the post, earlier it was an officer of the rank of Principal Secretary & above) required to be the SEC.

Significance of Election Commission Institution

- It is the guardian of free and reasonable elections in India.
- It enforces the Model Code of Conduct (MCC) before every election to be followed by the different candidates and parties so that the decorum of the electoral process is maintained well.
- It creates awareness about the electoral process and electoral governance amongst stakeholders namely, voters, political parties, election functionaries, candidates and people at large; and to enhance and strengthen confidence and trust in the electoral system of this country.
- The Election Commission prescribes the limits of campaign expenditure by the candidates and parties and monitors the spending too.
- The body also mandates that the political parties submit their audited financial reports regularly.

State Election Commissions (SECs)

The State Election Commission has been entrusted with the function of conducting free, fair and impartial elections to the local bodies in the state.

- **Article 243K(1)**: It states that the superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to the Panchayats (Municipalities under Article 243ZA) shall be vested in a State Election Commission consisting of a State Election Commissioner to be appointed by the Governor.
- **Article 243K(2)**: It states that the tenure and appointment will be directed as per the law made by the state legislature. However, State Election Commissioner shall not be removed from his/her office except in like manner and on the like grounds as a Judge of a High Court.

Challenges With Functioning of Election Commission Institution

Lack of Autonomy: Although the state election commission on many occasions tried to exercise its duties enshrined in the constitution of India, they struggled to assert their independence. For example:

- In Maharashtra, SEC had asserted that he should have the power to hold elections to the offices of mayor, deputy mayor, sarpanch and deputy sarpanch.
- On the contrary, he was arrested and sent to jail for two days in March 2008 after the Legislative Assembly found him guilty of breach of privilege in an alleged conflict over his jurisdiction and powers.

Lack of Safeguard for SEC: Though the State Election Commissioner shall not be removed from his/her office except in like manner and on the like grounds as a Judge of a High Court (Art 243K(2)), yet it has been diluted on many instances.

- In the Aparmita Prasad Singh vs. State of U.P. (2007) the Allahabad High Court held that if the Governor has power to fix or prescribe tenure by rule, he also enjoys the power to amend the rule, either for extending the term of the tenure or reducing the same.
- Once the prescribed tenure comes to end, the incumbent SEC must cease to hold office and this shall not amount to removal from office.

Non Uniform Service Conditions for SECs: Article 243K(2) states that the tenure and appointment will be directed as per the law made by the state legislature and thus each SEC is governed by a separate state Act.

- This gives power to states to amend rules unilaterally and even sometimes take ordinance routes to bypass legislative scrutiny like the recent example of Andhra Pradesh SEC.

Steps To Be Taken

Supreme Court Directive

- The state governments need to follow the guidelines given by the Supreme Court in Kishan Singh Tomar vs Municipal Corporation of Ahmedabad case:
- The provisions of Article 243K of the Constitution, which provides for setting up of SECs, are almost identical to those of Article 324 related to the ECI.
- Also, the state governments should abide by orders of the SECs during the conduct of the panchayat and municipal elections, just like they follow the instructions of the EC during Assembly and Parliament polls.

Second Administrative Reforms Commission Recommendation

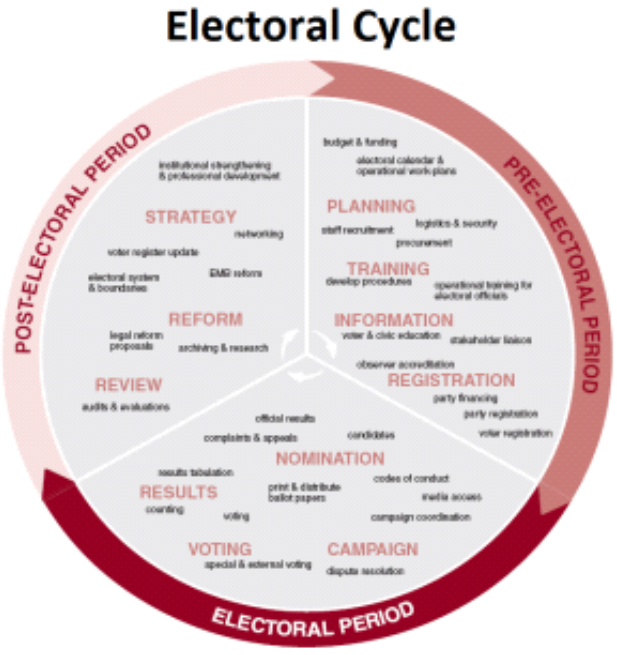
- Constitution of the State Election Commission: The State Election Commissioner should be appointed by the Governor on the recommendation of a collegium, comprising the Chief Minister, the Speaker of the State Legislative Assembly and the Leader of Opposition in the Legislative Assembly.
- An institutional mechanism should be created to bring the Election Commission of India and the SECs on a common platform for coordination, learning from each other's experiences and sharing of resources.

Law Commission 255th Report on Electoral Reforms

- It recommended, to add a new sub-clause to Article 324 of the Constitution to provide for a separate independent and permanent Secretariat for the ECI along the lines of the Lok Sabha/Rajya Sabha Secretariats under Article 98 of the Constitution.
- Similar provisions can also be made for the State Election Commissions to ensure autonomy, and free and fair local body election.

Conclusion

Election commissions are one of the bulwarks of the democratic system in India and thus securing their institutional integrity is a task that falls on all three branches — executive, judiciary and legislature. The unwarranted interference by one organ of the state in the functioning of others should be discouraged to achieve a robust electoral system.



Need to set up State Finance Commission

The 15th Finance Commission (headed by N K Singh) recently held a detailed meeting with RBI.

Key issues that were discussed

- *Continuity of the Finance Commission*: A permanent status to Finance Commission and a robust expenditure planning is the need of the hour. This is required, in view of the fiscal management requirements of the States, especially given the absence of mid-term reviews of awards granted by the Finance Commission.
- *State Finance Commissions (SFCs)*: States have not been setting up their State Finance Commissions every five years as mandated by 73rd Constitutional Amendment Act. Therefore, they discussed the necessity of SFCs to rationalize and systematize State/sub-state fiscal relations in India.
- *Expenditure codes*: Expenditure norms vary from state to state; therefore there is a need of uniform standard expenditure codes across the country.
- *Public Sector Borrowing Requirement (PSBR)*: It is defined as borrowing by not just Central and State governments but also by all public sector corporations and agencies. This consolidated figure will more or less put an end to the manipulation the fiscal deficit by the government. The main issues discussed are the increasing orientation of State governments' borrowing from markets, improving secondary market liquidity and cash management.
- *Importance of States in the economy*: The role of states in the growth of Indian economy has increased given the 'shift in composition of government finances'. States are now getting much higher share of transfer (devolution of 42%) from Centre, on the recommendation of 15th FC.
- *Factors driving fiscal slippage*: These factors include UDA, farm loan waivers and income support schemes; rising outstanding debt as a percentage of GDP despite moderation in interest payments as a percentage of revenue receipts.

15th Finance Commission (FC)

- Finance Commission is a constitutional body under Article 280 created every five years to recommend the transfer of financial resources from the Centre to the States.
- The Commission also decides the principles on which grants-in-aid will be given to the States.
- The 15th FC was constituted on November 27, 2017 and is headed by Mr. N.K. Singh.
- The recommendations, to be observed for a period of five years, will kick in from April 1, 2020.

State Finance Commissions (SFCs)

The State Finance Commission (SFC) is an institution created by the 73rd and 74th Constitutional Amendments (CAs) to rationalize and systematize State/sub-State-level fiscal relations in India.

- **Article 243I of the Constitution** mandated the State Governor to constitute a Finance Commission every five years.
- **Article 243Y of the Constitution** states that the Finance Commission constituted under article 243 I shall also review the financial position of the Municipalities and make recommendations to the Governor.

Concerns:

- States have not been setting up their SFCs regularly as mandated.
- They are not submitting the reports in time, lacking the proficiency.
- They have huge task of considering large number of local governments.
- They face a crucial problem of reliable data.
- SFCs and local governments are seen to be of inferior constitutional status than the Union FC.

CONSTITUTIONAL STATUS FOR NATIONAL COMMISSION FOR BACKWARD CLASSES

The Lok Sabha has passed the 123rd Constitutional Amendment Bill which seeks to grant constitutional status to the National Commission for Backward Classes (NCBC) at par with the National Commission for Scheduled Castes (NCSC) and the National Commission for Scheduled Tribes (NCST).

- The government has accepted two of the amendments moved by Rajya Sabha including appointing one woman member in the NCBC and giving power to state governments to frame policies for betterment of the OBCs.
- The NCBC is a body set up under the National Commission for Backward Classes Act, 1993. It has the power to examine complaints regarding inclusion or exclusion of groups within the list of backward classes, and advise the central government in this regard.

The Procedure for the Amendment of the Constitution: Article 368

- A Bill for the amendment of Constitution can be introduced only in either House of Parliament and not in the state legislatures.
- The Bill must be passed in each House by a special majority, that is, a majority (more than 50%) of the total membership of the House and a majority of two-thirds of the members of the House present and voting.
- Each House must pass the Bill separately. In case of a disagreement between the two Houses, there is no provision for holding a joint sitting of the two Houses for the purpose of deliberation and passage of the bill.
- The Bill must also be ratified by the legislatures of half of the states by a simple majority (a majority of the members of the House present and voting) if it seeks to amend the federal provisions of the Constitution.

Key Points

- The Bill inserts Article 338 B in the Constitution, which provides for a National Commission for Backward Classes (for the socially and educationally backward classes) with a Chairperson, Vice-Chairperson and three other members, all of whom shall be appointed by the President of India.
  - Their tenure and conditions of service will also be decided by the President through rules.
- Currently, under the Constitution, the National Commission for Scheduled Castes has the power to look into complaints and welfare measures with regard to Scheduled Castes, backward classes and Anglo-Indians.
  - The Bill seeks to remove the power of the NCSC to examine matters related to backward classes.
- The Bill states that the President may specify the socially and educationally backward classes in the various states and union territories. He may do this in consultation with the Governor of the concerned state. However, a law of Parliament will be required if the list of backward classes is to be amended.
- The duties of the NCBC will include:
  - investigating and monitoring how safeguards provided to the backward classes under the Constitution and other laws are being implemented,
  - inquiring into specific complaints regarding violation of rights, and
  - advising and making recommendations on socio-economic development of such classes.
- The amended Bill will give the Commission powers equivalent to that of a civil court. It will be able to summon any person, ask for a document or public record, and receive evidence on affidavits. Union and state governments will have to consult the Commission on all significant policy matters affecting the socially and educationally backward classes.
- The NCBC will be required to present annual reports to the President on working of the safeguards for backward classes. These reports will be tabled in Parliament, and in the state legislative assemblies of the concerned states.

National Commission for Scheduled Castes

- The National Commission for Scheduled Castes (NCSC) is a constitutional body established by Article 338 of the Constitution.
- The separate National Commission for SCs came into existence in 2004.
- It consists of a chairperson, a vice-chairperson and three other members. They are appointed by the President by warrant under his hand and seal. Their conditions of service and tenure of office are also determined by the President.

NOTE: A committee under Justice G Rohini has been set up to examine sub-categorisation of Other Backward Classes. The sub-categorization of OBCs can ensure increased access to benefits such as reservations in educational institutions and government jobs for less dominant OBCs.

Concerns

- The Bill makes Parliament the final authority on inclusion of communities in the OBC list and, therefore, takes away the authority of states which can now send requests to the NCBC — which, however, may or may not forward them to the union government.
- Until now, the NCBS's recommendations with regard to inclusions and exclusions in the list are binding on the government.

A Brief History of OBC Reservations

- **The Kalelkar Commission, set up in 1953**, was the first to identify backward classes other than the Scheduled Castes and Scheduled Tribes at the national level. Its conclusion that caste is an important measure of backwardness was rejected on the ground that it had failed to apply more objective criteria such as income and literacy to determine backwardness.
- **The Mandal Commission report (1980)** estimated the OBC population at 52% and classified 1,257 communities as backward. It recommended increasing the existing quotas, which were only for SC/ST, from 22.5% to 49.5% to include the OBCs. A decade later, its recommendations were implemented in government jobs, a move that sparked major agitations.
- To assuage the anti-reservation protesters, the P V Narasimha Rao government in 1991 introduced a 10% quota for the "economically backward sections"

among the forward castes.
- The Supreme Court struck this down in the Indra Sawhney vs Union of India case (1993), where it held that the Constitution recognized only social and educational — and not economic — backwardness.
- The apex court, however, held reservation for OBCs as valid and directed that the creamy layer of OBC (those earning over a specified income) should not avail reservation facilities.
- The overall reservation for SCs, STs and OBCs was capped at 50%. Based on the order, the central government reserved 27% of seats in union civil posts and services, to be filled through direct recruitment, for OBCs. The quotas were subsequently enforced in central government educational institutions.

Comptroller and Auditor-General of India

About
- CAG is an independent authority under the Constitution of India.
- He is the head of the Indian audit & account department and chief Guardian of Public purse.
- It is the institution through which the accountability of the government and other public authorities (all those who spend public funds) to Parliament and State Legislatures and through them to the people is ensured.
- G. C. Murmu is the incumbent CAG of India.

Background
- Office of the Accountant General was established in 1858 (the year the British took over administrative control of India from the East India Company).
- *In 1860 Sir Edward Drummond was appointed as the first Auditor General.*
- Meanwhile after some restructuring the Auditor General of India came to be called the Auditor and Accountant General to the Government of India.
- In 1866, the position was renamed Comptroller General of Accounts, and in 1884, it was re-designated as Comptroller and Auditor General of India.
- Under the Government of India Act 1919, the Auditor General became independent of the government as statutory backing was given for the position.
- The Government of India Act 1935 further strengthened the position of the Auditor General by providing for Provincial Auditors General in a federal set-up.
- The act also described the appointment and service procedures and gave a brief overview of the duties of the Auditor General of India.
- The Accounts and Audits Order of 1936 provided detailed accounting and auditing functions of the auditor general.
- This arrangement remained unchanged until India's independence in 1947. After independence, **Article 148 of the 1949 Indian Constitution provided for the establishment of a Comptroller and Auditor General to be appointed by the President of India.**
- *CAG jurisdiction was extended to Jammu and Kashmir in 1958.*
- *In 1971 the central government enacted the Comptroller and Auditor General (Duties, Powers, and Conditions of Service) Act, 1971. The act made CAG responsible for both accounting and auditing duties for central and state governments.*
- In 1976 CAG was relieved from accounting functions.
- CAG has undergone rapid computerization and modernization since the 1990s and pervasive nature of Indian corruption has kept CAG vigilant and it has audited and investigated some of the worst and most controversial corruption scandals in Indian history.

