

INTRODUCTION

WHAT IS MEANT BY A CONSTITUTION?

The basis of any system of government, democratic or otherwise, is its Constitution. A Constitution is the vehicle of a Nation's progress. It is a legal and social document. In democracy, however, Constitution has a special significance. Still, writers differ as to the precise meaning of the term *Constitution*. The basis of a Constitution lies in a belief in limited government.

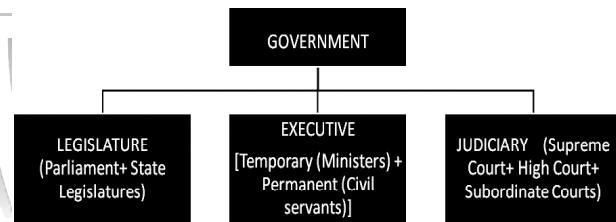
Modern writers view the constitution as a scheme for the arrangement of power-relationship inside a community. According to Prof.K.C. Wheare (*Modern Constitutions*), the basis of a constitution lies in a belief in limited government. Its purpose is to design the institutional fabric of a state by means of which power relationship may be so organised that it would lead to an effectively restrained governmental action. As Friedrich in his work *Constitutional Government and Democracy* observes, "As a political process, the constitution can be described as analogous to the rules of a game insuring fair play. A Constitution is, broadly speaking, a set of rules, written and unwritten, that seeks to establish the duties, powers and functions of the various institutions of government, regulate the relationships between them and define the relationships between the state and the individuals.

The political scientist inquiring into the process of constitutionalising a government must study the technique of "establishing and maintaining effective restraints on political and governmental action."

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Traditionally, there are three main organs of the government of a country-

1. Legislature, which is entrusted with the task of making the laws, amend them or repeal them;
2. Executive, which is entrusted to implement, execute or administer laws; and
3. Judiciary, which is entrusted to interpret and enforce laws and to administer justice.



While these three organs are the principal organs of the government of the country, its Constitution may also provide for the creation of other organs or institutions which it may consider as significant and fit for inclusion in the Constitution. For example, the Constitution of India provides for the setting up of a Finance Commission for distribution of financial resources between the Centre and the States.

CLASSIFICATION OF CONSTITUTIONS

Constitutions can be classified in different ways. These include the following:

- The form of the Constitution and status of its rules (whether the Constitution is written or unwritten).
- The ease with which the Constitution can be changed (whether it is flexible or rigid)
- The content of the Constitution and the institutional structure that it establishes (whether it is monarchical or republican, federal or unitary, or Presidential or Parliamentary)

Written and Unwritten Constitution

A written Constitution is that Constitution of which the provisions have been codified into a



single legal document. (Codification means systematic arrangement of the various provisions of the Constitution.) For example- the U.S. Constitution, the Indian Constitution etc. An unwritten Constitution, on the other hand, stands for the whole body of customs, conventions and usages which have not been systematically documented and yet which are as important regulating rules as those in a so- called written Constitution. For example- Israel, U.K., and the New Zealand have unwritten Constitutions.

Written Constitution	Unwritten Constitution
It is an enacted Constitution (e.g., the Indian Constitution was enacted by a special body known as the Constituent Assembly)	It is an evolved Constitution. (e.g., the British Constitution has evolved since 1215 A.D. i.e., the Magna Carta)
The Constitution is supreme as the Parliament is the creation of the Constitution	The Parliament is supreme as it enjoys the supreme power to make or unmake any law.
It may be either rigid or flexible.	It must be flexible.

Flexible and Rigid Constitution

The classification of Constitutions into flexible and rigid types owes its origin to Bryce's *Studies in History and Jurisprudence*. Bryce made this classification on the basis of the amendment procedure of the Constitution.

A flexible Constitution is that one the provisions of which can be changed easily. The process of amendment generally remains lucid and easy. The amendment bill has to be passed only by the legislature. e.g. The Constitution of Sri Lanka, the Great Britain etc.

A rigid Constitution does not mean that it cannot be amended but amendment in this case is a complex process demanding the cooperation of both the centre and the states. e.g. The US Constitution is a rigid one. After an amendment bill is passed by both houses of Parliament it has to be ratified by 2/3 of the states.

Now the question before us is that whether the Indian Constitution is flexible or rigid?

