RV College of Engineering®, Bengaluru – 59
(Autonomous Institution affiliated to VTU, Belagavi)
Department of Industrial Engineering and Management

18HS71 - Constitution of India and Professional Ethics

Unit – II

Directive Principles of State Policy- Significance of Directive Principles of State Policy, Fundamental Duties in the Constitution of India; Union Executive- President and State Executive- Governor; Parliament & State Legislature; Council of Ministers; Anti-defection law; Union and State Judiciary; Emergency provisions; Elections, Administrative tribunals. Human Rights & Human Rights Commission. **10 Hrs**

Directive Principles of State Policy (DPSP

Articles 36-51 under Part-IV of Indian Constitution deal with Directive Principles of State Policy (DPSP). They are borrowed from the Constitution of Ireland, which had copied it from the Spanish Constitution. This article will solely discuss the Directive Principles of State Policy, its importance in the Indian Constitution and the history of its conflict with Fundamental Rights.

What are the Directive Principles of State Policy?
The Sapru Committee in 1945 suggested two categories of individual rights. One being justiciable and the other being non-justiciable rights. The justiciable rights, as we know, are the Fundamental rights, whereas the non-justiciable ones are the Directive Principles of State Policy.
DPSP are ideals which are meant to be kept in mind by the state when it formulates policies and enacts laws. There are various definitions to Directive Principles of State which are given below:

- They are an 'instrument of instructions' which are enumerated in the Government of India Act, 1935.
- They seek to establish economic and social democracy in the country.
- DPSPs are ideals which are not legally enforceable by the courts for their violation.

Directive Principles of State Policy – Classification
Indian Constitution has not originally classified DPSPs but on the basis of their content and direction, they are usually classified into three types-

- **Socialistic Principles**,
- **Gandhian Principles** and,
- **Liberal-Intellectual Principles**.

The details of the three types of DPSPs are given below:

DPSP – Socialistic Principles

Definition: They are the principles that aim at providing social and economic justice and set the path towards the welfare state. Under various articles, they direct the state to:

Article 38	Promote the welfare of the people by securing a social order through

	justice—social, economic and political—and to minimise inequalities in income, status, facilities and opportunities
Article 39	Secure citizens: • Right to adequate means of livelihood for all citizens • Equitable distribution of material resources of the community for the common good • Prevention of concentration of wealth and means of production • Equal pay for equal work for men and women • Preservation of the health and strength of workers and children against forcible abuse • Opportunities for the healthy development of children
Article 39A	Promote equal justice and free legal aid to the poor
Article 41	In cases of unemployment, old age, sickness and disablement, secure citizens: • Right to work • Right to education • Right to public assistance,
Article 42	Make provision for just and humane conditions of work and maternity relief
Article 43	Secure a living wage, a decent standard of living and social and cultural opportunities for all workers
Article 43A	Take steps to secure the participation of workers in the management of industries
Article 47	Raise the level of nutrition and the standard of living of people and to improve public health

DPSP – Gandhian Principles

Definition: These principles are based on Gandhian ideology used to represent the programme of reconstruction enunciated by Gandhi during the national movement. Under various articles, they direct the state to:

Article 40	Organise village panchayats and endow them with necessary powers and authority to enable them to function as units of self-government
Article 43	Promote cottage industries on an individual or co-operation basis in rural areas
Article 43B	Promote voluntary formation, autonomous functioning, democratic control and professional management of co-operative societies
Article 46	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 47	Prohibit the consumption of intoxicating drinks and drugs which are injurious to health
Article 48	Prohibit the slaughter of cows, calves and other milch and draught cattle and to improve their breeds

DPSP – Liberal-Intellectual Principles

Definition: These principles reflect the ideology of liberalism. Under various articles, they direct the state to:

Article 44	Secure for all citizens a uniform civil code throughout the country
Article 45	Provide early childhood care and education for all children until they complete the age of six years
Article 48	Organise agriculture and animal husbandry on modern and scientific lines
Article 49	Protect monuments, places and objects of artistic or historic interest which are declared to be of national importance
Article 50	Separate the judiciary from the executive in the public services of the State
Article 51	• Promote international peace and security and maintain just and honourable relations between nations • Foster respect for international law and treaty obligations • Encourage settlement of international disputes by arbitration

Directive Principles of State Policy's notes about its classification is important for UPSC 2021 and aspirants should learn these with articles mentioned.

What are the new DPSPs added by the 42nd Amendment Act, 1976?

42nd Amendment Act, 1976 added four new Directive Principles in the list:

S.No	Article	New DPSPs
1	**Article 39**	To secure opportunities for the healthy development of children
2	**Article 39A**	To promote equal justice and to provide free legal aid to the poor
3	**Article 43A**	To take steps to secure the participation of workers in the management of industries
4	**Article 48A**	To protect and improve the environment and to safeguard forests and wildlife

Facts about Directive Principles of State Policy:

1. A new DPSP under **Article 38** was added by the 44th Amendment Act of 1978, which requires the State to minimise inequalities in income, status, facilities and opportunities.
2. The 86th Amendment Act of 2002 changed the subject-matter of **Article 45** and made elementary education a fundamental right under **Article 21A**. The amended directive requires the State to provide early childhood care and education for all children until they complete the age of 14 years.
3. A new DPSP under **Article 43B** was added by the 97th Amendment Act of 2011 relating to co-operative societies. It requires the state to promote voluntary formation, autonomous functioning, democratic control and professional management of co-operative societies.
4. The Indian Constitution under **Article 37** makes it clear that 'DPSPs are fundamental in the governance of the country and it shall be the duty of the state to apply these principles in making laws.'

Criticism of Directive Principles of State Policy

As a point of debate, the following reasons are stated for the criticism of Directive Principles of State Policy:

1. It has no legal force
2. It is illogically arranged
3. It is conservative in nature
4. It may produce constitutional conflict between centre and state

What is the conflict between Fundamental Rights and DPSPs?
With the help of four court cases given below, candidates can understand the relationship between Fundamental Rights and Directive Principles of State Policy:

Champakam Dorairajan Case (1951)
Supreme Court ruled that in any case of conflict between Fundamental Rights and DPSPs, the provisions of the former would prevail. DPSPs were regarded to run as a subsidiary to Fundamental Rights. SC also ruled that Parliament can amend Fundamental Rights through constitutional amendment act to implement DPSPs.

Fundamental Duties in India - Article 51A

Introduction to 11 Fundamental Duties in India
The fundamental duties which were added by the 42nd Amendment Act of the Constitution in 1976, in addition to creating and promoting culture, also strengthen the hands of the legislature in enforcing these duties vis-a-vis the fundamental rights.

42nd Amendment Act of 1976 added 10 Fundamental Duties to the Indian Constitution. 86th Amendment Act 2002 later added 11th Fundamental Duty to the list. Swaran Singh Committee in 1976 recommended Fundamental Duties, the necessity of which was felt during the internal emergency of 1975-77.

The Fundamental Duties are dealt with Article 51A under Part-IV A of the Indian Constitution. This article will mention in detail the 11 Fundamental Duties and their importance in India.