Comparison with Britain CAG
- CAG of India only performed the role of an Auditor General and not of a Comptroller but in Britain it has the power of both Comptroller as well as Auditor General.
- In India the CAG audits the accounts after the expenditure is committed i.e. ex post facto. In UK no money can be drawn from the public exchequer without the approval of the CAG.
- In India, CAG is not a member of the parliament while in Britain; CAG is a member of house of the Commons.

Constitutional Provisions
- Article 148 broadly deals with the CAG appointment, oath and conditions of service.
- Article 149 deals with Duties and Powers of the Comptroller and Auditor-General of India.
- Article 150 says that the accounts of the Union and of the States shall be kept in such form as the President may, on the advice of the CAG, prescribe.
- Article 151 says that the reports of the Comptroller and Auditor-General of India relating to the accounts of the Union shall be submitted to the president, who shall cause them to be laid before each House of Parliament.
- Article 279 – Calculation of "net proceeds" is ascertained and certified by the Comptroller and Auditor-General of India, whose certificate is final.
- **Third Schedule** – Section IV of the Third Schedule of the Constitution of India prescribes the form of oath or affirmation to be made by the Judges of the Supreme Court and the Comptroller and Auditor-General of India at the time of assumption of office.
- *According to Sixth Schedule the accounts of the District Council or Regional Council should be kept in such form as CAG, with the approval of the President, prescribe. In addition these bodies account are audited in such manner as CAG may think fit, and the reports relating to such accounts shall be submitted to the Governor who shall cause them to be laid before the Council.*

Independence of CAG

There are several provisions in the Constitution for safeguarding the independence of CAG.
- CAG is appointed by the President by warrant under his hand and seal and provided with tenure of 6 years or 65 years of age, whichever is earlier.
- CAG can be removed by the President only in accordance with the procedure mentioned in the Constitution that is the manner same as removal of a Supreme Court Judge.
- He is ineligible to hold any office, either under the Government of India or of any state, once he retires/ resigns as a CAG.
- His salary and other service conditions cannot be varied to his disadvantage after appointment.
- His administrative powers and the conditions of service of persons serving in the Indian Audit and Accounts Department are prescribed by the President only after consulting him.
- The administrative expenses of the office of CAG, including all salaries, allowances and pensions are charged upon the Consolidated Fund of India that is not subject to vote.

Functions and Power of CAG
- CAG derives its audit mandate from different sources like–
  - Constitution (Articles 148 to 151)

- The Comptroller and Auditor General's (Duties, Powers and Conditions of Service) Act, 1971
- Important Judgments
- Instructions of Government of India
- Regulations on Audit & Accounts-2007

- CAG audits the accounts related to all expenditure from the Consolidated Fund of India, Consolidated Fund of each state and UT's having a legislative assembly.
- He audits all expenditure from the Contingency Fund of India and the Public Account of India as well as the Contingency Fund and Public Account of each state.
- He audits all trading, manufacturing, profit and loss accounts, balance sheets and other subsidiary accounts kept by any department of the Central Government and the state governments.
- He audits the receipts and expenditure of all bodies and authorities substantially financed from the Central or State revenues; government companies; other corporations and bodies, when so required by related laws.
- He audits the accounts of any other authority when requested by the President or Governor e.g. Local bodies.
- He advises the President with regard to prescription of the form in which the accounts of the Centre and States shall be kept.
- He submits his audit reports relating to the accounts of the Centre to the President, who shall, in turn, place them before both the houses of Parliament.
- He submits his audit reports relating to the accounts of a State to the Governor, who shall, in turn, place them before the state legislature.
- CAG also acts as a guide, friend and philosopher of the Public Accounts Committee of the Parliament.

CAG and Public Accounts Committee (PAC)

PAC is a Parliamentary Standing Committee created under GOI Act, 1919.

- CAG audit reports are handed over to the PACs at the centre and at the state.
- Three CAG reports i.e. audit report on appropriation accounts, audit report on finance accounts and audit report on public sector undertakings are examined by PAC.
- At the central level, these reports are submitted by CAG to president, who makes them to be laid in parliament.
- CAG also assists the committee in its deliberations by preparing a list of the most urgent matters which deserve the attention of the PAC.
- He also helps in making the actions of the committee clear to the witnesses and in making the action of the government clear to the committee.
- CAG position is sometimes one of interpreter and translator, explaining the officials' views to the politicians and vice-versa.
- The responsibility of the CAG does not end here. He has to watch whether the corrective action suggested by him has been taken or not. In cases whether it has not been taken, he reports the matter to the PAC which will take up the matter.

Challenges and Opportunities

In present times audits are getting complex because forms of corruption and maladministration extremely difficult to detect.

- Besides the historic task of keeping a close watch on the Central and State governments, CAG are now auditing several public-private partnerships (PPP) projects.
- In this context CAG of India has suddenly landed in the midst of unprecedented opportunity and challenge.
- No criterion or procedure has been prescribed either in the Constitution or in the statute for the appointment of CAG.
- This has given the sole power to the executive to appoint a person of their choice as the CAG. This goes against the international best practices prevalent across the world.
- The CAG has the authority to inspect any Government office and to call for any accounts. However, in practice, the supply of records is often denied.
- Moreover, usually inordinately delayed and more often than not, crucial documents are supplied to the auditors at the end of the audit programme with the sole objective of obstructing meaningful audit of those crucial records.
- Just like the citizen's right to get the information within a month under RTI Act 2005, auditors should be provided access to records on priority basis within seven days, failing which, heads of departments should be required to explain the circumstances that caused the delay.
- In 2015, an all-India conference of PACs of Parliament and State/Union Territories legislatures discussed the need for complete independence of the CAG, making it a part of the PAC, like in the UK and Australia.
- It also called for prior consultation with the Chairman, PAC, before appointment of the CAG and consequential need to amend the CAG Act to this effect.
- Though the Indian Constitution provides for a six-year term to the CAG, the cap of 65 years of age has been reducing the actual terms of successive CAGs in the recent times.
- Shorter tenure works as an impediment to the independent and proper functioning of the institution due to lack of continuity of the leadership and loss of expertise.
- Internationally, the CAG of the UK and the Comptroller General of the US has 10 and 15 years of term respectively.
- The work of audit of accounts of the Union and of the States is actually done by the officers and staff of the IA&AD. However, no statutory recognition has been given to the work of IA&AD in India as against National Audit Office of the UK.
- The recognition of the IA&AD as a statutory body with delegation of powers to lower functionaries on the pattern of IT Act will improve the quality of audit and give credibility to the work done by the officers and staff of the IA&AD, thereby leading to greater impact and better outcome.
- Some of the audits of CAG in recent times have attracted criticism due to exaggerated loss estimates or outlandish figures.
- To avoid such allegations CAG should follow rigorous standards so that the integrity of audits is not affected by extraneous considerations.

Reforms suggested by Vinod Rai (former CAG)

- Bring all private-public partnerships (PPPs), Panchayati Raj Institutions and government-funded societies, within the ambit of the CAG.
- CAG Act of 1971 should be amended to keep pace with the changes in governance.
- A collegium type mechanism to choose a new CAG on the lines of selecting a Chief Vigilance Commissioner (CVC).

- From climate change to PPPs, there are dramatic changes happening in the way government funding and public goods are exploited. CAG has to change its audit mechanisms in this context.
- CAG has to prepare itself to audit issues like implementation of the Sustainable Development Goals and the Goods and Services Tax.
- In the wake of the Big Data revolution, CAG came out with a Big Data management policy in 2016 and also established a Centre for Data Management and Analytics in Delhi. This is a welcome step.
- In 2017, CAG of India hosted the Commonwealth Auditors General Conference. Leveraging technology in public audit and environment audit were the two themes of the conference. Conference helped in fostering partnerships amongst Commonwealth countries for capacity development in public audit.

- CAG successfully audited the UN headquarters which involves multifarious and complex operations; it shows the credibility of Indian CAG.

Tribunals

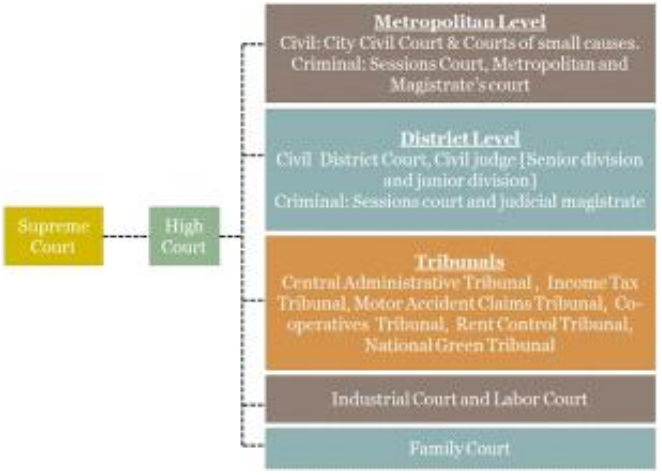
Tribunal is a quasi-judicial institution that is set up to deal with problems such as resolving administrative or tax-related disputes. It performs a number of functions like adjudicating disputes, determining rights between contesting parties, making an administrative decision, reviewing an existing administrative decision and so forth.

- The term 'Tribunal' is derived from the word 'Tribunes', which means 'Magistrates of the Classical Roman Republic'.
  - Tribunal is referred to as the office of the 'Tribunes' i.e., a Roman official under the monarchy and the republic with the function of protecting the citizen from arbitrary action by the aristocrat magistrates.
- A Tribunal, generally, is any person or institution having an authority to judge, adjudicate on, or to determine claims or disputes – whether or not it is called a tribunal in its title.

Need of Tribunal

- To overcome the situation that arose due to the pendency of cases in various Courts, domestic tribunals and other Tribunals have been established under different Statutes, hereinafter referred to as the Tribunals.
- The Tribunals were set up to reduce the workload of courts, to expedite decisions and to provide a forum which would be manned by lawyers and experts in the areas falling under the jurisdiction of the Tribunal.
- The tribunals perform an important and specialized role in justice mechanism. They take a load off the already overburdened courts. They hear disputes related to the environment, armed forces, tax and administrative issues.

Constitutional Provisions



- Tribunals were not part of the original constitution, it was incorporated in the Indian Constitution by 42nd Amendment Act, 1976.
  - Article 323-A deals with Administrative Tribunals.
  - Article 323-B deals with tribunals for other matters.
- Under Article 323 B, the Parliament and the state legislatures are authorised to provide for the establishment of tribunals for the adjudication of disputes relating to the following matters:
  - Taxation
  - Foreign exchange, import and export
  - Industrial and labour
  - Land reforms
  - Ceiling on urban property
  - Elections to Parliament and state legislatures
  - Food stuff
  - Rent and tenancy rights
- Articles 323 A and 323 B differ in the following three aspects:
  - While Article 323 A contemplates the establishment of tribunals for public service matters only, Article 323 B contemplates the establishment of tribunals for certain other matters (mentioned above).
  - While tribunals under Article 323 A can be established only by Parliament, tribunals under Article 323 B can be established both by Parliament and state legislatures with respect to matters falling within their legislative competence.
  - Under Article 323 A, only one tribunal for the Centre and one for each state or two or more states may be established. There is no question of the hierarchy of tribunals, whereas under Article 323 B a hierarchy of tribunals may be created.
- Article 262: The Indian Constitution provides a role for the Central government in adjudicating conflicts surrounding inter-state rivers that arise among the state/regional governments.

Tribunals in India

Administrative Tribunals

- Administrative Tribunals was set-up by an act of Parliament, Administrative Tribunals Act, 1985. It owes its origin to Article 323 A of the Constitution.
    - It adjudicates disputes and complaints with respect to recruitment and conditions of service of persons appointed to the public service and posts in connection with the affairs of the Union and the States.
- The Administrative Tribunals Act, 1985 provides for three types of tribunals:
    - The Central Government establishes an administrative tribunal called the Central Administrative Tribunal (CAT).
    - The Central Government may, upon receipt of a request in this behalf from any State Government, establish an administrative tribunal for such State employees.
    - Two or more States might ask for a joint tribunal, which is called the Joint Administrative Tribunal (JAT), which exercises powers of the administrative tribunals for such States.
- There are tribunals for settling various administrative and tax-related disputes, including Central Administrative Tribunal (CAT), Income Tax Appellate Tribunal (ITAT), Customs, Excise and Service Tax Appellate Tribunal (CESTAT), National Green Tribunal (NGT), Competition Appe llate Tribunal (COMPAT) and Securities Appellate Tribunal (SAT), among others.

Central Administrative Tribunal

- It has jurisdiction to deal with service matters pertaining to the Central Government employees or of any Union Territory, or local or other government under the control of the Government of India, or of a corporation owned or controlled by the Central Government.
    - The CAT was set-up on 1 November 1985.
    - It has 17 regular benches, 15 of which operate at the principal seats of High Courts and the remaining two at Jaipur and Lucknow.
    - These Benches also hold circuit sittings at other seats of High Courts. The tribunal consists of a Chairman, Vice-Chairman and Members.
        - The Members are drawn, both from judicial as well as administrative streams so as to give the Tribunal the benefit of experti se both in legal and administrative spheres.
- The appeals against the orders of an Administrative Tribunal shall lie before the Division Bench of the concerned High Court.

State Administrative Tribunal

- Article 323 B empowers the state legislatures to set up tribunals for various matters like levy, assessment, collection and e nforcement of any of the tax matters connected with land reforms covered by Article 31A.