The framers of the Indian Constitution were keen

to avoid excessive rigidity. They were anxious to have a document which could grow with a growing nation, adapt itself to changing need and circumstances of a growing population. The nature of the amending process envisaged by the framers of our Constitution can best be understood by referring the following observation of Pt. Nehru, "*While we want this Constitution to be as solid and permanent as we can make it, there is no permanence in the Constitution. There should be certain flexibility. If you make anything rigid and permanent, you stop the nation's growth.... In any event, we could not make this Constitution so rigid that it cannot be adapted to changing conditions. When the world is in a period of transition what we may do today may not be wholly applicable tomorrow*".

But the framers of the Indian Constitution were also aware of the fact that if the Constitution was so flexible it would be a playing of the whims and caprices of the ruling party. They were, therefore, anxious to avoid flexibility of the extreme type. Hence, they adopted a middle course. It is neither too rigid to admit necessary amendments, nor flexible for undesirable changes.

For the purpose of amendment the various Articles of the Constitution are divided into three categories:

- Amendment by Simple Majority:** Provisions of the Constitution that can be amended by the Parliament by simple majority as that is required for passage of any ordinary law. The amendments contemplated in Articles 3, 5, 169 and 239A, can be made by simple majority.
- Amendment by Special Majority:** Articles of the Constitution which can be amended by special majority as laid down in Article 368. All Constitutional amendments, other than those referred above, come within this category and must be effected by a majority of the total membership of each House of Parliament as well as by a majority of not less than 2/3 of the members of that House Present and Voting.
- By Special majority and ratification by states:** Provisions of the Constitution which require, in addition to the majority mentioned above, ratification by not less than ½ of the State legislatures. The states have been given an important voice in the



amendment of these matters. The following provisions of the Constitution require such ratification by the States:

- (1) Election of the President- Articles 54 and 55.
- (2) Extent of the Union and the State executive powers- Articles 73 and 162.
- (3) Articles dealing with Supreme Court, High Courts in the States and Union Territories- Articles 124 to 147, 214 to 231 and 241.
- (4) Distribution of legislative powers between the Centre and the States- Chapter I of Part XI, Articles 245 to 255.
- (5) Any list mentioned in Schedule VII.
- (6) Representation of the States in the Parliament.
- (7) Article 368.

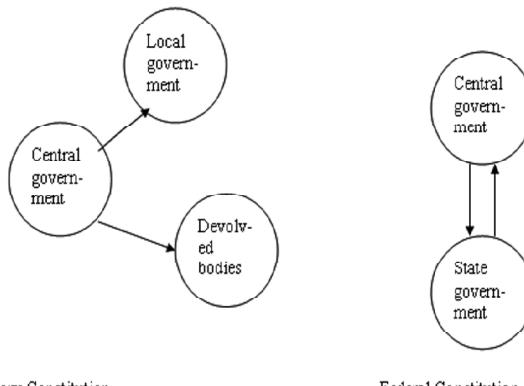
Rest all the provisions of the Indian Constitution are flexible in nature i.e., they can be amended by the Parliament alone. Thus we can conclude that *Indian Constitution is largely flexible with some rigid provisions.*

UNITARY AND FEDERAL CONSTITUTION

All modern states are divided on a territorial basis between central (national) and peripheral (regional, provincial or local) institutions. The nature of such divisions varies enormously. These differences include the Constitutional framework within which centre- periphery relationships are conducted, the distribution of functions and responsibilities between the levels of governments.

A Constitution is known as unitary if it sets up one central government in which all powers of government are concentrated. The provincial governments, under such a Constitution operate as subordinates to the central government and enjoy only such powers which may be delegated by the central government to them.

A Constitution is Federal if it provides for the division of powers between the central and provincial governments. The provincial governments are not subordinate to the central government.



There is a difference of opinion amongst the Constitutional jurists about the nature of the Indian Constitution. One view is that it is a quasi-federal Constitution and contains more unitary features than federal. The other view is that it is a federal Constitution. The view of the framers of the Constitution is that the Indian Constitution is a Federal Constitution. Dr. Ambedkar, observed thus, "*I think it is agreed that our Constitution notwithstanding the many provisions which are contained in it whereby the Centre has been given powers to override the Provinces nonetheless, is a Federal Constitution*".