The list of 11 Fundamental Duties under article 51-A to be obeyed by every Indian citizen is given in the table below:

Sl. No	11 Fundamental Duties
1.	Abide by the Indian Constitution and respect its ideals and institutions, the National Flag and the National Anthem
2.	Cherish and follow the noble ideals that inspired the national struggle for freedom
3.	Uphold and protect the sovereignty, unity and integrity of India
4.	Defend the country and render national service when called upon to do so
5.	Promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities and to renounce practices derogatory to the dignity of women
6.	Value and preserve the rich heritage of the country's composite culture
7.	Protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures
8.	Develop scientific temper, humanism and the spirit of inquiry and reform
9.	Safeguard public property and to abjure violence
10.	Strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement
11.	Provide opportunities for education to his child or ward between the age of six and fourteen years. **This duty was added by the 86th Constitutional Amendment Act, 2002**

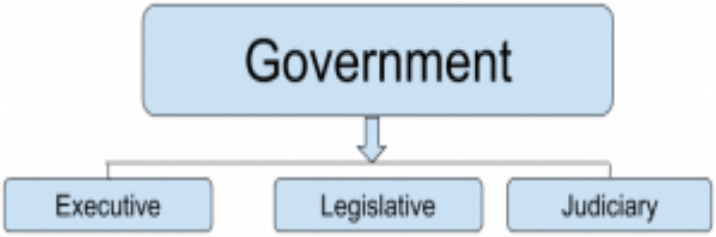
Importance of Fundamental Duties- Part IV-A

Fundamental Duties are an inalienable part of fundamental rights. The importance of these are given in the table below:

S.No	Importance of Fundamental Duties
1.	They remind Indian Citizens of their duty towards their society, fellow citizens and the nation
2.	They warn citizens against anti-national and anti-social activities
3.	They inspire citizens & promote a sense of discipline and commitment among them
4.	They help the courts in examining and determining the constitutional validity of a law

Parliamentary form of Government

Before talking of the Parliament and Union Executive, let us understand the form and nature of the Indian government. The Structure of the Indian government can be understood by the following flow chart:



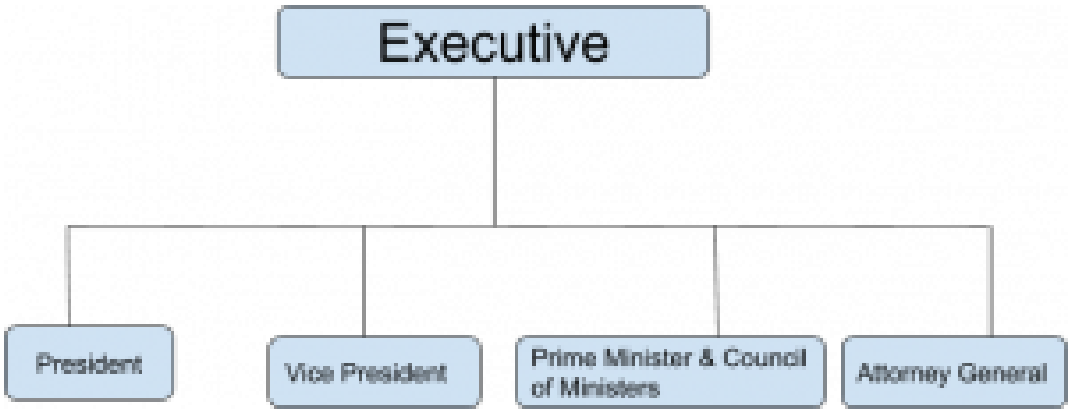
India is a form of Parliamentary Government. It is a form of government in which the executive is responsible and answerable to the legislative. It is also called the Cabinet Government due to the concentration of executive powers in the Cabinet. The Executive is a part of the Legislative.

This form of government was basically preferred by the leaders as:

- Leaders were aware of such a form of government.
- This government was considered a more responsible government as in this form of government, the executive is answerable to legislative and the legislative is answerable to the citizens.
- This type of government prevents Authoritarianism.
- This form helps to get representation from a Diverse Group of people.
- This form of government remains laden with the availability of Alternate Government.
- In this form of government, the head of the state holds a ceremonial position and is the nominal executive. For example, the President
- The real head of the State is the Prime Minister, who is the real executive.
- There is a majority party rule in such a form of government.
- There is always a Parliamentary Opposition to maintain a check on the actions of the ruling government.
- In this form of Government Civil Servants are Independent.

This is a famous concept of government followed in other countries like Japan, Canada, Britain. This form of government in India was majorly inspired by Britain.
Opposite of such a form of government is the Presidential form of Government. In this government, the President is answerable to citizens rather than the legislative.

If we dwell deep inside, we find further subdivision of the Executive Organs of the State. These subdivisions are:



Union executive-The President (Article 52)

The first and foremost part of the Executive is the President. Article 52 states that there shall be a President of India. The President is considered the Executive head of the country. All the Executive business of the country is carried out in the name of the President. So the President is the executive head and all actions are in his name.

Qualifications: Article 58

After knowing that President is the Executive Head of the entire nation, you might too aspire to become a president. So let's analyze the eligibility and all the specific requirements, you would be needing to become the President of India?

Article 58 talks about the eligibility of a person to become President of India. It says that a person is eligible for election as President if he:

- is a citizen of India;
- has completed the age of thirty-five years;
- is qualified for election as a member of the House of the People.

A person can be disqualified for election as President if he holds any office of profit under

- the Union of India or;
- the Government of any State or;
- under any local or other authority subject to the control of any Government of India.

Condition of President's Office: Article 59

The eligibility to become the President might seem simple but the conditions his office are quite strict. Article 59 of the Indian Constitution talks about the conditions of the President's office. It says:

- The President cannot be a member of either House of Parliament or of any other House of the Legislature of any State.
- If he is a member of either House of Parliament or a member of a House of the Legislature of any State, he will need to vacate his seat in that House on the date of entering into his office as President.
- The President shall not hold any other office of profit.
- The President shall be authorized to the use of his official residences without rent.

- He shall be also authorized to emoluments, allowances, and privileges determined by Parliament.
- The emoluments and allowances of the President cannot be diminished or reduced during his term of office.

Official residence, emoluments, and allowances of President

Apart from all these conditions and rules, you might crave for some advantage of being the President. Well, the President of India is also entitled to certain allowances and privileges, as he is the first citizen of the country. The President of India is entitled to rent-free accommodation, allowances, and privileges by law. Rashtrapati Bhavan is the President's official residence, including reception halls, guest rooms, and offices. It is the largest residence of any head of state in the world .

Election of President: Article 54

It says that the President must be elected by the members of an electoral college. The electoral college consists of the elected members of both Houses of Parliament and the state Legislative Assemblies.

Mode of Voting

As per Article 55(3) of the Constitution of India, the election of the President should be held according to the system of proportional representation by means of a single transferable vote. The voting at the presidential election shall be by secret ballot.

Disputes regarding the election: Article 71

What if people raise issues regarding your elections as president? Who would clarify the dispute?

Well, Article 71 deals matters relating to the election of the President. It states that any dispute arising with respect to the election of the President will be adjudicated by the Supreme court and its decision will be considered final.