Water Disputes Tribunal

- The Parliament has enacted Inter-State River Water Disputes (ISRWD) Act, 1956 have formed various Water Disputes Tribunal for adjudication of disputes relating to waters of inter-State rivers and river valleys thereof.
    - **Standalone Tribunal**: The Inter-State River Water Disputes (Amendment) Bill, 2019 is passed by Parliament for amending the existing ISRWD Act, 1956 to constitute a standalone Tribunal to remove with the need to set up a separate Tribunal for each water dispute which is invariably a time-consuming process.

Armed Forces Tribunal (AFT)

- It is a military tribunal in India. It was established under the Armed Forces Tribunal Act, 2007.
- It has provided the power for the adjudication or trial by AFT of disputes and complaints with respect to commission, appoint ments, enrolments and conditions of service in respect of persons subject to the Army Act, 1950, The Navy Act, 1957 and the Air Force Act, 1950.
- Besides the Principal Bench in New Delhi, AFT has Regional Benches at Chandigarh, Lucknow, Kolkata, Guwahati, Chennai, Kochi, Mumbai and Jaipur.
    - Each Bench comprises of a Judicial Member and an Administrative Member.
- The Judicial Members are retired High Court Judges and Administrative Members are retired Members of the Armed Forces who have held the rank of Major General/ equivalent or above for a period of three years or more, Judge Advocate General (JAG), who have held the appoi ntment for at least one year are also entitled to be appointed as the Administrative Member.

National Green Tribunal (NGT)

- The National Environment Tribunal Act, 1995 and National Environment Appellate Authority Act, 1997 were found to be inadequat e giving rise to demand for an institution to deal with environmental cases more efficiently and effectively.
- The Law Commission in its 186th Report suggested multi-faceted Courts with judicial and technical inputs referring to the practice of environmental Courts in Australia and New Zealand.
    - As a result NGT was formed as a special fast-track, quasi-judicial body comprising of judges and environment experts to ensure expeditious disposal of cases.
- The National Green Tribunal was established in 2010 under the National Green Tribunal Act 2010 as a statutory body.
    - It was setup for effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources.
    - It also ensures enforcement of any legal right relating to environment and giving relief and compensation for damages to persons and property.
- The Tribunal is mandated to make and endeavor for disposal of applications or appeals finally within 6 months of filing of th e same.
- Initially, the NGT is proposed to be set up at five places of sittings and will follow circuit procedure for making itself mo re accessible.
    - New Delhi is the Principal Place of Sitting of the Tribunal and Bhopal, Pune, Kolkata and Chennai shall be the other four place of sitting of the Tribunal.

Income Tax Appellate Tribunal

- Section 252 of the Income Tax Act, 1961 provides that the Central Government shall constitute an Appellate Tribunal consisting of many Judicial Members and Accountant members as it thinks fit to exercise the powers and functions conferred on the Tribunal by the Act.

Characteristics of Administrative Tribunals

- Administrative Tribunal is a creation of a statute.
- An Administrative Tribunal is vested in the judicial power of the State and thereby performs quasi-judicial functions as distinguished from pure administrative functions.
- Administrative Tribunal is bound to act judicially and follow the principles of natural justice.
- It is required to act openly, fairly and impartially.
- An Administrative Tribunal is not bound by the strict rules of procedure and evidence prescribed by the civil procedure court.

Merging of Tribunals

The Finance Act of 2017 merged eight tribunals according to functional similarity. The list of the tribunals that have been merged are given below:

- The Employees Provident Fund Appellate Tribunal with The Industrial Tribunal.
- The Copyright Board with The Intellectual Property Appellate Board.
- The Railways Rates Tribunal with The Railways Claims Tribunal.
- The Appellate Tribunal for Foreign Exchange with The Appellate Tribunal (Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976.
- The National Highways Tribunal with The Airport Appellate Tribunal.
- The Cyber Appellate Tribunal and The Airports Economic Regulatory Authority Appellate Tribunal with The Settlement and Appellate Tribunal (TDSAT).
- The Competition Appellate Tribunal with the National Company Law Appellate Tribunal.

Difference Between Tribunal and Court

- Administrative Tribunals and Ordinary Courts both deal with the disputes between the parties which affects the rights of the subjects.
- Administrative Tribunal is not a court. Some notable differences between a court and Administrative Tribunal are as follows -

No.	Court of Law	Tribunal
1.	A court of law is a part of the **traditional judicial system** whereby judicial powers are derived from the state.	An Administrative Tribunal is an **agency created by the statute** and invested with judicial power.
2.	The Civil Courts have judicial power to try all **suits of a civil nature** unless the cognizance is expressly or impliedly barred.	Tribunal is also known as the Quasi-judicial body. Tribunals have the power to try cases of **special matter which are conferred on them by statutes**
3.	Judges of the ordinary courts of law are independent of the executive in respect of their tenure, terms and conditions of service etc. **Judiciary is independent of Executive**	Tenure, terms and conditions of the services of the members of **Administrative Tribunal are entirely in the hands of Executive** (government).
4.	The presiding officer of the **court of law is trained in law.**	The president or a member of the Tribunal may not be trained as well in law. He may be an **expert in the field of Administrative matters.**
5.	A judge of a court of law **must be impartial** who is not interested in the matter directly or indirectly.	An Administrative Tribunal **may be a party to the dispute** to be decided by it.
6.	A court of law is bound by all the **rules of evidence and procedure.**	An Administrative Tribunal is not bound by rules but bound by the **principles of nature of Justice.**
7.	Court must decide all questions **objectively** on the basis of evidence and materials on record.	Administrative Tribunal may decide questions by taking into account departmental policy, the decision of Administrative Tribunal may **be subjective rather than objective.**
8.	A court of law can decide **vires of a legislation**	Administrative Tribunal cannot do so

Statutory Bodies

Tuesday, May 19, 2020 12:26 PM

STATUTORY BODIES

National Commission for Women:

- Chairperson + 5 members + 1 member-secretary, **all nominated by the Ministry of Women and Child Development**
- All appointed for 3 years
- It can also include other members, but they don't have voting rights
- While investigating matters, the commission has all the powers of a civil court trying a suit

Failures

- It was born out of successive women's movements demanding a representational conduit between itself and the state
- Various women's organizations have been complaining against the commission over the fact that it has been ignored by the government on policy issues and over the ad hoc manner in which the women's groups have generally been asked be part of any consultative process
- The Commission lacks autonomy and in the performance of its role has been restricted by its institutional design. The NCW Act does not lay down any minimum requirement for members and has not stipulated a procedure of selecting the members with the result that the selection process is in total control of the party in power
- Rather than acting with an independent mandate and as a buffer between the citizens and the state, the commission has largely acted as a department of MWCD
- The recommendations of the commission are hardly ever listened to

Successes

- However, some women's organizations have been able to gain minimal concessions from the commission in isolated cases (such as issues of female construction workers, women in prostitution, mahila sarpanches etc.) thus showing that though tough, there is a possibility of the commission being used judiciously
- The commission has also produced good reports on occasion (such as on child prostitution, status of muslim women etc.)

National Human Rights Commission:

- 'Human Rights' mean the rights relating to life, liberty, equality and dignity of the individual, that everyone is entitled to enjoy freely regardless of their birth, caste, creed, religion, sex, nationality etc.
  - Human rights are not static, but evolve over time

Composition

- Chairman (an ex-CJI) + 8 members (a present or ex judge of SC, a present or ex CJ of an HC, 4 ex-officio members who are chairpersons of National Commission (of minorities, SC, ST, Women), 2 with experience in human rights)
- Appointed by (6): **PM + Home Minister + Leaders of Opposition in LS and RS + Lok Sabha speaker + Deputy Chairman of RS**
- Formed as per the **'Paris Principles'**, which provide that such an institution should provide a broad mandate, representative composition, wide accessibility, effectiveness

Successes

- Succeeded in persuading the central government to sign the UN Convention against Torture
- Number of complaints received has been rising over the years, showing greater awareness

Failures

- However, about 60% of the cases come from just 4 states, indicating that not many people know about the charter of the commission
- Number of pending cases has also been rising sharply
- The commission is completely dependent on the government for manpower and finances
- Cannot investigate any actions of the armed forces
- Cannot enforce it's own findings

National Commission for Protection of Child Rights:

- Mandate is to ensure that all laws, policies, programmes, and administrative mechanisms are in line with child rights enshrined in Indian constitution and in the UN Convention on the Rights of the Child(anyone upto 18 years of age)
- Chairperson + 6 members (at least 2 of whom are women)
  - Appointed by a 3-person committee under the Minister in-charge of DWCD

National Commission for Backward Classes:

- Chairperson (judge of SC or HC) + 4 members (one social scientist, two knowledgeable about BCs, one Secretary to Government of India)
- The **commission considers inclusions in and exclusions from the lists of communities notified as backward** for the purpose of job

reservations, and relays its recommendations to the government
- The **government has the power to reject the recommendations**
- Has the same powers as a civil court

➢ **National Commission for Minorities**
- Set up to look in to affairs related to Muslims, Christians, Sikhs, Buddhists, Zoroastrians, and Jains
- Composed of Chairperson + Vice Chairperson + 5 members; **all are nominated by the central government, but must be from the minority communities**
- Has all the powers of a civil court
- Presents an annual report to the government that has to be tabled in front of both houses of parliament

➢ **Delimitation Commission**
- It's a statutory body, not a constitutional one
- All orders issued by it are beyond legal scrutiny
- ***Composition:*** Present or ex judge of SC, Chief Election Commissioner, State Election Commissioner

➢ **Central Board for Film Certification**
- This is a censorship and classification body under **Ministry of Information and Broadcasting**
- It assigns certifications to films**, television shows, television ads, and publications** for exhibition, sale or hire in India
- The Board consist of non-official members and a Chairperson (all of whom are appointed by Central Government)
- Grants 4 kinds of certificates to films:
  - U –unrestricted exhibition
  - UA- unrestricted exhibition, with a word of caution to parents that some content might not be appropriate for children below 12 years of age
  - A- adults only
  - S- restricted to special class of persons

➢ **UGC and AICTE (All India Council for Technical Education):**
- AICTE is the statutory body and a national-level council for technical education, **under Department of Higher Education, Ministry of Human Resource Development**
- Responsible for proper planning and coordinated development of the technical education and management education system in India
- The AICTE accredits postgraduate and graduate programs under specific categories at Indian institutions as per its charter
- Main difference between UGC and AICTE is that the latter deals only with technical education
- UGC, it is the apex body that **approves universities** in the country. UGC **provide funds** for affiliated universities and colleges, and **also conducts exams, known as NET, for appointing teachers** in colleges
- The AICTE is only a statutory body, which deals with coordinated development and proper planning of the technical education system in the country. All the Engineering, MBA and Pharmacy colleges are affiliated with the All India Council for Technical Education
- UGC's prime function is to look into the financial needs of universities. It then allocates and disburses grants to these universities. Other academic functions come only after these functions
- On the other hand, the AICTE act gives priority to undertaking surveys in various fields of technical education at all levels. Fund allocation and disbursement comes second to this
- In its 25 April 2013 judgment the Honorable Supreme Court said "as per provisions of the AICTE Act and University Grants Commission (UGC) Act, the council has no authority which empowers it to issue or enforce any sanctions on colleges affiliated with the universities as its role is to provide guidance and recommendations"
- This means that AICTE is now merely an advisory body; UGC does all the regulatory work, and all technical institutes will need to align themselves with a university

➢ **National Disaster Management Authority:**
- Under Ministry of Home Affairs
- Primary purpose is to coordinate response to natural or man-made disasters and for capacity-building in disaster resiliency and crisis response
- The Prime Minister is the de-facto chairperson of NDMA
- A 9-member board chaired by the Prime Minister of India governs the NDMA. The remainder of the board consists of members nominated based on their expertise in areas such as policy, planning, infrastructure management, communications, meteorology and natural sciences
- Heads NDRF, whichconsists of ten battalions of Central Armed Police Forces, including three each of the BSF, CRPF, and two each of the CISF and ITBP

➢ **National Green Tribunal:**
- National Green Tribunal was established in 2010 by an Act of the Parliament of India
- It handles fast disposal of cases pertaining to environmental issues
- It was enacted under India's constitutional provision of Article 21, which assures the citizens of India the right to a healthy environment

- The Tribunal has Original Jurisdiction on matters of "substantial question relating to environment" (i.e. a community at large is affected, damage to public health at broader level) & "damage to environment due to specific activity" (such as pollution). It aims to move beyond simply anthropometric concerns
- The sanctioned strength of the tribunal is currently 10 expert members and 10 judicial members although the act allows for up to 20 of each
- The Chairman of the tribunal is required to be a serving or retired Chief Justice of a High Court or a judge of the Supreme Court of India. Members are chosen by a selection committee (headed by a sitting judge of the Supreme Court of India) that reviews their applications and conducts interviews. The Judicial members are chosen from applicants who are serving or retired judges of High Courts. Expert members are chosen from applicants who are either serving or retired bureaucrats not below the rank of an Additional Secretary to the Government of India

- Given the high rates of backlog in Indian courts, a tribunal like this one can go a long way in improving the situation of disposal of environmental cases
- NGT, since it's inception, has shown a disposal rate of about 60%, which is significantly higher than overall judicial disposal rates; still, in absolution, the pendency remains high, showing manpower constraints
- Also, since the NGT is located in only five big cities across India, and has now taken the powers of lower courts, access to people from remote areas (especially tribals) is now constrained
- There have been some protests from the Ministry of Environment that the NGT has been overstepping its brief; it is not clear whether the NGT has *suo moto* powers, whether it can review and direct changes in rules and regulations (power of judicial review); thus, there is condierable friction between the NGT and the MoE

➢ **Central Information Commission:**

- CIC was set up under the RTI Act of 2005
- Aims to provide redressal mechanism for the citizens who have not been able to submit information requests to a Central/ State Public Information Officer due to such a person not being appointed, or refusing to accept the query
- Includes one Chief Information Commissioner and up to 10 Information Commissioners, all appointed by the President
- The nomination committee includes PM, LoP in Lok Sabha, and one Union Cabinet Minister nominated by the President (so essentially the PM has two votes) *(for states, CM, LoP in Vidhan Sabha, plus one Cabinet Minister appointed by CM)*
- 5 year terms, no reappointment, retirement at 65
- MPs/ MLAs cannot be CICs