But some Constitutional jurists hesitate to characterize the Indian Constitution as Federal. It is, therefore, necessary to ascertain firstly, what are the essential characteristics of a federal Constitution, and secondly, to examine whether our Constitution possesses those characteristics.

Essential Characteristics of a Federal Constitution

Distribution of Powers: The distribution of powers is an essential feature of a federal system. Federalism means the distribution of the powers of the State among a number of co-ordinate bodies each originating in and controlled by the Constitution. The basis of such distribution of powers is that in matters of national importance, in which a uniform policy is desirable in the interests of the units, authority is entrusted to the Union, and matters of local concern remain with the States.

Supremacy of Constitution: A federal State derives its existence from the Constitution. Hence, every power, executive, legislative, or judicial whether it belongs to the nation or to the Individual State is subordinate to and



<p>controlled by the Constitution. The Constitution constitutes the supreme law of the land.</p> <ul style="list-style-type: none"> <input type="checkbox"/> A Written Constitution: A federal Constitution must be necessarily a written Constitution. The foundations of a federal State are complicated contracts. It will be practically impossible to maintain the supremacy of the Constitution, unless the terms of the Constitution have been reduced into writing. The supreme Constitution is essential if government is to be federal; the written Constitution is essential if federal government is to work well. To base an arrangement of this kind upon understanding or conventions would be certain to generate misunderstandings and disagreements. <input type="checkbox"/> A Rigid Constitution: A natural corollary of a written Constitution is its rigidity. In a rigid Constitution the procedure for amendment is very complicated and difficult. This does not mean that the Constitution should be legally unchangeable. It simply means that the power of amending the Constitution should not remain exclusively with either the Central or State governments. The supremacy of the Constitution can only be maintained if the method of amendment is rigid. <input type="checkbox"/> An Independent and impartial judiciary: The very nature of a federal State involves a division of powers between the Central and the State governments under the framework of the Constitution. It is, therefore, essential to maintain this division of powers between the two levels of governments. This must be done by some independent and impartial authority above and beyond the ordinary bodies whether federal or state legislatures existing under the Constitution. In a federal polity, the judiciary has the final power to interpret the Constitution. <p>The Indian Constitution possesses all the essential features of a true federation as discussed above. The Constitution establishes a dual polity, a system of dual government with the central government at one level and the state government at the other. The Constitution is written and supreme. The provisions of the Constitution which are concerned with federal principles cannot be altered without the consent of the majority of the States.</p>	<p>There is a Supreme Court to arbitrate the disputes that may arise between the Union and the States or between the states themselves and finally interprets the Constitution.</p> <p>But as mentioned earlier, some scholars hesitate to characterize the Indian Constitution as truly federal because according to them in certain circumstances the Constitution empowers the centre to interfere in the State matters and thus place the state in subordinate position. They therefore, use such expressions as 'quasi-federal', 'unitary with federal features', or 'federal with unitary features'. In the opinion of Prof. K.C. Wheare: "The Constitution establishes a system of government which is almost quasi-federal..... a unitary state with subsidiary federal features rather than a federal state with subsidiary unitary features." Jennings has characterized it as "a federation with strong centralizing tendency".</p> <p>Let us now examine what are those provisions of the Constitution which are produced in support of the above argument and how they modify the strict application of the federal principle. In this regard it can be pointed out that the Indian Constitution contains some distinctive features, the features which are different from U.S.A and such other States which are considered as role models for the federal States.</p>
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Distinctive Features of Indian Constitution

- Single Constitution:** Unlike the U.S. which is considered as role model of federalism, India has a single Constitution. The states do not have separate Constitutions.*
- Single Citizenship:** There is single citizenship in India. There is no dual- citizenship in our country. We all, irrespective of the state in which we are living, are the citizens of India.*
- Appointment of Governors-** The Governors of the States is appointed by the President and are answerable to him. Apart from this, there are provisions in the Constitution under which the Governor is required to send certain State laws for the assent of the President (Article 200). The President has the power to veto those state laws. But whatever be the letter of the Constitution, in practice there are not many examples where the President has vetoed the state laws. The only example has been the Kerala Education Bill. But here also



the Centre obtained the advisory opinion of the Supreme Court before sending back to the state legislature for suitable amendments in the light of the Court's opinion.