- If the election of a person as President is declared void, acts done by him in the exercise of the powers of the office of President will not be considered invalid by reason of the order of the Supreme Court.
- Parliament can formulate any law regarding the election of a President in consonance with the provisions of the Constitution.
- The election of a person as President or Vice President shall not be called in question on the ground of the existence of any vacancy for whatever reason among the members of the electoral college electing him.

Oath by the President: Article 60

So, after you are elected, it is time to make an oath and get familiar with the term of office of the President. Any person holding the office of the President or delivering the functions of the President must, before entering into the office of the President, be made to subscribe in the presence of the Chief Justice of the country or any other senior-most judge of the Supreme Court, to an oath or affirmation in the name of God to faithfully execute the office of president of India and to preserve, protect and defend the Constitution and the law to the best of his abilities and that he would devote himself to serve the people of India and ensure their well being.

Term of office of the President: Article 56

Article 56 defines the term of the office of the President to be of five years unless:

- A new President enters the office, the incumbent President shall hold it;
- President resigns before the expiry of the term by writing it to the Vice President;
- The President is removed from his office, for violation of the Constitution, by the process of impeachment provided under article 61.

The article also states that any resignation made by the President to the Vice President must be communicated to the Speaker of the Lok sabha by the Vice President himself.

Time of holding the election on expiry of the term and filling casual vacancies

Article 62 provides for the filling up of the vacancy to the office of the President. It defines the terms of office of the person filling the casual vacancy as well as the time of holding elections to fill the vacancy.It states that an election to fill the vacancies must be fulfilled before the expiration of the term of the office of the President.

An election to fill the vacancies, occurring due to the death, resignation or impeachment of the President, must be done as soon as possible. The elections, in any case, must be conducted within a time period of six months from the date of occurrence of the vacancy. The new person elected to the office of the President will be subject to all the provisions of Article 56 and will hold his office for a five-year term from the date of entering into the office.

Procedure for impeachment of the President: Article 61

The President of India can be impeached under Article 61, for the violation of the Constitution, on the basis of charges preferred by either House of Parliament. A resolution with the proposal to prefer such charges must be signed by at least one-fourth of the total members of the house. The resolution also needs to be passed by at least two-thirds majority of the house.

When the resolution is passed by one of the Houses, the other House must investigate the charges. The President has been granted the right to be present or to be represented in such investigations. When the House investigating the charges passes the resolution by a two-thirds majority and declares the charges as sustaining, it results in removing the President from his office from the date of passing of the resolution.

Privileges of the President: Article 361

As President, you also enjoy some degree of immunity. Under Article 361, the President is protected from being answerable to any court for:

- For exercise and performance of his powers and duties of his office;
- For doing any act or claimed of doing any act in the exercise of those powers and duties;

The conduct of the President can be reviewed only if either House of Parliament designates or appoints any court tribunal or any other body to investigate the charges under Article 61.
But it bars no person from bringing any valid proceeding against the Governor or Government of India.

The Article immunes the President against all types of criminal proceedings during the term of his office.
No issuance of any order relating to the arrest and imprisonment of the President can be made by any court during his term of office.

A civil proceeding can be constituted against the president during his term of office if:

- The act is done or alleged to have been done, whether before or entering the office of the President, by him was in his personal capacity;
- Two months prior notice is provided, to the president or was sent to his office, stating:
  1. The nature of the proceeding;
  2. The cause of action;
  3. The details of the other party including name, description, and place of residence;
  4. The relief claimed by the other party;

Powers of the President

The President of India is provided with a wide range of power that we will discuss one by one. Let's start with the most interesting and important power i.e. the executive powers.

Executive powers

Article 53 of the Indian Constitution states that all the executive powers of the Union will be vested in the President of India. President is allowed to exercise his executive powers through officers subordinate to him, directly or indirectly, in consonance to the provisions of the Constitution.

Under this article, the President has powers regarding:

- Appointment of the high authorities of the Constitution like the Prime Minister and the Council of Ministers;
- Right of being informed about all the national affairs;
- Appointment of the judges of the constitutional courts(Supreme Court and High Courts);
- Appointment of the state Governors, the Attorney General, the Comptroller, and Auditor General, the Chief Commissioner and members of the Election Commission of India;
- Administration of Union territories and appointment of the Chief Commissioners and Lieutenant Governor of the Centrally Administered Areas;
- Removal of the Council of Ministers, the state Governors, the Attorney General.

Military powers

Article 53 also states that the President shall be the Supreme Commander of all the Armed Forces of the Union of India. It also states that no specific provisions can reduce the scope of this general principle.

As the Supreme Commander of the Armed Forces of the Union, President has powers regarding:

- Appointment of all the officers, including the appointment of the chiefs of the forces;
- Wars are waged in the name of the President;
- Peace is concluded in the name of the President.

Diplomatic powers

The President forms the face of Indian diplomacy and helps the nation to maintain cordial relationships with countries across the globe.

- All the Ambassadors and high commissioners in foreign nations are his representatives;
- He receives the credentials of the Diplomatic representatives of other nations;
- Prior to ratification by Parliament, the treaties and agreements with other nations, are negotiated by the President.

Legislative powers

The President also enjoys certain legislative powers like:

- During the budget session, the President is the first to address the Parliament;
- The President is empowered to summon a joint session in order to break the deadlock in the legislation process between the two Houses of the Parliament;
- President sanction is mandatory in cases of provisions relating to:
    1. creating a new state;
    2. changes in the boundary of existing states;
    3. a change in the name of a state.
- Legislative provisions relating to fundamental rights of the citizens of India require the President's consent;
- President's consent is mandatory in cases of money bill originating in Lok sabha;
- President's consent is necessary for all the bills passed by the Parliament to become a law;
- President is empowered to promulgate ordinances when the Parliament is not in session;
- President also nominates the members of both the Houses.

Ordinance making power of the President: Article 123

Article 123 talks about the presidential powers to promulgate ordinances. An ordinance can be promulgated if:

- neither of the House of the Parliament is in session;
- and the President feels a need for immediate action.

The ordinance which is promulgated by the President will have the same effect as that of an act or law of the Parliament.

The essential conditions to be met by an ordinance are:

- It shall be presented before both the Houses of Parliament for passing when it comes to the session;
- The ordinance shall cease to operate six weeks after the date of reassembling of the parliament;
- The ordinance may also expire if the resolutions disapproving it are passed by both the Houses of Parliament;
- It can be withdrawn at any time by the President;
- The ordinance must be in consonance to the Constitution of India else it shall be declared void.

Financial Roles

- President receives reports of the Finance Commission and acts on its report.
- The Contingency Funds of India are at the disposal of the President.
- He also causes the presentation of audits in the Parliament.

Judicial Powers

The President enjoys the following privileges as his judicial powers:

- He can rectify the judicial errors;

- He exercises the power of grant of pardons and reprieves of punishments;
- President can seek the advice of Supreme Courts on:
    1. Legal matters,
    2. Constitutional matter,
    3. Matters of national importance.