➢ **Central Vigilance Commission:**

- Set up to address government corruption
- Is a statutory body
- Composed of one CVC plus two Vigilance Commissioners
- **Appointments** are made by the PM, A cabinet minister nominated by the PM, and the Leader of Opposition in Lok Sabha
- It has the status of an autonomous body, free of control from any executive authority, charged with monitoring all vigilance activity under the Central Government of India
- **Weaknesses**:

– Its jurisdiction extends only over officers of All India Services, and not over the judiciary and the executive
– It is not an investigative body itself, but recommends investigation by CBI, Departmental Chief Vigilance Officers etc.
– CVC is only an advisory body. Central Government Departments are free to either accept or reject CVC's advice in corruption cases
– CVC does not have adequate resources compared with number of complaints that it receives. It is a very small set up with a sanctioned staff strength of 299, and it is supposed to check corruption in more than 1500 central government departments and ministries
– CVC cannot direct CBI to initiate inquiries against any officer of the level of Joint Secretary and above on its own. Such permission has to be obtained from the concerned department
– CVC does not have powers to register criminal case. It deals only with vigilance or disciplinary cases
– CVC has supervisory powers over CBI. However, CVC does not have the power to call for any file from CBI or to direct CBI to investigate any case in a particular manner
– Appointments to CVC are indirectly under the control of Government of India, though the leader of the Opposition (in Lok Sabha) is a member of the Committee to select CVC and VCs. But the Committee considers candidates put up before it. These candidates are decided by the Government

➢ **Directorate of Revenue Intelligence:** The Directorate of Revenue Intelligence was constituted on 4th December 1957, for dealing exclusively with the work relating to the collection and study of information on smuggling activities and the deployment of all anti-smuggling resources at the all India level. It **functions under the Central Board of Excise and Customs in the Ministry of Finance, Department of Revenue**

Anti-dumping duty is levied on distrustfully low-priced imports, so as to protect the domestic manufacturers. Directorate of Revenue Intelligence (DRI) issued a show-cause cum demand notice to telecom major Vodafone and its two subsidiaries for evading this anti0dumping duty of around Rs. 330 crores.

REGULATORY BODIES- FINANCE

The Indian discussion on the role and function of government agencies in financial regulation needs to be accompanied by a treatment of the difficulties of high quality agencies. While Indian policy makers have one important success in SEBI, which has emerged as a relatively high quality agency, Indian policy makers need to diagnose and the sources of problems at the other four agencies in finance (RBI, FMC, IRDA and PFRDA). The difficulties of IRDA and PFRDA serve as a reminder that even when an agency starts with a clean slate, without institutional baggage from a pre-reforms India, without conflicts of interest and archaic legal foundations, there is still a substantial risk of failure in institution building

1. **Securities and Exchange Board of India (SEBI):**

- Securities include debt, equity, and derivatives such as forwards, futures, options, stocks etc.
- SEBI regulates the securities market in India
- It is now a statutory body
- **Composition:** Chairman (nominated by Union government), 2 officers from Finance Ministry, 1 from RBI, 5 other members nominated by Union government
- It performs all 3 functions (quasi), legislative (drafts regulations), executive (investigates and enforces rules), and judicial (passes rulings), in matters related to securities
- To appeal its rulings, there exists a Securities Appellate Tribunal; second appeal lies directly to the SC **(important- Rajan recently said that we don't want an appellate raj)**

2. **Forward Markets Commission (FMC):**

- Chief regulator of commodities forwards markets in India; allows commodity exchange in 22 exchanges across India, of which 6 are national
- It is now going to be merged with SEBI, since commodity trading has increasingly become a financial trading activity
- Commodity markets need to be regulated as trading in commodities leads to speculation, which can lead to spiraling food price inflation
- It allows futures trading in 23 Fibres and Manufacturers, 15 spices, 44 edible oils, 6 pulses, 4 energy products, single vegetable, 20 metal futures, 33 others Futures
- The efforts to check harmful/ illegal commodities futures trading are likely to get a major boost with SEBI being given the jurisdiction to regulate commodity markets as well following FMC merger, as SEBI already enjoys greater powers including those to conduct search and seizure, impose penalties, order arrests and take other strict actions against wrongdoers
- Merger promotes better coordination, and is in line with FSLRC recommendation
- Could lead to better trust, and hence entry of strong institutional investors in the commodities space
- The merger of SEBI and FMC means that all organised financial trading, government bonds, and commodities futures will be under the SEBI's jurisdiction. **This leaves the RBI with an odd collection of elements: corporate bonds with maturity below one year, credit derivatives, and currencies and their derivatives. It would have been much cleaner to do the full thing, instead of settling for such an awkward compromise.**

3. **Pension Fund Regulatory and Development Authority (PFRDA):**

- Promotes old age income security by establishing, developing and regulating pension funds and protects the interests of subscribers to schemes of pension funds and related matters
- Chairman + max. 5 members, all appointed by Union government
- PFRDA faced a difficulty akin to SEBI's early years in that its legislation has been delayed. At the same time, SEBI started chalking up important achievements in the 1988-1992 period. In addition, PFRDA has a strong contractual role in the NPS, which gives it regulatory powers through enforcement of contracts. Yet, in its first seven years, PFRDA has failed to emerge as a strong organization

4. **Insurance Regulatory and Development Authority (IRDA):**

- Autonomous apex statutory body which regulates and develops the insurance industry in India
- In an unusual decision, IRDA was placed in Hyderabad, which led to an increased distance from the knowledge and staff quality of Bombay. While IRDA was relatively cutoff from the main Indian discourse on financial policy and regulation, which takes place in Bombay and Delhi, insurance companies had a strong incentive to engage with IRDA. With focused lobbying by insurance companies acting upon relatively weak staff quality, and the lack of the context of the financial discourse of Bombay, IRDA came to increasingly share the world-view of insurance companies
- Through this, IRDA came to increasingly support questionable sales practices and tax subsidies for fund management by insurance companies. The establishment of IRDA, thus, must be chalked up as a failure of institution building

Regulators in areas other than finance

- **Competition Commission of India:** Not statutory**;** all members nominated by the central government; notable cases include BCCI v/s IPL franchises (2013), DLF limited etc.

- **Atomic Energy Regulatory Board:**

– Carries out regulatory functions to ensure that the use of ionizing radiation and nuclear energy in India does not cause undue risk to health and environment in India

- Has constituted a number of advisory committees that deal with nuclear safety, industrial and fire safety, and occupational health
- During a recent visit by an IAEA team, they made recommendations saying that AERB should be given more powers

Education

Tuesday, May 19, 2020 12:32 PM

Education in India

Literacy Rates:

- According to the 2011 census, "every person above the age of 7 years who can read and write with understanding in any languag e is said to be literate"
- **National Literacy Rate (2011 census): 74.07** % *(in comparison, China and most ASEAN nations have literacy levels of 90%+)*
- Males: 81%; Females: 65%
- Youth literacy rate (15-24 years): 81.1% (84.4% among males; 74.4% among females)

Enrolment Rates:

- As of 2011, enrolment rates are 58% for pre-primary, 93% for primary, 69% for secondary, and 25% for tertiary education
- Despite the high overall enrolment rate for primary education, among rural children of age 10, half could not read at a basic level, over 60% were unable to do division, and half dropped out by the age 14

The National Council of Educational Research and Training (NCERT) is the apex body for curriculum related matters for school education in India

Primary Education (Class 1-8)

Article 21A of the constitution declares free and compulsory education between the ages of 6 and 14 years to be a fundamental right; Article 45 declares it as a Directive Principle of State Policy.

As per the ASER 2014 survey**, 96.7% of all rural children between the ages of 6-14 were enrolled in schools**. Visit to a government school on any random day in September, October or November showed that about **71% of enrolled children are attending school on that day.**

While quantitatively India is inching closer to universal education, the quality of its education has been questioned particu larly in its government run school system:

- ASER survey shows that only about 50% of the schools comply with pupil-teacher ratio norms
- Only 48% of children in Standard V and 75% in Standard VIII can study a Standard II level text
- In 2009, two states in India, Tamil Nadu and Himachal Pradesh, participated in the international **PISA exams**, which are administered once every three years to 15 year olds. Both states ranked at the bottom of the table, beating out only Kyrgyzstan in score, and falling 200 points (two standard deviations) below the average for OECD countries. Since then, India has not participated in this exercise.

Private school enrolment has been rising year on year, and was about 30% in 2014. With more than 50% children enrolling in private schools in urban areas, the balance has already tilted towards private schooling in cities; even in rural areas, nearly 20% of the children in 2004-5 were enrolled in private schools.

70-80% of all recognized schools at the elementary stage are government run (or supported), making it the largest provider of ed ucation in the country. However, due to a shortage of resources and lack of political will, this system suffers from massive gaps including high pupi l to teacher ratios, shortage of infrastructure and poor levels of teacher training.

Given the low quality of learning outcomes, motto now needs to be **'every child in school, and learning well'.**

There have been several efforts to enhance quality made by the government. The **District Education Revitalization Programme (DERP)** was launched in 1994 with an aim to universalize primary education. 85% of the DERP was funded by the central government and the remaining 15 % was funded by the states. Under DERP, 1,60,000 new schools were opened, including 84,000 alternative education schools delivering alternative education to approximately 3.5 million children,

This primary education scheme has also shown a high Gross Enrolment Ratio of 93 –95% for the last three years in some states. Significant improvement in staffing and enrolment of girls has also been made as a part of this scheme. The current scheme for universalization of Education for All is the **Sarva Shiksha Abhiyan**, which is one of the largest education initiatives in the world. Enrolment has been enhanced, but the levels of quality rema in low.

Problems:

1. Teacher-related:

- Chronic shortage of regular teachers; resulting gap is sometimes met by hiring contract teachers
- Considerable absenteeism (25%+ on a daily basis)
- Combined with only around 75% student attendance on a given day as shown by surveys, **the combined probability of a student and the teacher being present together is only 50%!**
- Shocking lack of teaching even by teachers who show up

- **Present system of teacher payments in government schools cannot be said to have any built-in system of financial incentives at all**
- Teacher payments are determined by the Pay Commissions, which have perverse incentives for continuously increasing government employee salaries
- It is a well established fact that regular inspections make a difference to teaching standards
- A better system of pupil evaluation and school evaluation will be a great help in enabling parents and others to hold the sys tem accountable

2. Management and Administration related:

- Biggest problem is **lack of accountability** in the delivery of school education
- An oft-cited reason for lack of motivation of public school teachers is low salaries; however, ratio of teacher salary to per-capita GDP in India is over 3; in China and most OECD countries, it is between one and two
- Hence, contrary to popular belief, **public school teachers in India are massively overpaid!**
- Faced with these cost escalations, many states have stopped hiring regular teachers, and have resorted to hiring contract tea chers, who can be paid a fraction of the sum; this impact quality in a big way

- **Evaluation gap:**
- Under the RTE 2010, 'automatic promotion' from one class to the next is guaranteed, irrespective of whether a child learn or not, and board exams are prohibited till 8th standard
- Instead, **a system of 'continuous and comprehensive evaluation' is recommended**, without any clear details; in effect, many states have adopted a 'no evaluation' approach

3. Problems with the Right to Education Act:

- Provisions of the RTE Act of 2010:
- Student-teacher ratio of 30 at primary and 35 at secondary level
- All-weather buildings, one classroom per teacher, kitchens, gender separated toilets, libraries, sports equipment etc. should be available
- No pre-admission screening of children or parents
- No exams till 8th standard
- Private schools will have to take 25% of their students in Grade 01 from the weaker sections, and provide free compulsory education till 8th standard; government will reimburse at the rate of per-child expenditure in public schools
- State governments can set T&Cs of service and salary of teachers

- Problems, according to Panagariya:
- Will create a large-scale *inspector raj* where inspectors will falsely certify that the school meets prescribed norms in exchange for bribes
- Implementation of the provisions might lead to wholesale interference in the admission process by influential politicians and bureaucrats
- **Focus is on input-based measures such as toilets, kitchens etc. rather than learning-level outcomes**
- Falls well short of providing effective measures to force the teachers to perform their duties
- Does away with examinations till 8th standard

4. Private schooling as an alternative
- Inconclusive results for better educational attainments in private schools
- In the absence of competition, especially in rural areas, private schools can become extractive money-making machines

Middle and Secondary Education

Covers students aged 14-18 years. The two halves of secondary education are each an important stage for which a pass certificate is needed, and thus are affiliated by central boards of education under HDR ministry, before one can pursue higher education, including college or pr ofessional courses. Upon successful completion of Higher Secondary, one can apply to higher education under UGC control such as Engineering, Medical, and Business Administration.

A significant new feature has been the extension of SSA to secondary education in the form of the **Rashtriya Madhyamik Shiksha Abhiyan.**

Another notable special programme, the *Kendriya Vidyalaya* project, was started for the employees of the central government of India, who are distributed throughout the country. The government started the *Kendriya Vidyalaya* project in 1965 to provide uniform education in institutions following the same syllabus at the same pace regardless of the location to which the employee's family has been transferred.

Higher Education

Panagariya's opinion:

In world university rankings, no Indian institutes figure in the list of top 200. The **enrolment ratio is only about 22% for higher education**, and is increasing only at a snail's pace.

The central problem with higher education is an **antiquated administrative structure**, where a **virtual monopoly has been granted to the UGC**. It determines curriculums at various levels, degrees to be awarded, and also (indirectly) faculty salaries. Without UGC's approv al, no new universities can be set up/ current private institutions cannot be granted university status (without UGC saying so).

Private colleges are allowed to exist, but they must affiliate themselves to a public university in order to award degrees. E ntry of private universities is difficult, and even when they do enter, they must remain unitary, and cannot affiliate colleges to award degrees/ open satell ite campuses without UGC approval.