- Parliament's power to form new states and alter boundaries of the existing states:** Under Article 3 of the Constitution the Parliament has been authorized to alter the boundaries or change the name of states. The very existence of the States thus depends upon the will of the Union Government. The provisions in Article 3 take into account the fact that the Constitution contemplated readjustment of the territories of the constituent states which might arise in future.
- Schedule VII depicts that the Union has jurisdiction over the more subjects (97) and the most important subjects. In case of a concurrent list both the Union & the States have equal legislative jurisdiction but in case both make a law on the same subject mentioned in the Concurrent list it is the Union law which prevails.
- Residuary list:** There are certain matters which have not been mentioned in any of the three lists. Any subject not included in the three lists is supposed to be in an imaginary list i.e. *the residuary list*. The power to make laws on the residuary list rests with the Union. In the USA & Australia the power to make laws on residuary list lies with the States. In Canada it lies with the Union.
- The Parliament has exclusive legislative jurisdiction over the subject mentioned in the Union List and the State legislature ordinarily enjoy jurisdiction over the state list but under 5 special conditions the Parliament can legislate over the state list:

First Condition

Under Article 249 the Rajya Sabha may pass a resolution where it can authorize the Parliament to legislate on one or more subjects mentioned in the state list on the grounds of national interest but this law will not be valid for more than one year. But the Rajya Sabha by passing the same resolution again can extend it for another one year. It may be renewed as many times necessary but not exceeding a year at a time.

Second Condition

Under Art 250 during the proclamation of National emergency the Parliament assumes concurrent legislative jurisdiction over each & every subject of the state list. The State list is converted into Concurrent list. Such a law, however, shall cease to have effect on the expiry of six months after the resolution has ceased to operate.

Third Condition

Under Article 252 the Parliament has the power to legislate for two or more States by consent and consent of such legislation by any other State. The article makes it possible for the Parliament to make such laws relating to state subjects as regards such States whose legislatures empower the Parliament in this behalf by resolutions.

Fourth Condition

Article 253 empowers the Parliament to make any law for the whole or any part of the territory of India for implementing international treaties and agreements.

Fifth Condition

Under Article 356 during Presidents rule, the State government is dismissed, the State legislature is either suspended or dissolved and the legislative power of the State legislature could be entrusted to the Parliament by the President.

- Administrative Directives:** - In accordance with articles 256 and 257 of the Constitution the Centre can give directions to a State as may appear to the Union government to be necessary. It may also provide directions to a State as to the Construction and maintenance of means of Communication, the measures to be taken for the protection of railways within the State. According to article 365, if any State fails to comply with or to give effect to any directions given in the exercise of the executive power of the Union under any of the provisions of this Constitution, it shall be lawful for the President to hold that a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of this Constitution.



- The officers of All India Services (Indian Administrative Service, Indian Police Service and Indian Forest Service), are appointed by the Union but they serve in the States. They also draw their salary from the state exchequer.

Do the above discussed provisions modify the federal character of the Indian Constitution?

It may be that we deviated in respect of certain matters from the strict federalism as operating in the U.S.A. or Switzerland, but the reasons are obvious. The Indian Constitution makers defined the Indian federal Structure not with an eye on theoretical but on practical considerations in designing federalism. Under the impact of world wars, international crisis, scientific and technological progress and developments and the emergence of the ideal of social welfare State, the whole concept of federalism had been undergoing a change for sometime throughout the world. There are centralizing tendencies in evidence in every federation and whether it is in U.S.A or in Australia, strong and powerful national governments have emerged in every federation. The framers of the Indian Constitution took note of these tendencies and kept in view the practical needs of the country designed on federal structure not on the footing that it should conform to some theoretical, definite or standard pattern, but on the basis that it should be able to sub serve the need of the vast and diverse country like India. The Indian Constitution, therefore, constitutes a new bold experiment in the area of federalism.

In short, it may be concluded that the Constitution of India is neither purely federal nor purely unitary. In the words of Prof. Alexandrowicz "the Indian federation is a case *Sui Generis*" i.e., a federation of its own type i.e. is a federal Constitution with strong unitary features. It enshrines the principle that in spite of federalism, the national interest ought to be paramount. Thus, the Indian Constitution is mainly federal with unique safeguards for enforcing national unity and growth.