Pardoning power: Article 72

Article 72 provides for the provisions relating to the pardoning powers of the President. President can grant pardons, respites, reprieves, and remissions of punishments or remit suspend or commute the sentence given to a person by the court in the following cases:

- When the sentence is granted through a court-martial;
- When the sentence or punishment is given for offense of violation of any law relating to matters that fall in the ambit of Union's executive powers;
- When a death sentence is passed by a court.

Pardoning Power

Indian Presidents are known for the generous grant of pardons. Pardon is an act of grace and not a form of a right to be demanded by any person. Unlike the Constitutional provision, Pardon is granted by the executive as a whole and not by the President alone. This is done as it is necessary for the President to act on the aid and advice of the Council of Ministers.

A pardon completely sets free an offender of all his guilt. A full pardon makes the person innocent in the eyes of law as if he has never committed a crime. It gives him the identity as that of a new man with a new set of capacities.

The pardoning power comes with discretion on the part of the President. The practice to confer the right of pardon on some authority has long existed. It is also practised in other countries, for example, the U.S. Constitution prescribes for the power of pardon to the President whereas, In the United Kingdom, the same is conferred to the Crown.

Articles 72 and 161 of Constitution

Article 161 grants the power to the Governor of the state to suspend, remit or commute sentences of the offenders in certain cases relating to a violation of provisions or laws to which the executive power of the state extends.

Article 72	**Article 161**
• Grants power to the President of India.	• Grants powers to the Governor of state.
• The power is wider in scope.	• The scope of powers is narrower.
• The powers of pardon extend to cases of Court Martial as well.	• Power cannot interfere with cases of Court Martial.
• Allows President to grant pardon in cases of death sentence.	• Governor cannot grant pardon in cases of death sentence.

Emergency Powers

Article 352 of the Constitution of India grants President, three kinds of emergency powers as well:

- When a National Emergency is declared in case of external aggression or internal armed rebellion, the President holds the powers to declare a state of emergency. Thus the President's rule gets established in the country. However, the prime minister and the Council of Ministers must recommend such an emergency;

- When there exists a constitutional or law and order breakdown situation in a state, the President may declare a state of emergency in such cases. The state would then come under Governor's rule;
- Whenever the financial stability of the nation or any country is seriously affected, the President has the right to intervene and direct the state to check and maintain public expenditure.

The Vice President (Article 63)

Functions of the Vice-President

There are some important functions and duties to be performed by the Vice-President of India. Article 64 and Article 65 of the Indian constitution talks about the following functions:

- The Vice-President is the ex-officio Chairman of Rajya Sabha(the Council of States);
- The Vice President casts his vote in case of a tie in Rajya Sabha;
- The Vice President represents the Council of States on ceremonial occasions;
- He protects the rights and privileges of the members of the Rajya Sabha;
- He travels, for goodwill missions, to foreign countries;
- The Vice-President shall perform the functions of President, in cases where the President is not able to perform his functions due to absence or illness etc until the President resumes his duty;
- The Vice-President shall act as President, If the vacancy is created for the post of President due to his resignation, removal, and death or otherwise until a new President is elected;
- The period between the Vice-President acting as the President and the election of a new President can be extended for a maximum period of six months.

The Council of Ministers

Article 74 of the Indian constitution states that:

- There should be a Council of Ministers to aid and advise the president;
- The Council of Ministers must have a Prime Minister at the head to aid and advise the President;
- The President should exercise his functions and act in accordance with advice rendered by the Council of Ministers;
- The Council of Ministers should reconsider any advice sent back by the President;
- The President is bound to act in accordance with the advice tendered by the Council, after reconsideration.

Size of Ministries

The executive powers in India are exercised by the Council of Ministers. These ministers constitute ministries having cabinet minister, junior minister, etc. Before 2003, the size of ministries was not specified under any provision leading to a lot of chaos.

After the 91st amendment Act of 2003 came into existence, it marked a ceiling limit to the size of the ministries. The amendment stated that the strength of the Council of Ministers cannot exceed more than 15% of the total number of members of the Lok sabha or relevant Legislative Assembly of the state.

An exception was provided to the smaller states like Sikkim, Mizoram, and Goa, having a strength of lesser than 40 members in the legislative assemblies.

Disqualification on defection on the ground of split in a political party

Article 102(2) and Article 191(2) provides for Anti-Defection laws regarding the members of Lok sabha. According to this law, a member of a House, belonging to any political party, shall be disqualified as a member of the House on the following basis-

- If the person voluntarily gives up his/her membership of the political party to which he/she belongs; or
- If the person votes or abstains from voting in contrary to any direction issued by the political party or by any person or authority authorized to give directions.

In either case, the prior permission of such political party, person or authority must be sought. The voting or abstention must be approved by the political party, person or authority within fifteen days from the date of voting or abstention.
When a member of a House claims that he and any other members of his party have formed a group representing a faction emerging as a result of a split in his original political party. If such a group consists of one-third or more of the members of such a political party then the ministers cannot be disqualified under Anti-Defection laws.

A non-member can become a Minister
Article 75 of the Constitution of India provides for provisions relating to the appointment of the Union Ministers.
At first, the Prime Minister is appointed by the President and then the President appoints other ministers on the advice of the Prime Minister.
The provision clearly states that any minister, who is not a member of either House of the Parliament, shall cease to be a minister after the period of six months from the date of his appointment.
The non-member must get elected to either House of the Parliament in order to continue as a Minister of Lok Sabha.

A convicted person cannot be appointed Chief Minister
When the question arose whether a convicted can be appointed as Chief Minister or not.

The issue was decided in the negative by the Supreme Court in the famous case of B.R. Kapoor v State of Tamil Nadu and Anr (Famously known as Ms. J. Jayalalitha Case). It was held that any person who is convicted for a criminal offense and sentenced to imprisonment, for a period of two years, or more, cannot be appointed the Chief Minister of any State under Article 164(1) of the Indian Constitution.

Dissolution of Parliament

In our country, the Lok Sabha has a five-year term but it can be dissolved earlier. Article 83(2) of the Indian Constitution states that at the completion of five years term, from the starting date of Lok sabha meetings, it can be dissolved. In such cases, an election is held to elect the new Members of Parliament.
The Lok Sabha can also be dissolved by the President on the advice of the Prime Minister before the expiry of its term.
The President can also dissolve the Lok Sabha, if he feels that a viable government cannot be formed, after the resignation or fall of a regime, as the case may be.

Principle of Collective Responsibility

The principle of Collective Responsibility means that the Council of Ministers is collectively responsible as a body for all the actions, omissions and conduct of the government.

It states that all ministers stand or fall together in Parliament. The Government is considered as a unity of ministers instead of single individuals. It means that the minister should publicly support the decisions made by the cabinet, even if they disagree privately. This support even includes voting for government in the legislature.

Minister's Individual Responsibility

The Ministerial Individual Responsibility means that a cabinet minister is ultimately responsible for all the actions of his ministry or department.
Whenever there is an individual ministerial responsibility, the party to which the minister is a part is not answerable for the failure of the minister. The minister shall himself take the blame for the actions of his ministry and resign.

Appointment of Prime Minister

The Prime Minister of India is appointed by the President through provisions under Article 84 and Article 75. Prime minister is the leader of the majority party or coalition of parties of Lok sabha. When a party achieves majority the leader of that party is called upon by the President to be the Prime Minister of the country. He is considered as the real head of the country.