A similar story unfolds in case of medical education, with Medical Council of India (MCI) playing the role of UGC.

There exists, thus, a **de-facto license-permit raj in higher education sector**. This must be done away with, and **private sector entry encouraged.**

From the News

- **Choice based Credit System (CBCS)**

CBCS links two key concepts in the dynamics of higher education—choice and assessment. The cafeteria approach, a feature of the now abandoned FYUP, is being reincarnated. Courses are to be sliced and diced into categories like foundation, core and elective and a student can o pt for courses of her choice from

a bouquet of courses.

Infrastructure—both physical and human—even in a well-funded institution like the University of Delhi, is woefully inadequate. Cramped classrooms, shortage of faculty, inadequate library and laboratory facilities etc. will make the scheme unworkable in its spirit.

Planners of this scheme also seem to be conflating choice with uniformity. The scheme envisages a uniform curriculum, provide d on the UGC website, for all universities. The arrogance evident in this riding rough shod over all concepts of academic autonomy is astonishing. Stan dardising curriculum, such that an undergraduate course is taught in the same way at a small state university with scarce resources and infrastructure as the Delhi University will have disastrous consequences. The differentials in the infrastructure and institutional culture will make any such attempt farcica l.

The CBCS proposes to overhaul higher education system in the country in one stroke. The university grants commission (UGC), w hich is a unique example in the world of a regulator and a funding agency rolled into one, proposed that every university (central, state, private, de emed-to-be etc.) move to this system immediately. Of course, given that the UGC funds most of these universities, the proposal should be read as a diktat.

- **UGC and AICTE (All India Council for Technical Education) tussle:**
  - AICTE is the statutory body and a national-level council for technical education, **under Department of Higher Education, Ministry of Human Resource Development**
  - Responsible for proper planning and coordinated development of the technical education and management education system in India
  - The AICTE accredits postgraduate and graduate programs under specific categories at Indian institutions as per its charter
  - **Main difference between UGC and AICTE is that the latter deals only with technical education**
  - UGC is the apex body that approves universities in the country. UGC provide funds for affiliated universities and colleges. The UGC also conducts exams, known as NET, for appointing teachers in colleges
  - The AICTE is only a statutory body, which deals with coordinated development and proper planning of the technical education system in the country. All the Engineering, MBA and Pharmacy colleges are affiliated with the All India Council for Technical Education
  - **UGC's prime function is to look into the financial needs of universities. It then allocates and disburses grants to these uni versities. Other academic functions come only after these functions**
  - On the other hand, the AICTE act gives priority to undertaking surveys in various fields of technical education at all levels. Fund allocation and disbursement comes second to this
  - In its 25 April 2013 judgment the Honorable Supreme Court said "as per provisions of the AICTE Act and University Grants Commission (UGC) Act, the council has no authority which empowers it to issue or enforce any sanctions on colleges affiliated with the universities as its role is to provide guidance and recommendations"
  - This means that **AICTE is now merely an advisory body**; UGC does all the regulatory work, and all technical institutes will need to align themselves with a university

Health

Tuesday, May 19, 2020 12:32 PM

Health

2016 READ: http://www.livemint.com/Opinion/CcE7fkG3behtIalLdiw3oO/Hidden-hunger-and-the-Indian-health-story.html

Although India has done well to be on track to achieve some of the MDGs like reduced MMR and IMR, there are still many infectious diseases which the system has failed to respond to. There is also a growing burden of non-communicable diseases. Incidence of catastrophic expenditure due to healthcare costs is growing and is now being estimated to be one of the major contributors to poverty.

The 12th FYP aims at 'Universal Health Coverage', that assures access to a defined essential range of medicines and treatment at an affordable cost, which should be entirely free for a large percentage of the population.

Read:
https://nagahistory.wordpress.com/2014/03/12/indian-health-care-system/

Spending on Health: Public expenditure on health in India is very low (about 1% of the GDP) and has remained at this fraction for about two decades now. Only 9 countries in the world have a lower ratio. In comparison, China spends 2.7% of its GDP, Latin America 3.8, and the world average is 6.5%.

Overall expenditure on healthcare, on the other hand, stands at 4% of GDP (as against public, which is 1% => private expenditure is 3%, much higher than public).

The total spending on healthcare in 2011 in the country is about 4.1% of GDP. Global evidence on health spending shows that unless a country spends at least 5–6% of its GDP on health and the major part of it is from Government expenditure, basic health care needs are seldom met.

In addition to this low public expenditure on health, what stands out is that public expenditure accounts for only 30% of the total health expenditure (world average: 63%; most EU countries: over 70%). Thus, **India has one of the most commercialized healthcare systems in the world**. This is largely a result of the fact that the country's public health facilities are very limited, and quite often, badly run. Even where the health facilities exist, absenteeism rates among health workers range from 35-58%.

Private health facilities, given their extensive spread, are virtually unregulated. About 80% of all outpatient and 60% of all inpatient care comes from the private sector. About 40% of all private healthcare is provided by informal, unqualified professionals. 72% of all private healthcare enterprises are household-run businesses, who provide health services without hiring a worker on a fairly regular basis.

Malnutrition: No country for which data is available has a higher proportion of underweight children than India, which has **43% of its children as underweight**, as measured by the weight-for-age figures (China- 4%; Sub-Saharan Africa- 20%). There is also a serious issue regarding a lack of improvement over time; for example, the proportion of underweight children was not much lower in 2006 as compared to 1992.

Immunization rates: Immunization rates in India are among the lowest in the world for almost all vaccines (BCG, DPT, Polio, Measles, and Hepatitis B). In fact, outside Sub-Saharan Africa, one has to go to conflict-ravaged countries like Afghanistan, Haiti, and Iraq etc. to find immunization rates that are lower than India's.

Overall, problems with the health sector can be summarized as follows:

1. Health indicators like IMR and MMR continue to lag behind global averages
2. Healthcare spend is growing at a much slower average as compared to the growth of national income
3. **OOPS (out of pocket spending) continues to be high**
4. Infrastructure gap remains substantial (only 1.3 beds per 1000 people in 2010; global average is 2.6, WHO guideline is 3.5. 63% of these beds are in the private sector)
5. Health workforce inadequate; only 0.7 doctors per 1000 people (including nurses, 2.2 / 1000); a high proportion of these are also inactive, so the effective ratio is much lower
6. **About 50% of the existing medical workforce does not practice in the formal health system**
7. Regulatory system has been partially defined, and implementation is still laggard
8. PPPs haven't really taken off

Amidst this backdrop, the NRHM was launched with much fanfare in 2005 by the then new UPA government.

NRHM:

- Run by Ministry of Health and Family Welfare
- It was seen that where human resource capacities are sub-optimal, logistics are weak, and infrastructure is inadequate, all national health programmes were doing badly
- Thus, NRHM was **launched to carry out necessary architectural correction in and strengthen the basic healthcare delivery systems**
- Special focus on 18 states that have weak public health infrastructure/ indicators (north east, UP, Bihar, Uttarakhand, MP, Rajasthan, J&K ('improvement in healthcare infrastructure in demographically backward states and districts')
- **Key components:**

– The thrust of the mission is on establishing a fully functional, **community owned**, **decentralized** health delivery system to ensure **simultaneous action on a wide range of determinants of health** such as water, sanitation, education, nutrition, and social and gender equality

- Provision of a female health activist in each village **(ASHA)**; ASHAs would not be drawing any fixed salary and would be given performance based compensation, a concept which matches closely with recruitment pattern in private organizations
- A village health plan prepared through a local team headed by the Health & Sanitation Committee of the Panchayat
- Strengthening of the rural hospital for effective curative care and made measurable and accountable to the community through Indian Public Health Standards (IPHS)
- Integration of vertical Health & Family Welfare Programmes and Funds for optimal utilization of funds and infrastructure and strengthening delivery of primary healthcare
- Aims at effective integration of health concerns with determinants of health like sanitation & hygiene, nutrition, and safe drinking water through a District Plan for Health
- Seeks decentralization of programmes for district management of health

- **Goals:**

- Reduction in Infant Mortality Rate (IMR) and Maternal Mortality Ratio (MMR)
- Universal access to public health services such as Women's health, child health, water, sanitation & hygiene, immunization, and Nutrition
- Prevention and control of communicable and non-communicable diseases, including locally endemic diseases
- Access to integrated comprehensive primary healthcare
- Population stabilization, gender and demographic balance
- Revitalize local health traditions and mainstream AYUSH
- Promotion of healthy life styles

- **Performance:**

- NRHM has done well in augmenting depleting numbers of health workers in the public health system, and deployed about 20,000 ambulances for free emergency response (helping poor households save on transport costs)
- Provided cash transfers to over a million pregnant women annually
- Across states, major increases in outpatient attendance, and institutional delivery of healthcare
- **However,** gaps between the desired norms and actual levels of achievement were worse in high focus states
- Inefficiencies in fund utilization, poor governance and leakages have been a greater problem in some of the weaker states
- Much of the increase in service delivery was related to select reproductive and child health services and to the national disease control programmes, and not to the wider range of health care services that were needed
- The National Rural Health Mission was intended to strengthen State health systems to cover all health needs, not just those of the national health programme. In practice, however, it remained confined largely to national programme priorities
- All the disease conditions for which national programmes provide universal coverage account for less than 10% of all mortalities and only for about 15% of all morbidities. **Over 75% of communicable diseases are not part of existing national programmes**

National Health Policy 2015:

- Aims to achieve universal health coverage by advocating health as a fundamental right, whose denial will be 'justiciable'
- Aims to increase public expenditure on health from the current 1% of GDP to 2.5% over the next 5 years (public + private is at about 4% currently)
- ***Problems:*** Currently, national programmes provide coverage only with respect to certain interventions such as maternal ailments, which account for less than 10% of all mortalities. Over 75% of communicable diseases are outside their purview and only a limited number of non-communicable diseases are covered
- Even if ratified by the parliament, since health is a state subject, adoption by the different states will be voluntary. Thus, adoption might not be uniform across the country, and that sort of defeats the purpose
- ***Read:***
  http://www.business-standard.com/article/opinion/a-misguided-approach-115010601238_1.html

ICDS:

- India has one of the highest malnutrition rates in the world (43% are underweight, 48% have a lower than average height for age, and 28% infants are born with a low birth weight)
- A child's nutritional status is hard to correct if it is ignored initially; given the extent of illiteracy and counter-productive social norms in many areas in India, care of young children cannot be left to the household alone
- ICDS is the **only national programme aimed at children under 6 years of age**; it aims to provide integrated health, nutrition, and pre-school education services to children under 6 through local anganwadis
- However, ICDS tends to be starved of resources, attention, and political support
- Several people criticize ICDS as a failure, and consider any spending on it to be wasteful
- However, in states where ICDS is managed well, it has shown rather good results. Even in not so well-run states (such as Rajasthan, UP, Chhatisgarh), results aren't all bad

- Results show that regardless of how they are run, AWCs atleast open regularly and have an active 'supplementary nutrition programme'. This means that India has a functional, country-wide infrastructure that makes it possible, in theory, to reach out to children under 6

Amidst these faltering moves towards consolidation of India's public health services, there are also developments towards an ever-greater reliance on private provision of healthcare and private insurance, as can be seen by the championing of **Rashtriya Swasthya Bima Yojana (RSBY):**

RSBY:

- Was initially handled by Ministry of Labour; now handled by Ministry of Health and Family Welfare
- Under this scheme, BPL families are enrolled with private insurance companies
- Government pays the insurance premium, which entitles the beneficiaries to Rs. 30,000 (maximum annual expenditure for a family of five) of healthcare in an institution of their choice, to be picked from a given list
- The scheme is **funded in a 3:1 ratio by the central and state governments**
- RSBY is certainly an improvement over the existing Out-of-Pocket-System (OOPS), whereby the bulk of healthcare is purchased for cash from private providers
- Evaluations show that RSBY has gone some way towards increasing the usage of institutional healthcare by the most deprived sections of the population
- Despite its attractive sounds, there are several reasons to be deeply concerned about this healthcare model:
  - ***Efficiency issues****:* Since the government will pay the insurance premium, neither the insured patients nor the healthcare providers will have any incentive to contain costs
  - ***Accessibility issues:*** Far-flung rural areas are unlikely to have easy access to quality private healthcare, even with insurance
  - ***Distortion issues:*** Commercial health insurance is likely to be biased against preventive healthcare and towards hospital care. This will happen, even though various major diseases such as cancer, diabetes etc. can be best dealt with by early, pre-hospitalization treatment
  - ***Targeting issue*****:** how to identify BPL families?
  - Further, this model gives the government an easy opportunity to shrug its shoulders and further wash its hands off the responsibility of providing public health services
- Other issues included a multiplicity of similar schemes run by various state governments; low awareness among beneficiaries about when to use RSBY, denial of services by healthcare providers etc.
- **Modi government has decided to ban private insurers from RSBY now; only public sector insurers will be allowed under the scheme**

Reforms (Sen and Dreze):

- We need to stop believing, despite all evidence, that India's transition to good healthcare can be easily achieved through private healthcare and insurance; this hasn't happened anywhere in the world, and most developed countries contribute to well over half of the national health expenditure
- **Need a renewed focus on PHCs, village-level health workers, preventive health measures etc.**
- We need to devote much more resources as a proportion of GDP to public expenditure on health

Bhagwati and Panagariya:

- Reforms are necessary in 5 key areas: public health, routine healthcare, care involving hospitalization or outpatient surgeries, human resources, and oversight of the health system

- ***Public Healthcare:***
  - Public healthcare system in India is biased towards allocation of health expenditures in favor of medical services rather than public health; this is a result of the post-independence decision to merge the medical and public health services into a single department; later, medical and public health cadres of services were also merged into a single cadre
  - This has resulted in neglect of public health services in favor of medical services in India; in principle, establishment of a separate agency entrusted with public health services with its own separate budget should help boost the provision of these services
  - Additionally, the government should run regular information campaigns to inform the citizens about benefits of a health local environment
  - Secondly, FSSAI (Food Safety and Standards Authority of India) needs to be made more effective

- ***Routine Healthcare:***
  - This includes ailments such as cold, cough, fever, and minor injuries that are widespread and do not cost very much to treat per episode
  - Panagariya says government has tried to provide healthcare of this kind to people via PHCs for 50-odd years, and there's not much to show for it (only 20% of rural patients seek routine outpatient care at PHCs; rest choose private healthcare providers (many of whom are underqualified)
  - He says best solution is cash transfers

- ***Major Illnesses*** are perfect candidates for insurance. RSBY is on the right track here.