DEMOCRACY

Democracy is derived from the Greek words- Demos (People) and Kratia (Rule). Thus democracy means *rule of the people*. Democracy is that

institutional arrangement which ensures free participation of the people in the process of controlling ultimate political power. In a democracy the people control the government. But this does not imply rule by all the people or by the majority. By counting the heads of the adherents we cannot discover the essence of democracy. The rule by all the people is a political myth because unanimous decision is impossible. Nor is majority rule the essence of democracy. Even a ruthless despot may destroy the democratic institutions, and yet may enjoy the support of the majority of the people. "Democracy," as MacIver observes, "is not a way of governing, whether by majority or otherwise, but primarily a way of determining, who shall govern and, broadly, to what ends.' Freedom of choice, thus, is the basic core of democracy. The people must be given the freedom to choose who shall govern. This question can be decided only by referring it to "public opinion and accepting on each occasion the verdict of the polls."

Hence, democracy is traditionally associated with co-existence of ideas, with the right to differ, and with the resolution of ideological differences not by bullet but by ballot. Through election one idea becomes triumphant, and this is the ruling idea of the community. Thus the political authority, through the operation of democracy, becomes responsive to the dominant idea of the community. It ensures in democracy the community's control over the government.

Political Parties are the vehicles of ideas. Plurality of ideas to which democracy is by its nature hospitable, involves plurality of parties. Parties are the instruments through which ideas arising in the area of society pour into the area of the state. Parties are the principal media through which the ideas "flow from their "social reservoir into the system of the state and turn the wheels of the political machinery in that system." Thus parties act as the bridge between social thought and political decision in democracy.

It follows from the aforesaid discussions that *the necessary conditions for a democratic regime are*

- Presence of more than one political party.
- Regular elections.
- Universal adult suffrage.
- Rights and liberties to the citizens



- Majority rule with respect for minority rights.
- Constitutional government.
- Freedom of Press
- An independent judiciary
- Political tolerance.

Democracy as an ideal refers not only to a democratic government but also to a democratic society. Democracy is associated with peaceful competition of ideas. This requires the dominance of reason in human relations. The rule of force is hostile to the spirit of democracy, for it is destructive of reason. Hence, democratic ideal is a society where reason dominates. In a truly democratic society every man feels himself capable of contributing something unique to the common flow of ideas and feelings by participating in the process of discussion. Democracy as an ideal is a society of equals in the sense that each is an integral and irreplaceable part of the whole. Moreover, democracy implies moral responsibility of each for his action. Any action of the government in a democracy means an action by the chosen representatives of the people and hence, in ultimate analysis, it involves the moral responsibility of the people themselves. Democracy as an ideal condemns a system of privilege based on birth and wealth. Its premise is that in a social climate of equal opportunities the differences in mental and moral equipment of men can best come out. Hence, democratic ideal does not postulate a dead level of uniformity; it is the vision of a society of diverse personalities. A democratic society is characterized by freedom, equality, active and intelligent citizens, each man choosing his own way of life for himself and willing that others should choose theirs.

DICTATORSHIP

The institution of dictatorship which was prevalent in ancient Rome is basically different from its modern form. In Rome the dictatorship was a temporary political expedient to tide over an emergency. It was never considered to be a permanent political institution. When the emergency passed off, the dictator had to relinquish the seat of power. Secondly, the Roman dictatorship did never involve a break from legality. It was a constitutionally sanctioned

political authority. As MacIver observes, "The Roman dictatorship was a constitutional device under which the constitution was suspended during a grave crisis of the state."

In contrast, modern dictatorship is an extra-constitutional development, and it involves a sharp break from legality and tradition. It is the product of force. Force creates as well as sustains it. Secondly, modern dictatorship is permanent in its nature. The effort of a modern dictator to remain in power permanently through a planned process of physical and psychological coercion distinguishes modern dictatorship from the traditional. Thirdly, a modern dictator rests his power on the active support of an associated class. He rules with the active assistance of an organised political party.

Certain advantages are claimed for dictatorship. In a democracy parties create cleavages in the society by magnifying the points of disagreement. This is prejudicial to the cause of national unity. Contrarily, in a dictatorship only one party exists, and hence, the national life does not suffer from any inner split. By eliminating the sources of conflict dictatorship lays down a sound foundation for national solidarity.

Dictatorship admirably answers the needs of an emergency. To effectively meet an emergency calls for quick decision and immediate mobilisation of all social forces. This requires a fast-moving unified political machinery. Under a dictatorship, because of unity of power, a decision can be easily and quickly reached without a long-drawn-out discussion. Its political machinery can immediately be geared to the requirements of an emergency.