Constitutional Duties of Prime Minister

The constitution envisages the Prime Minister with certain rights and duties. The functions of the Prime Minister are as follows:

- The Prime Minister proposes the names of the members to President for appointment as Ministers of the government;
- Prime minister can reshuffle the Cabinet and decides for the distribution of charges of different ministries as well;
- He presides over the meetings of the Cabinet and can also change the decisions taken by the Cabinet;
- He suggests the President of India about the resignation or removal of any minister from the Cabinet;
- He also directs and controls the functioning of Ministers in the Cabinet;
- The Prime Minister may resign at any time and can even ask the President of India to dissolve the Cabinet.;
- He can advise the President to dissolve entire Lok Sabha to conduct fresh elections;
- The Cabinet stops functioning If the Prime Minister resigns from his post, and spontaneously dissolves after the death of the Prime Minister.

Rights and powers regarding Appointments:

Prime Minister can advise the President for the appointment of the following:

- Comptroller and Auditor General of India;
- Attorney General of India;
- Advocate General of India;
- Chairman and members of UPSC;
- Selection of Election Commissioners;
- Members and chairman of the Finance Commission.

Rights/Powers with regard to Parliament of India:

Prime Minister is the leader of the Lok sabha with rights to exercise the powers as follows:

- The prime minister decides the foreign policy of the country.
- He is the speaker of the Central Government.
- He is the leader of the majority party or coalition of parties in the Parliament.
- The Prime Minister is also is the chairman of various organizations including:
    1. NITI Aayog;
    2. National Development Council;
    3. National Integration Council;
    4. Inter-state Council;
    5. National Water Resources Council.
- He is also the head of the disaster management team during a political level emergency.
- He is also the political head of all the forces.

Dismissal of a Minister

The minister of the Lok sabha can be removed from his post under the following conditions:

- Upon the death of the minister;
- Upon self resignation from the minister;
- If the minister is dismissal by the President, for unconstitutional his acts as per Article 75(2);
- Article 75 of the constitution states that the minister holds the office at the pleasure of the President;
- Upon direction from the Court for committing the violation of any law;
- If the minister loses the eligibility to be a member of Parliament.

Dismissal of the Cabinet

The Cabinet of Minister dissolves if:

- The Prime Minister asks the President of India to dissolve the Cabinet;
- The Prime Minister advises the President to dissolve entire Lok Sabha to conduct fresh elections;
- If the Prime Minister resigns from his post;
- The cabinet automatically dissolves after the death of the Prime Minister.

State Executive

Appointment of the Governor

Article 153 of the Indian Constitution says that each state of the nation should have a governor. The governor is appointed by the President. Under the 7th Constitutional Amendment, it was stated that there can be the same governor for two different states.

The Qualification that one needs to be eligible for a governor of a State/States are the following-

1. They must be a citizen of the country.
2. They should be 35 years and above.

Once the Governor is selected,

1. He shall be appointed to a state to where he belongs
2. Consult the Chief Minister of the state about where to be appointed.

Special Powers of the Governor
The powers of the Governor that are granted to him by the Indian Constitution can be broadly classified into four categories, that is Executive, Legislative, Financial, and Judicial.

1. Executive Powers
Some of the executive Powers of the Governor are –
- He is responsible for the appointment of the advocate general of states and also determines their remuneration.
- Chief Ministers and other ministers of the states are appointed by the Governor
- He acts as the President's agent during the President's rule in the state.
- Every executive action taken by the state government is to be taken in his name.

2. Legislative Powers
Some of the Legislative Powers of the Governor are –
- Governor may/may not send a bill to the state legislature concerning any bill that is pending in the state legislature.
- The state legislature is addressed by him in the first session of every year.
- Then the Governor appoints a person to preside over the session the speaker and the deputy speaker of the legislative assembly are absent.
- He has the authority to consult the Election Commission for the disqualification of members.

3. Financial Powers
Some of the Financial Powers of the Governor are –
- The Governor looks over the state budget being laid in the state legislature.
- He makes advances to meet unforeseen expenditures as the contingency fund of the state is under him.
- Every five years, the state finance commission is constituted by him.

4. Judicial Powers
Some of the Judicial Powers of the Governor are –
- His recommendation is sought by the President before the appointment of the high court judges.
- In consultation with the state High Court, the Governor makes appointments, postings, and promotions of the district judges.
- He also appoints persons to the judicial services with the consultation of the state high court and the state public service commission.

7th Constitutional Amendment

Some of the most comprehensive changes in the Indian Constitution were bought in by the 7th Constitutional Amendment, back in the year 1956. It was exclusively designed to implement the State Reorganisation Act.

Some of the changes that were brought forward by this Amendment Act are –
1. It allowed two different states to have the same Governor.
2. It provided for a maximum of 500 members directly elected from territorial constituencies in the States, and a maximum of 20 members chosen from the Union Territories to the Lok Sabha.
3. Allowed a common high court for two or more states.

4. The maximum strength of the Legislative Council of a State was raised from one-fourth to one-third of the strength of the Legislative Assembly of that State.
5. Relaxed the complete ban on practice by retired judges of the High Courts and made provisions for them to practice in the Supreme Court and in any High Court other than the one in which he/she was a permanent judge.
6. Ordered the states to provide facilities for instruction in their mother tongue at the Primary stage to children belonging to linguistic minority groups.

These amendments were needed to implement the recommendations of the States Reorganisation Commission regarding the reorganization of the states on a linguistic basis.

Chief Minister and the Council of Ministers

Once the Legislative Assembly elections of a particular state get over, the party that gets the largest mandate by the people of the state gets elected to rule the state. The leader of that party is appointed as the Chief Minister of the state by the Governor.

Article 74 and 75 of the Indian Constitution deal with the Council of Ministers. The council of ministers is headed by the prime minister of the country. The salaries and allowances of the council of ministers are decided by the Parliament.

Appointment of Chief Minister

The particulars of the chief minister's appointment are not mentioned in the Indian Constitution. However, one thing that is absolute is that the Chief Minister of a state is appointed by the Governor of that state.

The leader of the political party that gets the majority of the votes, gets to be appointed as the Chief Minister of the state. In case, no party gets a majority, then the governor gets to use his discretion and appoint a Chief Minister.

Oath of Chief Minister

The Chief Minister takes an Oath in the presence of the Governor of the state before entering the office.

As mentioned in the 3rd schedule, while taking the oath, he/she shall say, "I, A. B., do swear in the name of God that I will bear true faith and allegiance to the Constitution of India as by law established, 1 [that I will uphold the sovereignty and integrity of India,] that I will faithfully and conscientiously discharge my duties as a Minister for the Union and that I will do right to all manner of people in accordance with the Constitution and the law, without fear or favour, affection or ill-will."

Powers of a Chief Minister

Being the leader of the ruling party of the state, the chief minister has been granted some powers by the Indian Constitution. Some of the powers of the Chief Ministers are as below –

1. Head of the Council of Ministers

The chief minister is the head of the council of Ministers. The ministers are appointed by the Governor on the advice of the Chief Minister and he also has a free hand in making a list of his colleagues. The Chief Minister can reconstruct his Ministry as and when the need arises.