- ***Human Resources:***
  - Many of the unregulated private sector healthcare practitioners (Rural Medical Providers- RMPs) are under-qualified
  - Replacing them all with 'proper' MBBS doctors might not be feasible in the short run, but maybe we can run one-year accreditation courses
  - Simultaneously, need to loosen the stranglehold of the Medical Council of India over new medical institutions in the country

Government Schemes

Janani Suraksha Yojana:

- Was launched in 2004 to promote institutional deliveries as against traditional, home deliveries
- Is a part of NRHM
- Largely as a result of JSY, Maternal Mortality Rate (MMR) has declined from 600 in 1990 to 178 in 2010 (highest declines have been seen in the post JSY period)
- **Janani Shishu Kalyan Yojana** was launched in 2011 to provide service guarantee in the form of entitlements to pregnant women, sick new borns, and infants; facilities include free transport to and from health centers, diet, diagnostics, drugs etc. for free
- **Despite all this,** about 50,000 women die during childbirth annually. A host of socio-economic factors like illiteracy, child marriage, low awareness etc. contribute significantly to this

Regulation:

The Government's regulatory role extends to the regulation of drugs through the **CDSCO**, the regulation of food safety through the office of the **Food Safety and Standards Authority of India**, support to the regulation of professional education through the **four professional councils** and the regulation of clinical establishments by the National Council for the same.

International Relations - Institutions

Tuesday, May 19, 2020 12:39 PM

Important International Agencies, Institutions, and Fora- their Structure and Mandate, and

Bilateral, Regional, and Global Groupings and Agreements Involving India and/or affecting India's interests

Many of these organizations help with the work of establish a 'global governance mechanism', that is, in theory, not limited to any one country

UNITED NATIONS

Structure and Mandate

The UN is composed of 6 principal organs:

1. ***General Assembly:***

- All member nations have equal representation here
- Oversees the budget of the United Nations, appoint the non-permanent members to the Security Council
- Voting on some questions (peace and security, budget, election, admission, expulsion of members etc.) is by a special 2/3rd majority; rest simple majority
- UN-GA has 193 members, most of which are developing countries. They thus are capable of determining the agenda of the UN
- Assembly resolutions are not binding on members
- ***'Uniting for Peace' resolution (377)*:**Although the resolutions passed by the General Assembly do not have the binding forces over the member nations, the Assembly may take action if the Security Council fails to act, owing to the negative vote of a permanent member, in a case where there appears to be a threat to the peace, breach of the peace or act of aggression (i.e., a security council permanent member veto can be overturned in special cases). These have been used during the Suez crisis, and regarding the question of Namibia and South Africa

– The uniting for peace resolution was first used during the Suez crisis, and has been used 8 times since, the eighth time being in case of Zimbabwe on the question of Namibia in 1981

- GA has been criticized for focusing so much on consensus that it was passing watered-down resolutions reflecting 'the lowest common denominator' of widely different opinions

2. ***Security Council***

- Charged with the maintenance of international peace and security
- Powers include establishment of peacekeeping operations, international sanctions, military action authorization
- It can issue **binding resolutions** to member states (only UN agency to wield that power)
- Consists of 15 members; 5 permanent (USA, UK, Russia, China, France), and 10 non-permanent members elected on a regional basis for two-year terms. Only *permanent* members have the veto power
- A 2005 RAND Corporation study found the UN to be successful in two out of every three peacekeeping efforts
- The Security Council's effectiveness and relevance is questioned by some because, in most high-profile cases, there are essentially no consequences for violating a Security Council resolution (Srebrenica, Darfur)
- Japan and Germany, the main defeated powers in WWII, are now the UN's second- and third-largest funders respectively, while Brazil and India are two of the largest contributors of troops to UN-mandated peace-keeping missions. Consequently, they all demand a seat at the table (G4 nations)
- All permanent members, apart from China, support India's bid. It has relaxed its stance in the recent past, but it wants India to reject Japan's candidature
- However, the '/ 'uniting for consensus' countries block the bids of these G4 countries

3. ***Economic and Social Council (EcoSoc):*** Coordinates the 14 specialized agencies (mentioned below), their functional commissions, and 5 regional commissions. Has 54 members

4. ***International Court of Justice (ICJ):***

- This is the primary judicial branch of the UN
- Primary function is to settle disputes between states, and provide advisory opinion on questions of law submitted to it by states, agencies, and the UN-GA
- ICJ has a dual jurisdiction: it decides, in accordance with international law, disputes of a legal nature that are submitted to it by States (jurisdiction in **contentious** cases); and it gives advisory opinions on legal questions at the request of the organs of the United Nations or specialized agencies authorized to make such a request (**advisory** jurisdiction).
- Under contentious jurisdiction, only States may apply to and appear before the International Court of Justice. International organizations, and private persons are not entitled to institute proceedings before the Court. The Court can only deal with a dispute when the States concerned have recognized its jurisdiction. No State can therefore be a party to proceedings before the Court unless it has in some manner or other consented thereto
- The US was, in 1986, told that its covert war against Nicaragua was against international law- after that, the US withdrew from ICJ's jurisdiction, and now considers its opinion valid only on a case-by-case basis
- UNSC is authorized to enforce the court's rulings, but they can be vetoed by permanent members
- No matter what the ruling of the ICJ is, if the state(s) in question do not comply, the UNSC can take coercive action *only* if international peace and security is at stake (this has never happened)
- Organizations, private enterprises, and individuals cannot have their cases taken to the International Court, such as to appeal a national supreme court's ruling. U.N. agencies likewise cannot bring up a case except in advisory opinions (a process initiated by the court and non-binding). This also means that the potential victims of crimes against humanity, such as minor ethnic groups or indigenous people, may not have appropriate backing by a state
- Other existing international thematic courts, such as the ICC, are not under the umbrella of the International Court, and work independently from the UN

5. ***Trusteeship Council:*** Ceased functioning in 1994, just exists on paper

6. ***Secretariat:*** Day to day admin and secretarial task

Aside from these, it encompasses 15 agencies, and several other programs and bodies:

- Specialized agencies (15): FAO, ILO, WHO, IMF, UNESCO, WB and others
- Related organizations: IAEA, CTBTO, WTO, OPCW (Chemical Weapons)
- Secretariats of Conventions: UNCCD (combat desertification), UNFCCC (climate change)

India and the UN

- India was one of the founding members of the UN
- India has contributed soldiers to peacekeeping missions in Korea, Egypt, Congo, Somalia, Lebanon, Rwanda, and South Sudan
- Part of G4 (Brazil, India, Japan, Germany- primary motive is to gain a UNCS permanent seat), G77 (loose coalition of developing countries for better bargaining; now has 134 members, *not* 77)
- India was amongst the most outspoken critics of apartheid and racial discrimination in South Africa, being the first country to have raised the issue in the UN (in 1946)
- In 1953, Vijaylakshmi Pandit was elected the first woman President of the GA
- ***Kashmir issue:*** In 1948, the United Kingdom, which was hoping to avoid being seen as unfriendly to a Muslim state after the creation of Israel, used pressure tactics on its allies France, Canada and the US to support the Pakistani viewpoint that Kashmir's accession to India was disputable and had to be put to the test of a plebiscite. To this day, Indian strategic commentators and critics of Nehru bemoan his cardinal mistake of taking the Kashmir dispute to a UN that was packed with pro-Pakistani partisan powers. Nehru did not appreciate that the UN was an institution of power politics, not an impartial police force
- Security Council members the US, United Kingdom and France tried to prevent India from forcibly absorbing the Portuguese colony of

Goa in 1961. But for the Soviet Union veto in favour of India, Goa would've become a disputed territory like Kashmir

- Following the 1962 conflict with China, India became involved in two wars with Pakistan and entered a period of political instability, economic stagnation, food shortages and near-famine conditions. India's role diminished in the UN which came both as a result of its image and a deliberate decision by the post-Nehru political leadership to adopt a low profile at the UN and speak only on vital Indian interests
- Demand for a permanent seat on the SC (described in SC section above)

FOOD AND AGRICULTURE ORGANIZATION

Structure and Mandate

- This is a body of the UN that leads international efforts to defeat hunger
- In theory, acts as a neutral forum where all nations meet as equals to negotiate agreements and debate policy
- FAO is also a source of knowledge and information, and helps developing countries and countries in transition modernize and improve agriculture, forestry and fisheries practices, ensuring good nutrition and food security for all

INTERNATIONAL CRIMINAL COURT

Structure and Mandate

- The ICC has the jurisdiction to prosecute individuals for the international crimes of genocide, crimes against humanity, and war crimes
- Was created by the **'Rome Statute'**
- Has 122 member countries, **India is not one of them** (neither are China and the USA)
- The ICC is intended to complement existing national judicial systems and it may therefore only exercise its jurisdiction when certain conditions are met, such as when national courts are unwilling or unable to prosecute criminals or when the United Nations Security Council or individual states refer investigations to the Court
- So far, nine investigations have been opened, and 36 individuals have been indicted. All of the official investigations have been in Africa, and hence the ICC has been accused of selective enforcement of western imperialism towards African countries
- **India is *not* a member of the ICC:** The issue of State sovereignty and national interests versus the powers of the ICC, the difficulty of collecting evidence, the problem of finding impartial prosecutors acceptable to the entire international community and the definition of crimes that would come within the ICC's jurisdiction emerged are some of the challenges that India cites for not accepting ICC's jurisdiction
- The Indian position, that India does not need the ICC because it is perfectly capable of dealing with mass crimes, is misleading. The ICC only steps in when the state does not act, or acts in ways that shield perpetrators

INTERNATIONAL MONETARY FUND

Structure and Mandate

- The IMF was established in 1945 with the goal of restructuring the international payments system; in modern times, its primary goal is to ensure macroeconomic stability of individual countries
- Countries contribute funds to a pool through a quota system from which countries with payment imbalances can borrow
- The quota system reflects the country's obligations as being dependent on it's relative size in the global economy; each member's quota also determines its voting rights. Thus wealthier countries have more influence
- In times of need, countries can usually borrow a multiple of their IMF quota
- The organization's objectives are: to promote international economic cooperation, international employment,and exchange-rate stability, including by making financial resources available to member countries to meet balance-of-payments needs
- **SDR:**

http://www.insightsonindia.com/2015/05/22/3-china-is-pushing-hard-for-the-renminbis-inclusion-into-the-special-drawing-right-

sdr-as-one-of-its-reserve-currency-should-it-be-admitted-substantiate-also-examine-how-would-renminbi/

- ***Rationale:*** Private international capital markets function imperfectly and many countries have limited access to financial markets. Such market imperfections, together with balance-of-payments financing, provide the justification for official financing, without which many countries could only correct large external payment imbalances through measures with adverse economic consequences
- ***Policy of Conditionality:*** Low-income countries can borrow on concessional rates, but requires all borrowing countries to tweak and reform their macroeconomic imbalances in the form of policy reform (structural adjustment)
- ***Structural Adjustment Requirements ('Washington Consensus'):*** The World Bank and the IMF together advocate structural reforms to correct fiscal imbalances as a pre-condition to providing loans. Some of these requirements are:Austerity (cutting expenditure) and balanced budgets,removing price controls and state subsidies,privatization, devaluation, trade liberalization, opening up domestic stock markets, and improving governance. These loan conditions ensure that the borrowing country will be able to repay the IMF and that the country will not attempt to solve their balance-of-payment problems in a way that would negatively impact the international economy
- ***Criticisms:***

– Termed by ODI as a 'pillar of global apartheid'

– Given that voting power is determined by financial contributions, the US holds an unnaturally large sway in the IMFs affairs, and the US ideology of neoliberalism and global capitalism has been adopted by the IMF as its working motto

– It doesn't sufficiently make distinctions between countries experiencing adverse macroeconomic situation due to external factors v/s internal factors

– It's policies are anti-development, as austerity measures lead to lower growth, opening up on underdeveloped financial markets can lead to hot money flows etc.