Historically, dictatorship is associated with administrative efficiency and quick economic progress. With total control over individual life, it becomes easy to accelerate the rate of economic and technological growth in dictatorship. The spectacular economic and scientific development in Soviet Russia during the last four decades speaks eloquently of the efficiency of the dictatorial system. However, this should not be generalised. A number of dictatorships are notorious for inefficient and corrupt rule. What is, therefore, important is not the ambit of power, but its use for developmental purposes.



The dictatorial state is a one-idea state which is necessarily hostile to ideological multiformity. Freedom of thought is allowed only within the rigid frame of the ruling ideology. Every individual must conform to the standards set by the state. The denial of freedom of thought amounts to the denial of the opportunity for articulate expression of personality in the absence of which man cannot realise his best self.

Power is a mixture of force and consent. Since the source of power in dictatorship is not consent of the people, it has to maintain power through continuous employment of force. Force without consent becomes misdirected, and ultimately shakes the foundation of the state.

PARLIAMENTARY FORM OF GOVERNMENT

A Parliamentary system of government is one in which the government governs in and through the legislature, thereby fusing the legislative and executive branches. Although they are formally distinct, the legislature and the executive are bound together in a way that violates the doctrine of separation of powers. The main features of this form of government are as follows:

- Governments are formed as result of legislative elections, based on the strength of the party representation.
- The members of the government are drawn from the legislature, usually from the leaders of the party or parties that have majority control.
- The government is responsible to the legislature, usually the lower house.

The head of the State (President or a monarch) is a mere nominal head whereas the head of the government, i.e., the Prime Minister is the real head.

PRESIDENTIAL FORM OF GOVERNMENT

A Presidential form of government is characterized by a Constitutional and political separation of powers between the legislative and the executive branches of government. Executive power is thus vested in an independently elected President who is not directly accountable to or removable by the legislature. The main features of this form of government are as follows:

- The executive and the legislature are separately elected, and each is invested with a range of independent Constitutional powers.
- The role of the head of state and head of government are combined in the office of the Presidency.
- Executive authority is concentrated in the hands of the President and the cabinet and the ministers are merely the advisors responsible to the President.
- Electoral terms are fixed. The President can neither dissolve the legislature nor be dismissed by it (except, possibly through impeachment).

TYPES OF MAJORITIES UNDER THE INDIAN CONSTITUTION

- Simple majority:** It is more than fifty percent of the members present and voting in the House. Simple majority is required for the passage of- confidence motion, no-confidence motion, adjournment motion, censure motion, money bill, ordinary bill, financial bill, vote of thanks on the President's address. It is to be noted that wherever there is no mention of any majority in the Constitution, simple majority is required.
- Absolute Majority:** It is more than fifty percent of the total strength of the House. This majority is not used anywhere independently.
- Effective majority:** It is more than fifty percent of the effective strength of the house. (Effective strength = strength of the House - the vacancies). Effective majority is required for the passage of a resolution for the removal of the Vice-President in the Rajya Sabha, removal of the Speaker and Deputy Speaker of the Lok Sabha and Vidhan Sabha (Legislative Assembly), Deputy chairman of Rajya Sabha, Chairman and Deputy Chairman of Vidhan Parishad (Legislative Council).
- Special Majority:** There are three types of Special majorities mentioned under the Constitution:
 1. **Under Article 249:** It is not less than two-third of the members present and voting. It is the majority by which the Rajya Sabha may authorize the Parliament to



make a law on any subject mentioned under the state list on the ground of national interest or it can authorize the Parliament to create a new All India Service or abolish an existing one.

2. **Under Article 368:** Two conditions are to be fulfilled: firstly, not less than two-third of the members present and voting and secondly, more than fifty percent of the total strength of the House. This majority is required for amendment of the Constitution, for the passage of

resolutions for the removal of the judges of the Supreme Court and High Courts, the Chief Election Commissioner and the Comptroller and Auditor General of India. This majority is also required in the State Legislative Assemblies for the passage of resolution for the creation or abolition of Legislative Council in the State.

3. **Under Article 61:** It is not less than two-third of the total strength of the House. This majority is required for the Impeachment of the President.