He further has the right to demand the resignation of any of the ministers under him. The chief minister also controls the agenda for the Cabinet meetings. Furthermore, he supervises and coordinates policies of several Ministers and Departments.

2. Aids and Advises the Governor
He is the link between the Cabinet and the Governor. The decisions of the council of ministers are communicated to the governor by the Chief Minister. He also needs to furnish any information relating to the administration of the State as the Governor may call for.

3. Leader of the House
Being the leader of the house, he gets to make all the announcements concerning the new or amended policies. Maintaining discipline of the Members of his party also comes under his hat. Adding to this, the chief minister can appoint a whip whose directive must be obeyed by all the legislators.

State Legislature

Introduction
The Constitution of India is regarded as one of the lengthiest written constitutions in the whole world. Our Constitution gives us a federal structure where the powers between the Central Government and the State Government are divided. Most of us know about the working of the Central Legislature and the powers related to the Central Legislature. Part VI of the Constitution deals with the State Legislature. In this article, we will discuss this part of the Indian Constitution in detail. Here we will discuss the unicameral and bicameral legislature. The creation and abolition of these Houses of the State Legislature. The qualification of a person to be a member of the State Legislature. Ultimately, we will discuss Articles 168 to 212 of the Indian Constitution. It is quite complex to understand the working and procedure of work in State Legislature but after going through the Constitution of India it becomes easier for one to understand it.

Bicameral and Unicameral Legislature
Before discussing what is a bicameral and unicameral legislature, let us first discuss what is the legislature. The legislature is the law-making body of the State. It is first among the three organs of the state. It can make laws as well as administers the government. As mentioned in Article 168 of the Indian Constitution, a state can have a unicameral legislature (It should be Legislative Assembly) as well as a bicameral legislature (Legislative Council and Legislative Assembly). According to Article 168 of the Indian Constitution, there shall be legislature in every State and it shall consist of the Governor.

Unicameral Legislature
Unicameral legislature refers to having only one legislative chamber which performs all the functions like enacting laws, passing a budget, and discussing matters of national and international importance. It is predominant in the world as most countries have a unicameral legislature. It is an effective form of the legislature as the law-making process becomes easier and reduces the possibility of obstacle in lawmaking process. Another advantage is that it is economically feasible to maintain a single chamber of the legislature. It is the most prevailing system in India as most of the States of India have a unicameral legislature. The members of the unicameral legislature (Legislative Assembly) elected directly by the citizens of the State.
Bicameral Legislature
By bicameral legislature, we refer to the State having two separate law-making Houses to perform the functions like passing the budget and enacting laws. India has a bicameral legislature at the Centre level while the State can make the bicameral legislature. In India, only 7 States have a bicameral legislature. It may be seen that a bicameral legislature may not

be as effective as a unicameral legislature. However, it works as a barricade in some cases as it somehow makes the law-making process more complex.

Abolition or Creation of Legislative Councils

In our country, the Legislative Council (also known as Vidhan Parishad) is the Upper House of a bicameral legislature. The creation of which is given in Article 169 of the Indian Constitution and can also be abolished according to Article 169 of the Constitution.

Article 168 mentions about the Legislative Council in some of the States of our country. There is no rule of having a bicameral legislature in the State of India. It is because our Constitution framers knew that it will not be possible for every State to have a bicameral legislature (due to financial or any other reason).

Article 169 talks about the creation or abolition of the Legislative Council. For the creation or abolition of the Legislative Council, the Legislative Assembly must pass a resolution that must be supported by more than 50% of the total strength of the assembly. It must be supported by more than 2/3rd of the total members present in voting. Therefore it talks about the absolute and special majority. The resolution to create or to abolish the Legislative Council needs the assent of the President as well.

Composition of the Houses

Article 170 of the Indian Constitution talks about the configuration of the Legislative Assemblies. This Article simply put emphasis on what will be the structure of the Legislative Assemblies in the state. On the other hand, the configuration of the Legislative Council is given in Article 171 of the Indian Constitution.

Legislative Assembly (Vidhan Sabha)

According to Article 170, there should be a Legislative Assembly in every State of India. However, these assemblies should be according to the provisions of Article 333 of the Indian Constitution. The Legislative Assembly of state can have at most 500 constituencies and at least 60 constituencies. These constituencies would be represented by the members who would be selected through the process of direct election. However, the division of territorial constituencies would be determined in such a manner that it becomes dependent on the population of that constituency. Here by the term " population" we mean population which has been published in the precedent census. The composition of the Legislative Assembly in any state can change according to the change in the population of that state. It is determined by the census of population. However, there are several exceptions to the composition of the Legislative Assembly. Let's take the example of Mizoram, Sikkim, and Goa which has less than 60 constituencies.

The tenure or duration of the Legislative Assembly is mentioned in Article 172 of the Indian Constitution. The Legislative Assembly should work for a time period of five years. Its tenure starts from the day of its first meeting. However, it can be dissolved earlier by the special procedure established by the law. However, there can be an extension in the tenure of the Legislative Assembly. This can be done during the National Emergency. During the period of the National Emergency, the Parliament can extend the tenure of the Legislative Assembly for a period of maximum one year. Also, this extension should not be more than six months after the proclamation has ceased to operate.

Legislative Council (Vidhan Parishad)

The composition of the Legislative Council is given in Article 171 of the Indian Constitution. The total members in the Legislative Council should not exceed one-third of the total members in the state Legislative Assembly. There is another criteria for the composition of the Legislative Council. The member in the Legislative Council should not be less than 40 in any case. There is an exception in the composition of Vidhan Parishad. The Legislative Council of Jammu and Kashmir has only 36 Member in Legislative Council, unlike the other Legislative Council.

The composition of the Legislative Council can be further divided in the following way:

- One-third of the members of the Legislative Council should be elected from the district boards, municipalities and other local authorities which is specified by the Parliament according to law.
- One-twelfth of its members shall be elected from the person who has been residing in the same state for the time period of at least three years and graduated from the university which is in the territory of India.
- One- twelfth of its total member should be elected from the person who is engaged in the teaching profession for at least three years in the educational institution of the state itself.
- One third should be elected by Legislative Assemblies and none of them should be a member of the Legislative Assembly.
- The remainder of the members should be nominated by the Governor according to the established law.

Qualifications of Membership

After this much of knowledge on both the Houses of Legislations, we can move further on the next topic. Here we will discuss what are the qualifications that one requires for being a member of the Legislative Assembly/Council.

The qualification of membership is given in Article 173 of the Indian Constitution. For the membership or for filling a seat in the legislature of the State, a person must be a citizen of India. A person will not be granted membership if he/ she is not a citizen of that country. Also, the qualification of the membership is somewhat similar to the qualification to the membership of the center legislature. The member of the Legislative Assembly should be more than 25 years. For being a member of the Legislative Council one should be more than 30 years. Also, a necessary condition for being a member of legislatures includes that he/she must be a voter from any of the constituencies of the state.