– Policy conditions are inflexible

– Jeffrey Sachs' work shows that the IMF's "usual prescription is budgetary belt tightening to countries who are much too poor to own belts"

India and the IMF

- India hasn't taken any funding from the IMF since1993, and all repayments for past loans were completed in the year 2000
- India has about 2.75% shareholdings, and ranks 17th in voting rights amongst 24 voting constituencies (India, Bangladesh, and Sri Lanka form a single constituency)

WORLD BANK

Structure and Mandate

- The World Bank was created at the 1944 Bretton-Woods conference. Its goal is to provide loans to developing countries for capital programs
- WB group consists of 5 organizations: IBRD, IDA, IFC, MIGA (Multilateral Investment Guarantee Association), and ICSID (International Centre for Settlement of Investment Disputes)
- Unlike the IBRD, the IDA makes loans at almost no interest over much longer periods of time (a 0.5% handling fee is charged) to the poorest countries
- The IFC and MIGA do not make loans to countries; instead, the IFC makes loans to private corporations that have projects in the Third World and former Soviet bloc. This includes major multinational corporations like Shell and Coca-Cola
- MIGA provides political risk insurance to companies that are worried that their assets may be seized by local governments or destroyed in war or other civil disturbances
- Voting power at the bank is based on economic size andcontributions to the International Development Association
- India has about 2.9% of the vote (7th largest)
- Helps the poorest of countries develop context-specific poverty reduction strategies, and consequently directs aid towards these countries based on the strategy
- ***Criticisms:***
- Stieglitz argued that the so-called free market reform policies which the Bank advocates are often harmful to economic development if implemented badly, too quickly ("shock therapy"), in the wrong sequence or in weak, uncompetitive economies
- Many times, the policy requirements associated with the loans are based on theoretical models rather than ground realities

- While the World Bank represents 188 countries, it is run by a small number of economically powerful countries. These countries (which also provide most of the institution's funding) choose the leadership and senior management of the World Bank, and so their interests dominate the bank. It is therefore a pillar of 'global apartheid'
- 'Washington Consensus' (privatization, deregulation, liberalization etc.)ignore equality, employment, and living standards
- Their structural adjustment loans have often focused on reducing inflation and fiscal imbalances by cutting spending on welfare programmes. As a consequence, poor in many countries have faced hardships. By these policies, the World Bank has usurped the power of the indebted countries to determine their own economic policy
- Naomi Klein: Group's credibility was damaged "when it forced school fees on students in Ghana in exchange for a loan; when it demanded that Tanzania privatise its water system; when it made telecom privatisation a condition of aid for Hurricane Mitch; when it demanded labour "flexibility" in Sri Lanka in the aftermath of the Asian tsunami; when it pushed for eliminating food subsidies in post-invasion Iraq"
- For years, the World Bank has been organised along geographic lines (South Asia, Africa and so on). The regions control the budgets, hire the staff and dominate the bank. They are also responsible for its reputation for being divided into silos: experts from different regions rarely talk to each other. In an attempt to break this pattern, the bank is setting up 14 "global practices" (such as finance and infrastructure) which will cut across the regions
- In July 2014, the Bank started to implement a new structure which shifts power and money away from country and regional executives to some 14 centralised thematic "global practices" (water, health etc.). This has led to layoffs, and inevitably, to protests in the ranks
- THE ABOVE TWO POINTS ARE CURRENT AND IMPORTANT

India and the World Bank

- India is member of IBRD, IDA, IFC, and MIGA, but *not* of ICSID
- Main assistance by IBRD has been provided for roads and highways, energy, urban infrastructure (including WATSAN), rural credit, disaster management, and financial services
- The major sectors of IDA assistance is provided are health, education, agriculture and poverty reduction sectors
- A key feature of the current strategy of the World Bank in India is its focus on supporting low-income and special category states, where many of India's poor and disadvantaged live
- The new strategy proposes a lending program of $3 billion to $5 billion each year over 2013-17. 60% of the financing will go to state government-backed projects. Half of this, or 30% of total lending, will go to low-income or special category states
- India represents IFC's single-largest country exposure, and has a portfolio of about $3.6 billion in India

ASIAN DEVELOPMENT BANK

Structure and Mandate

- Established in 1966, and is closely modeled on the World Bank; has a similar weighted voting system where votes are distributed based on member's capital subscriptions
- ADB borrows from international capital markets with its capital as guarantee
- Since the ADB's early days, critics have charged that the two major donors, Japan and the United States, have had extensive influence over lending, policy and staffing decisions
- There has been criticism that ADB's large scale projects cause social and environmental damage due to lack of oversight
- India has about 6% voting rights (4th highest; second highest is USA, even here)

NEW DEVELOPMENT BANK

Structure and Mandate

- Established at the 6th BRICS summit in Fortaleza (Brazil) in 2014
- Unlike the World Bank, which assigns votes based on capital shares, here **each participant country will be assigned one vote**, and **no country will have veto power**

- Countries apart from the BRICS countries will also be members- the bank will have some countries from 'the south' on a rotational basis, on the board of the bank, and they will be allowed to vote
- The bank will allow new members to join but the share of BRICS countries cannot drop below 55%
- The bank will primarily lend for infrastructural projects
- The **Contingent Reserve Arrangement**, which is the twin organization of the bank but is yet to take off, will fulfill an IMF-type role. Every country will be able to tap into a multiple of it's contribution, but anything above30% of that amount will come with IMF-style 'conditions' (some say this shows the inherent fallacy in having such an alternative)
- Some claim that Since the BRICS Bank will be giving project loans, based entirely on the viability of the project itself, it will be unconcerned with the macroeconomic orientation of the government; hence its loans will lack the ideological coercion that the World Bank's loans bring with them
- See this article

ASIAN INFRASTRUCTURE DEVELOPMENT BANK

Read: https://magic.piktochart.com/output/6822027-untitled-infographic?fb_action_ids=10155722853025175&fb_action_types=og.likes&fb_ref=.VZMMgVr3BuU.like

Structure and Mandate

- This is an international financial institution proposed by China
- China will remain the biggest shareholder in the bank (India second largest), and the shares of non-Asian countries will be restricted to 25% of the total
- The purpose of the multilateral development bank is to provide finance to infrastructure projects in the Asia Pacific region. AIIB is regarded by some as a rival for the IMF, the World Bank and the Asian Development Bank (ADB), which the AIIB says are dominated by developed countries like the United States and Japan
- Arguments bandied about for establishment of yet another bank: WB and ADB might be working in Asia already, but the financing deficit is still huge; while ADB and World Bank loans support everything from environmental protection to gender equality, the AIIB will concentrate its firepower on infrastructure
- Critics (such as the US) warn that the China-led bank may fail to live up to the environmental, labour and procurement standards that are essential to the mission of development lenders. China says the AIIB will adopt international best practises. The UK, Germany, and France have now decided to join in as founding members, drawing protests from the USA
- China's decision to fund a new multilateral bank rather than give more to existing ones reflects its exasperation with the glacial pace of global economic governance reform. The same motivation lies behind the New Development Bank established by the BRICS
- Although China is the biggest economy in Asia, the ADB is dominated by Japan; Japan's voting share is more than twice China's and the bank's president has always been Japanese. Reforms to give China a little more say at the International Monetary Fund have been delayed for years, and even if they go through America will still retain far more power. China is, understandably, impatient for change. It is therefore taking matters into its own hands

SOUTH ASIAN ASSOCIATION FOR REGIONAL COOPERATION

Structure and Mandate

- Has existed for about 30 years
- **8 member nations**: Bangladesh, Bhutan, India, Pakistan, Nepal, Sri Lanka, Maldives, and Afghanistan*(note that Myanmar and China are NOT members)*
- At the last summit in Kathmandu, countries agreed on building a regional electricity grid, to facilitate cross-border power trading (India has grid connected with Bhutan, Nepal, and Bangladesh)
- India has also announced the development and launch of a SAARC satellite
- India is by far the most populous, geographically and economically the largest member of the association; note that China is *not* a member
- The official meetings of the leaders of each nation are held annually whilst the foreign ministers meet twice annually

- Secretariat is in Kathmandu; first summit was in Dhaka

- India and Pakistan were skeptical initially about the idea of such an organization:
  - The Indian concern was the proposal's reference to the security matters in South Asia, and feared that SAARC might provide an opportunity for smaller neighbours to renationalize all bilateral issues and to join with each other to gang up against India
  - Pakistan assumed that it might be an Indian strategy to organize the other South Asian countries against Pakistan and ensure a regional market for Indian products, thereby consolidating and further strengthening India's economic dominance in the region

- ***South Asian Free Trade Area (SAFTA):***
  - Under SAFTA, all the SAARC member countries agreed to bring down customs duties on traded goods to zero by 2016
  - Trade liberalization scheme is not being applied for the 'sensitive list'; this will involve common agreement among the contracting countries favoring the least developed contracting countries

- ***Performance of SAARC:***
  - The objective behind formation of SAARC was to emulate the success of other similar regional bodies such as EU in Europe and ASEAN in South East Asia; while the other 'model' organizations have had some success, SAARC has mostly remained a non-starter
  - Despite increase in trade in the last few years, intra-regional trade in goods remains around 5%, and in services, around 0.2% of total official trade (intra-regional trade in ASEAN is 26%; MERCOSUR: 15%)
  - India's trade with the other SAARC countries is only a third of its trade with just China
  - Even this low level of trade among SAARC countries is basically on account of the traditional relationship between some countries such as that between India and Nepal or India and Bhutan, and has not seen any significant improvements because of SAARC
  - **Reasons for non-performance**: Tensions between India and Pakistan, bureaucratic governments in all member countries, lack of connectivity and infrastructure
  - Economic integration is the only way to reduce political friction in the region, which is in the case of most countries centered on hostility to India. Instead, the group is trying the reverse- Nepal is even trying to get China on board to counter India. Both at bilateral levels and in SAARC, member-states want to solve tough political problems before free trade gets underway
  - Most other regional cooperative bodies are characterized by multiple strong economies- in SAARC, India towers well above everyone else
  - Lack of a distinct South Asian identity (Afghanistan thinks it belongs to Central Asia, Pakistan to Middle East, Sri Lanka and Maldives to South East Asia)
  - India needs to be willing to share asymmetric responsibility; however, the under-development of India's own border areas continues to hinder closer economic ties in the region

India and SAARC

- Under SAFTA, there have been some concerns that some sectors of the economy are getting hurt due to more open trade- e.g., plantations sector in Kerala is suffering because of import of coconuts from Sri Lanka, palm oil from Malaysia etc.

There exist a number of other regional blocks within South Asia; along with SAARC, they aid India's 'look east' policy. India's modus operandi seems to be to take active interest in these small blocks, give out a few scholarships to students from these regions, help with running the secretariat etc. However, *it needs to be kept in mind that FTAs will not be beneficial for India in all cases- see ASEAN section*:

1. *BIMSTEC (Bay of Bengal Initiative for Multi-Sectoral Technical and Economic Cooperation):*
   - Third summit was held in March 2014
   - India has pledged to pay a third of the operating expenses of the secretariat in Dhaka
   - Conceived as a bridge-builder between the SAARC and the ASEAN
   - Important for India because it can help bring development to the North –Eastern states
   - India's main focus area here is connectivity (might help counter China)
   - Cooperation is also envisaged in areas such as security, disaster management etc. (apart from trade)

2. *MGC (Mekong-Ganga Initiative):*

- India + South-East Asian countries (Myanmar, Cambodia, Laos, Thailand, Vietnam)

3. BCIM (Bangladesh- China- India- Myanmar Forum for Regional Cooperation)

- The BCIM economic corridor is an initiative conceptualised for significant gains through sub-regional economic cooperation
- The multi-modal corridor will be the first expressway between India and China and will pass through Myanmar and Bangladesh
- The proposed corridor will pass through: China's Yunnan Province, Bangladesh, Myanmar and Bihar in Northern India through the combination of road, rail, water and air linkages in the region
- This interconnectedness would facilitate the cross-border flow of people and goods, minimize overland trade obstacles, ensure greater market access and increase multilateral trade
- India's isolated north east stands to gain with greater cooperation with the other 3 countries

ASSOCIATION OF SOUTH EAST ASIAN NATIONS

Structure and Mandate

- Formed in 1967
- If the ASEAN nations were a single country, their combined economy would rank the 7th largest in the world
- ASEAN seeks economic integration by creating an ASEAN Economic Community (AEC) by end-2015 to establish a common market
- '*The ASEAN Way':* Doctrine that the member countries will largely mind their own business when it comes to internal matters of member countries
- Since 2007, ASEAN countries have gradually lowered their import duties with member nations. The target is zero import duties by 2016. The single market will ensure the free flow of goods, services, investment and skilled labour and the free flow of capital
- ADB is exploring the feasibility of moving towards a currency union; however some obstacles remain. ASEAN currently trades more with other countries (75%) than among its member countries (25%). Therefore, ASEAN economies are more concerned about currency stability against major international currencies, like the US dollar
- *Regional Comprehensive Economic Partnership (RCEP):* Negotiations of RCEP are scheduled to be concluded at the end of 2015. RCEP consists of all ten ASEAN countries plus 6 countries (China, Japan, South Korea, Australia, India, New Zealand), which have trade agreement with ASEAN countries. RCEP covers 45 percent of world population and about a third of world's total GDP

India and ASEAN

- India signed the ASEAN-India FTA in 2009, and the FTA came into effect in 2010. Exports have since been increasing; as of 2011-12, two-way trade between India & ASEAN stood at US$ 79.86 billion, surpassing the US$ 70 billion target
- While there are many benefits to the ASEAN-India FTA, there is concern in India that the agreement will have several negative impacts on the Indian economy:
- It is feared that India will not experience as great an increase in market access to ASEAN countries as ASEAN will in India
- The economies of the ASEAN countries are largely export-driven, maintaining high export-to-GDP ratios, and will look eagerly towards India as a market
- Liberalization of tariffs and a rise in imported goods into India will threaten several sectors of the economy, specifically the plantation sector, some manufacturing industries, and the marine products industry
- As a dominant exporter of light manufacturing products, ASEAN has competitive tariff rates that make it difficult for India to gain access to the industry market in ASEAN countries
- However, given that India shares the concern of many ASEAN countries regarding China's nefarious plans in the South China sea, it is in our strategic interest to remain actively involved with the ASEAN countries

WORLD ECONOMIC FORUM

Structure and Mandate

- This is a Swiss non-profit organization, and is best known for its annual winter meeting in Davos (in Switzerland)
- The meeting brings together some 2,500 top business leaders, international political leaders, selected intellectuals, and journalists to discuss the most pressing issues facing the world, including health and the environment
- It strives to be impartial and is not tied to any political, partisan, or national interests
- Political leaders have been using it as a neutral forum
- WEF is a proponent of globalization, which Noam Chomsky says is a propaganda term: The dominant propaganda systems have appropriated the term 'globalization' to refer to the specific version of international economic integration that they favour, which privileges the rights of investors and lenders, those of people being incidental
- The 'Davos Man' has come to be used as a pejorative term for highly privileged members of the global elite believing that they've made it thus far because of sheer hard work, and increasingly view national governments as a relic of the past, and of no use in today's world apart from ensuring that the interests of these 'stateless elites' are paramount

INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE

Structure and Mandate

- This is an intergovernmental body under the UN
- Produces reports that help the UNFCCC
- The IPCC does not carry out its own original research, nor does it do the work of monitoring climate or related phenomena itself. The IPCC bases its assessment on the published literature
- IPCC has so far produced five assessment reports, the latest one was published in 2014. It said that India's high vulnerability and exposure to climate change will slow its economic growth, impact health and development, make poverty reduction more difficult and erode food security
- Was awarded the Nobel peace prize in 2007
- Criticizers say the IPCC reports are very toned down (given that they need to be approved by all member countries before being published), and outdated

Note: IPCC functions under the UNFCCC, which by itself sounds nothing more than yet another annual conference. Although the UNFCCC has 190+ members, the convention body has no enforcement powers, and doesn't set any targets regarding reduction of carbon emissions by itself. It acts as a convening body for other organizations and frameworks that might do so

UNITED NATIONS FRAMEWORK CONVENTION ON CLIMATE CHANGE (UNFCCC)

Structure and Mandate

- This is an international environment treaty, and the only one with any kind of legitimacy (due to its near-universal membership)
- Negotiated at the 'Earth Summit' (UNCED)in Rio in 1982
- The objective of the treaty is to stabilize greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system
- Article 3(1) of the Conventionstates that Parties should act to protect the climate system on the basis of "**common but differentiated responsibilities**", and that developed country Parties should "take the lead" in addressing climate change
- Developing countries also have to act, but their actions are to be supported by finance and technology transfer. The extent to which developing countries take climate actions depends on the extent to which developed countries meet their commitments on providing financial resources and on technology transfer to developing countries
- This basic CBDR tenet of the Convention is being challenged by the US, EU and other developed nations
- The convention is legally non-binding, but makes provisions for meeting called 'protocols' where negotiating countries can set legally binding limits
- The signatories meet annually to discuss progress
- **1997:** Kyoto protocol set legally binding emission limits on developed countries; this has been not been ratified by the USA (has been, by all other Annex 1 parties, which include industrialized countries and all former soviet centrally-planned economies)

- **2010:** Cancun agreements state that future global warming should be limited to below 2 °C relative to the 'pre-industrial level'; however, no quantified baseline temperatures have been specified
- **2014:** 10th COP, held in Lima-
  - Most notable achievement was China's bilateral pact with the USA, under which US will reduce carbon emission by 26% of 2005 levels, and China will draw at least 20% of its total energy requirement from alternative sources and peak its carbon emissions by 2030
  - However, no further movement on increasing developed country financial assistance to developing countries under the **Green Climate Fund;** it has a corpus of around $10 billion, but performance so far has been not much(aim is to increase the corpus to $100 billion by 2020)
  - As a response, China announced setting up a 'south-south' fund to assist with climate change financing in developing countries **(in keeping with its new global stance, its not contributing to the** existing **Green Climate Fund)**
  - Small island nations such as Tuvalu and Marshall Islands have been pushing for a 'Loss and Damage' clause, which was included in the preamble, but without any explicit commitments
  - A lack of commitment was also evident in the debate over reviews of **Intended Nationally Determined Contributions (INDCs),** which cover all climate-change mitigation initiatives to be taken by a country, and emissions reduction pledges by individual nations based on capacity and responsibility. Countries are to announce these before the 2015 Paris COP
  - The Lima conference highlighted similar divisions to previous meetings and concluded with a text that struck a balance without resolving the main issues
  - The main battle line in 2014 were centered around developed countries trying to dilute the CBDR and equity principles by urging emerging economies to be treated on a similar footing as developed economies; this was stoutly rejected by developing country blocks

COMMONWEALTH OF NATIONS

Structure and Mandate

- This was set up after the second world war (in 1949) by Britain, to maintain close economic ties with its erstwhile colonies that were now rapidly becoming independent
- Consists of 53 countries today, including Mozambique and Rwanda, who were never colonies of Britain
- Not so much a trade block, but an organization that aims to promote democracy, human rights, world peace etc.
- Commonwealth countries in theory do not consider each other 'foreign', and hence send 'High Commissioners' and not 'Ambassadors'
- Several countries (such as Britain, Caribbean islands) grant the right to vote to any commonwealth country citizen residing in their territory to vote in their elections
- In non-commonwealth countries, commonwealth countries can seek assistance at the British embassy, in case their own country does not have consular services in that country
- On occasion, the commonwealth has suspended members for not maintaining democratic governments (such as Nigeria from 1995-1999). Recently, there have been lots of protests demanding that Sri Lanka be dropped, given the war crimes inflicted on Tamils during the civil war
- This threat of potential shaming, and the fact that the organization provides a platform for the smaller countries to talk to the bigger ones, it doesn't really serve any purpose
- An internal report claimed that the organization was growing irrelevant, because it wasn't coming out strongly enough for alleged violations of the implicit code of conduct by member states. The report was quashed, not made public, and it's recommendations weren't accepted

INTERNATIONAL ATOMIC ENERGY AGENCY

Structure and Mandate

- Seeks to promote peaceful use of nuclear energy, and to prohibit its use for any military purpose, including manufacturing of nuclear weapons
- Reports to the UNGA and the UNSC (although it is an independent body)
- The IAEA Board of Governors (which sets most of the policy) consists of 22 member states elected by the General Conference (163

states), and at least 10 member states nominated by the outgoing Board

- IAEA promotes development of peaceful applications of nuclear technology, provide international safeguards against misuse of nuclear technology and nuclear materials, and promote nuclear safety (including radiation protection) and nuclear security standards and their implementation
- Three main areas of work that underpin the IAEA's mission are: Safety and Security; Science and Technology; and Safeguards and Verification
- The IAEA executes this mission with three main functions: the inspection of existing nuclear facilities to ensure their peaceful use, providing information and developing standards to ensure the safety and security of nuclear facilities, and as a hub for the various fields of science involved in the peaceful applications of nuclear technology
- IAEA has been criticized for its advocacy of nuclear power, and also for its sluggish response to the Fukushima disaster
- IAEA recommends safety standards, but member states are not required to comply; it promotes nuclear energy, but it also monitors nuclear use; it is the sole global organization overseeing the nuclear energy industry, yet it is also weighed down by checking compliance with the Nuclear Non-Proliferation Treaty (NPT) these contradictions make its work complicated and slow

NUCLEAR SUPPLIERS' GROUP

Structure and Mandate

- NSG is a multinational body concerned with reducing nuclear proliferation by controlling the export and re-transfer of materials that may be applicable to nuclear weapon development and by improving safeguards and protection on existing materials
- Was **formed in response to the Indian nuclear tests in 1974**, when it was felt that the supply of nuclear materials needed to be curtailed further as non-weapon technology could be easily turned to weapons technology
- Listed items could only be exported to non-nuclear states if certain International Atomic Energy Agency safeguards were agreed to or if exceptional circumstances relating to safety existed
- India might soon become a member of the NSG; it has support from the USA, UK, and France, but China has recently expressed its concern about India's membership (seen to be because of Obama's visit to India, and the joint statement regarding US-India vision for the Pacific Ocean, including the South China Sea)
- **If India is accepted, it'll be the only member country that hasn't signed the NPT**
- The NSG Guidelines prohibit nuclear commerce between NSG members and countries that do not have IAEA full scope safeguards. Nevertheless China concluded an agreement with Pakistan to supply two 340 MWe reactors to Pakistan in late 2008
- Indian admission to NSG should not be used by other interested parties as an excuse to give a free pass to China and Pakistan to carry on their nuclear transfers and legitimize the illegitimate – under the NSG Guidelines - and uncontrolled trade in nuclear reactors and nuclear material being carried out by China. Thus, **given that NSG waiver is already in place, India doesn't stand to gain much from the membership**, but if it does get admitted, China might raise the din to include Pakistan as well
- In 2006, after the civilian nuclear deal between the USA and India, US diplomacy and strong lobbying got the NSG to waive it's conditions so that nuclear material for peaceful purposes could be supplied to India

Other country groupings to control trade in weapons are:

- *Wassenaar Arrangement: Armaments*
- *Australia Group: Chemical Weapons*
- *Missile Technology Control Regime*

INTERNATIONAL ENERGY AGENCY

Structure and Mandate

- IEAis a Paris-based autonomous intergovernmental organization established in 1974 in the wake of the 1973 oil crisis
- The IEA was initially dedicated to responding to physical disruptions in the supply of oil, as well as serving as an information source on statistics about the international oil market and other energy sectors.
- The IEA acts as a policy adviser to its member states, but also works with non-member countries, especially China, India, and Russia
- The Agency's mandate has broadened to focus on the "3Es" of effectual energy policy: energy security, economic development, and environmental protection
- The IEA has a broad role in promoting alternate energy sources (including renewable energy), rational energy policies, and

multinational energy technology co-operation

- Criticisms include the insinuation that that IEA reports are merely political documents, and that the IEA has had an institutional bias towards traditional energy sources and has been using "misleading data" to undermine the case for renewable energy, such as wind and solar
- In the past, the IEA has been criticized by environmental groups for underplaying the role of renewable energy technologies in favour of nuclear and fossil-fuels, and constantly promoting over-optimistic projections of future oil production

ORGANIZATION OF PETROLEUM EXPORTING COUNTRIES

Structure and Mandate

- Was established in 1960, contains 12 members today
- It operates on the principle of unanimity, and one member, one vote
- OPEC was formed in 1960 when the international oil market was largely dominated by a group of multinational companies known as the 'seven sisters'
- The formation of OPEC represented a collective act of sovereignty by oil exporting nations, and marked a turning point in state control over natural resources
- OPEC sets production targets for its member nations and generally, when OPEC production targets are reduced, oil prices increase
- In spite of global oversupply, during the last OPEC conference in 2014 in Vienna, Saudi Oil Minister, blocked the appeals from the poorer OPEC member states, such as Venezuela, Iran and Algeria, for production cuts

INDIAN OCEAN RIM ASSOCIATION

- The IORA is a regional forum, tripartite in nature, bringing together representatives of Government, Business and Academia, for promoting co-operation and closer interaction among them
- The region is vital to global shipping lanes, and thus of immense strategic importance to countries in the region as well as globally
- 20 member states- South Africa, Mozambique, Tanzania, Kenya, Madagascar, Comoros, Mauritius, Seychelles, Iran, Oman, UAE, Yemen, India, Sri Lanka, Bangladesh, Malaysia, Indonesia, Singapore, Thailand, Australia (*Maldives, Pakistan, Saudi Arabia, Somalia, Myanmar are not members)*
- China has invested millions of dollars in recent years building seaports and highways in countries stretching from the Maldives to Sri Lanka that lie on vital shipping lanes through which much of its energy supplies and trade passes
- India, alarmed at the prospect of China building a network of friendly ports in a "String of Pearls" across the Indian Ocean, has stepped up its diplomacy, offering a range of civil and military assistance
- The distinct Indian vision of a security umbrella in the Indian Ocean is reflected in two landmark agreements signed during Modi's visits to Seychelles and Mauritius, whereby New Delhi acquired infrastructure development rights in Assumption Island and Agalega Island in Mauritius and Seychelles - two vital listening posts. By operating and sharing surveillance systems on these islets, India is explicitly helping their host nations "access the moves of unsavoury elements in the region

TRANS PACIFIC PARTNERSHIP

- This is a proposed regional regulatory and investment treaty between 12 countries: (USA, Canada, Mexico, Chile, Peru), Japan, Australia, New Zealand, (Malaysia, Brunei, Singapore, Vietnam)

SHANGHAI COOPERATION ORGANIZATION

- SCO is s a Eurasian political, economic and military organisation which was founded in 2001 in Shanghai by the leaders of China, Kazakhstan, Kyrgyzstan, Russia, Tajikistan, and Uzbekistan
- Main activities: cooperation on security, military activities, and economic and cultural cooperation
- The organization can emerge as the region's answer to NATO, but Russian suspicions of China using this as a ploy to consolidate stronghold in Central Asia have effectively prevented the organization from becoming very effective

- India has observer status in the SCO. Russia has encouraged India to join the organisation as a full-time member, because they see it as a crucial future strategic partner.China has welcomed India's accession to the SCO.India applied for membership in September 2014, and is keen to join because:
  - Member countries are rich in energy resources (both fossil fuels and uranium)
  - The Asian-Eurasian block can play a key role not only in stabilizing Afghanistan post-2014, but also help form a joint platform against terrorism, reducing and minimizing the menace of drug trafficking, and ensuring energy security to all stakeholders
  - Promotion of India's economic integration with the Central Asian republics, which is in line with India's Connect Central Asia policy

ASIA PACIFIC ECONOMIC COOPERATION (APEC)

- **APEC** is a forum for 21 Pacific Rim member economies that promotes free trade throughout the Asia-Pacific region
- It was established in 1989 in response to the growing interdependence of Asia-Pacific economies and the advent of regional trade blocs in other parts of the world; to fears that highly industrialized Japan (a member of G8) would come to dominate economic activity in the Asia-Pacific region; and to establish new markets for agricultural products and raw materials beyond Europe
- India has **requested** membership in APEC, and received initial support from the United States, Japan and Australia. Officials have decided not to allow India to join for various reasons, one of which is that India does not border the Pacific Ocean, which all current members do
- However, India was invited to be an observer for the first time in November 2011
- APEC has long been at the forefront of reform efforts in the area of business facilitation. Between 2002 and 2006 the costs of business transactions across the region was reduced by 6%, thanks to the APEC Trade Facilitation Action Plan (TFAPI)
- **Proposals for Free Trade Area of the Asia Pacific (FTAAP):**

- The proposal for a FTAAP arose due to the lack of progress in the Doha round of WTO negotiations, and as a way to overcome the "noodle bowl" effect created by overlapping and conflicting elements of the copious free trade agreements
- The FTAAP is more ambitious in scope than the Doha round, which limits itself to reducing trade restrictions. The FTAAP would create a free trade zone that would considerably expand commerce and economic growth in the region
- Some criticisms include that the diversion of trade within APEC members would create trade imbalances, market conflicts and complications with nations of other regions
- APEC has also been criticised for promoting free trade agreements that would trammel national and local laws, which regulate and ensure labour rights, environmental protection, and safe and affordable access to medicine
- Whether it has accomplished anything constructive remains debatable, especially from the viewpoints of European countries that cannot take part in APEC and Pacific Island nations that cannot participate but will suffer its consequences
- The development of the FTAAP (if it happens) is expected to take many years, involving essential studies, evaluations and negotiations between member economies

1. North Atlantic Treaty Organization
2. World Health Organization
3. International Labour Organization
4. Organization for Economic Cooperation and Development