Disqualifications of Membership

After being elected/ nominated as a member of the legislature, one cannot be a permanent member of the legislature. There are certain reasons mentioned in the Constitution by which a person may be disqualified from his/her membership to the Legislature. Article 191 talks about the disqualification of the members of the Legislature.

Disqualification of MLA/ MLC can be made on the following grounds:

1. If one holds the office of profit under the state or central government.
2. If one is of unsound mind and is declared so by the competent court.
3. If one is an undischarged insolvent.
4. If one is not a citizen of the country anymore or when he/ she voluntarily took the citizenship of another country.
5. If one is disqualified by the law of the Parliament. Example- Anti defection law.

Decisions on disqualifications

Article 192 of the Indian Constitution talks about the decision on the disqualification of a member of the state legislature. If any question arises about the disqualification of a member of the House of the legislature on any ground mentioned in Article 191 in the Indian Constitution, then Article 192 comes into play. Article 192 mentions that in such cases the decision about disqualification would be determined by the Governor of that state and his/ her decision would be final. However, the Governor needs to consult the Election Commission for the same and he/she needs to act accordingly. Here, grounds of disqualification would be the same as mentioned in Article 191.

Sessions of the State Legislature

Moving further on the next topic we will discuss the sessions of these State Legislatures. Its time of prorogation and dissolution will also be discussed by us here. Also, one thing is quite clear after a lot of analysis of State Legislature is that the Legislative Assembly is somehow similar to the House of the People (Lok Sabha) while the Legislative Council is similar to the Council of State (Rajya Sabha). Their sessions are also quite similar. Article 174 of the Indian Constitution gives the power to the Governor to summon these Houses of the State Legislature. He/ She can summon these bodies to meet at places and at such times which he/ she thinks fit or appropriate. But a necessary condition should be kept in mind is that the time period between the two sessions of these Houses should not exceed six months. Also as mentioned in Article 174 of the Indian Constitution, the Governor has the power to prorogue either House and to dissolve the Legislative Assembly.

Speaker and Deputy Speaker

There is a need for head or in charge of every legislative part. The Speaker and Deputy Speaker serve the same purposes in the Legislative Assembly. Article 178 of the Indian Constitution talks about the same. According to this article, there should be a Speaker and Deputy Speaker should be chosen from the Legislative Assembly. In this, it is also mentioned that the condition where if the office of Speaker and Deputy Speaker becomes vacant then it becomes the duty of the Legislative Assembly to choose the new Speaker and Deputy Speaker respectively.

Powers and Functions of Speaker

Article 178 gives the power to Speaker to preside over the sessions of the Legislative Assembly of the state. Similar powers are given to the Speaker of the Lok Sabha, as mentioned in Article 93 of the Indian Constitution. The power and position of an Indian Speaker are quite similar to the Speaker of the House of Commons in England.

The most important function of the Speaker is to preside over the sessions of the Legislative Assembly and also to maintain discipline and order in the assembly. Within the assembly, the Speaker is the master. He has the power to decide whether the Bill is a Money Bill or not. Also, the decision of Speaker cannot be challenged in a court of law. Money Bills are sent to the Legislative Council with the approval of the Speaker. The salary of Speaker is given from the Consolidated Fund of State.

The other functions/ powers of the Speaker are as follows:

- He/she does not participate in the debate of the assembly.
- Only votes when there is a condition of a tiebreak.
- He/She sees whether there is a necessary quorum.

- He has the power to adjourn or suspend the sitting of the Legislative Assembly when there is not a necessary quorum and also to maintain the discipline of House.
- He/She has the power to suspend or to expel the member for his/ her unruly behaviour.

Chairman and Deputy Chairman of the Legislative Council: Article 182,183,184,185
The working of the Legislative Council is quite complex. The process of membership, the appointment of its head and the power of the Legislative Council is also quite difficult to understand. According to Article 182 of the Indian Constitution, the Legislative Council must choose its two members as Chairman and Deputy Chairman. It also mentions that the Legislative Council must choose the Chairman and Deputy Chairman of the Legislative Council as soon as their office becomes vacant.

The offices of Chairman and Deputy Chairman becomes vacant very often. However, the reason for their removal/ resignation is mentioned in Article 183 of the constitution. The reasons are as follows:

1. Should not hold their post if they are not a member of the Legislative Council.
2. By sending the written resignation letter to each other.
3. They can be removed by passing a resolution in the Council. However, there should be a majority of members in support of this resolution. An important point to be remembered while passing a resolution that a notice of the intention of resolution should be given before 14 days.

Now imagine a condition when there is a vacancy in seat of Chairman of the Legislative Council. Then, the question which would strike us would be related to the replacement of his/ her place in the Legislative Council or who will look after the working of the Legislative Council. The answer to the second part of the question is given in Article 184 of the Indian Constitution. According to this Article, the Deputy Chairman has the power to perform the duties and to act as Chairman of the Legislative Council. According to Article 184, if there is a vacancy in the office of Chairman then all duties of Chairman would be performed by the Deputy Chairman and in case if the office of Deputy Chairman is also vacant then the duties of Chairman would be performed by the person appointed by the Governor.

Talking about Article 185 of the Indian Constitution, it puts certain restrictions on Chairman or Vice-Chairman when their impeachment resolution is under consideration. It simply tells that a Chairman or Vice-Chairman can not preside the Council when the resolution for their impeachment is under consideration. Here in this condition, Article 184 will be applied. Also, it is given in Article 185 that when such resolution is under consideration then the Chairman has all the right to attend the proceedings of the Legislative Council and he/she will have all the right to speak during such proceedings. Here, the Chairman has the right to vote in the first instance of the proceedings but he/she will not be able to vote in the condition of equality of votes.

Legislative Procedure: Article 196
The main purpose of Legislature is to make laws, pass a bill etc. To understand the working of Legislature or Legislative Procedure let us first discuss the term “Bill”. By Bill, we mean a draft of the legislative proposal. This bill after getting assent from both the Houses of Legislature becomes an Act after getting assent from the Governor. Article 196 of the Indian Constitution tells us about the provisions of the introduction and passing of the Bill. Except for the Money Bill and the Financial Bill (procedure of passage of these bills are given in Article 198 and 207), the other bills can be introduced in either Houses of the legislature. Any bill is said to be passed only when it got assent from both the Houses of the legislature. Here

both the Houses should agree on the amendment made to the bill. A bill would not lapse when it is pending in the House and there is the prorogation of that House. A bill pending in the Legislative Council of any state which is not passed by the Legislative Assembly shall not lapse even on the dissolution of the Legislative Assembly. Also, there is a condition mentioned in Article 196 which states that if there is a bill pending in the assembly and at that time the assembly dissolute, then the bill will also lapse ultimately. The bill will also lapse if it is passed by the assembly and is pending by the Council.

Ordinary Bills

The provision or the procedure related to Ordinary Bill is discussed in Article 196 of the Indian Constitution. The main purpose of the State Legislature is law-making as already being discussed in this article earlier. The legislature can make laws on State List as well as on Concurrent List. Ordinary Bill can be introduced in either of the Houses. The process given in Article 196 is applied here and once it gets the sign from the Governor it becomes law. The Governor has the power to issue ordinance when there is a need of any law and the legislature is not in session.

Money Bills

A Money Bill is a bill that is concerned with government spending or taxation. The procedure to pass a Money Bill is quite different from the Ordinary Bill. Its procedure is given in Article 198 of the Indian Constitution. According to this Article of the Constitution of India, the Money Bill can only be introduced in the Lower House i.e. in Legislative Assembly. After the Money Bill is passed by the Legislative Assembly and in that state, then this bill would be forwarded to the Legislative Council for its recommendations. The same bill should be returned to the assembly within fourteen days from the date of receiving the bills. The assembly can either accept the recommendation or can deny any recommendations according to the discretion of the assembly. The same bill is then again sent to the Council and the Council has a time period of fourteen days to pass the bill. In case the Legislative Council fails to do so, then it is deemed to be passed by both the Houses.

Union Judiciary- Supreme Court

In ancient times, when any wrong was done, it was on the king to ensure that the culprit was punished so that the victim gets relief. After the constitution has been adopted This function of the king has been replaced by the Judiciary whereas the other functions such as making the law and executing them are done by the Legislature and the Executive.In order to ensure transparency and fair work in the system, the constitution-makers kept these three organs independent of each other. The Judiciary is the ultimate interpreter of the rights while it acts as a guardian of the constitution. It can also conduct checks on the legislature and the executive and ensure that no one goes beyond their ambit of power. The Constitution ensures that the judiciary remains even-handed in all circumstances.We have different levels of Judiciary which is present at the central level, the state level, and district level. In Part V of the constitution, chapter IV concerns the Union Judiciary.

Supreme Court – The Guardian of the Constitution

There can be discords arising in between the different units of the federation, that is when the Supreme Court comes into play. It's the highest authority and the final interpreter of the law which means that it has the power to give final decisions on all the matters of the law. Its judgments are binding on all the lower courts. It has the power of judicial review through which it can review the action of the executive and the legislature.

Article 124 of the constitution,
The first part of this Article provides for the setting up of the Supreme Court which will be composed of one Chief Justice of India and only seven judges until the Parliament by law prescribes any more judges.

1. The second part of this Article states that the Chief Justice of India will be appointed by the President after consulting other judges whom he thinks suitable and will hold the office until he attains the age of 65 years. Whereas the president will have to take into account the Chief Justice's opinion when he appoints the other judges.
    - This Article in its part 2(a) says that a judge can by writing to the President, resign from his position, whereas,
    - this Article in its part 2(b) says that the judge can be removed under the provision contained in clause 4.

We will be dealing with this Article in detail, under the upcoming topics.

Appointment of the Chief Justice of India
According to Article 124(2), the Chief Justice of India will be appointed by the President and in pursuance of that, the President has to consult the judges of the Supreme Court and the High Courts which he thinks necessary. The president should also have a warrant regarding it.
The provision for the appointment of Chief Justice experienced many changes during the passage of time.

Composition of the Court
With respect to Article 124(2), the number of judges was only limited to seven but the parliament by law prescribed & amended that the number of judges should be increased to thirty-one, i.e thirty judges and the Chief Justice of India. This was done with a rationale that seven-judges will not be able to suffice the work, the Judiciary undertakes. In order to work efficiently, the number of judges should be increased otherwise the cases will keep on piling up and there will be more scenes of injustice.

Qualification of Judges
Article 124 in its clause (4), provides a checklist for the qualification of the judges of Supreme court which is as follows-

The person,

- Should be a citizen of India,
- Should have been a judge of the High Court or of at least two courts in succession, for a span of five years,
- Should have been an advocate of the High Court or at least two courts in succession, for a span of 10 years,
- And should be a distinguished jurist in the eyes of the President.

Tenure and Removal of Judges
According to Article 124(2), the judges of the Supreme court will hold their office until they reach the age of 65 years. That is they will get retired at the age of 65 years.

As far as the removal is concerned, Article 124(4) mentions that the judge can be removed on the ground of proved misdemeanor, the process for which is that the President will pass an order which will then be presented before both of the houses and it should pass with two-third majority of the members of the house present and voting.

We must not forget that the President should be proved incapable or guilty of his act. It can be proved through the procedure for the investigation regarding the same matter and the following procedure has to be laid down by the law of the Parliament. This right is given to the Parliament under Article 124(5).

Judges (Inquiry) Act, 1968
In this Act, the procedure for the investigation into the charges against the judges was laid down. The Judge can only be removed after proven misbehavior or incapacity.

This Act further specified that it will consist of the following people-

- Any judge of the Supreme court, or the Chief justice of the Supreme court,
- Any Chief Justice of the High Court, and
- Any person who is a distinguished jurist in the opinion of the Speaker.

These members will unanimously frame charges against the judge and will investigate it.

Salaries and Allowances
Article 125 talks about the salaries and allowances to be given to the Judges of the Supreme court.

- In clause (1), it was mentioned that the judges of the Supreme Court will be paid the salaries determined by the Parliament by law. This is present in the second schedule until any other law regarding the salaries is made.
- In clause (2), it was further mentioned that the judges will get privileges, allowances, and rights regarding leave of absence and pension with respect to the law prescribed by the Parliament.

Now, the Parliament by law can alter the rights that may hamper the judge's position. But this Article makes sure that it should not happen as it states further that, the Parliament should not enact any law which will stand as a disadvantage to the position of the judge after he has been appointed.

Acting Chief Justice: Article 126
Article 126 talks about acting Chief Justice, let's have a look.
Anytime during the tenure of the Chief Justice of India, if he is absent and is not able to dispose of his duties or his office is vacant for any reason, then the acting Chief justice will discharge the duties of the Chief Justice of India.

The seat of the Supreme Court: Article 130
In Article 130 it is mentioned that the Supreme Court will be seated in Delhi. Well, it is not a hard and fast rule but can be flexible as the Chief Justice of India may specify from time to time, which should be approved by the President.

Jurisdiction of the Supreme Court

(1) A Court of Record

- **The jurisdiction of the Supreme Court under Article 129 is independent of the Courts Act**

Contempt of court takes place when any person disobeys the orders of the court or through his demeanor disrespects the court.Court of Record is that the proceedings of the court will be

recorded so that they can act as a testimony in the future.Well, Article 129 makes the Supreme Court the court of record and gives it the power to punish for its contempt.

Supreme Court's power to punish for contempt of itself as well as subordinate courts
Article 215 of the Constitution does not empower the High Court to punish for contempt of the Supreme Court but the Supreme Court has the power to punish for contempt of High court and other subordinate courts.In case, the Supreme court does not punish for its own contempt then the High Court has no say in it.

Contempt jurisdiction for protection of Registry
Supreme court has not only maintained the contempt of court in order to punish people to harm the judge's reputation but also to protect the name of the Judiciary.
To give you an illustration, an advocate was barred from practising law for one month because he accused the registry of the court wherein he wrote the word 'bench hunt'.
The Court ruled out that the bench is not constituted by the registry but by the Chief Justice of India and the contempt of registry shall be punished.

A Minister or official may also be guilty of contempt when the Contempt of Court is committed by the State
When there is an issue before the court which is between the states on both sides of the state is one of the parties and the court give an order or decree which the state disobeys then the Supreme Court can make the State guilty of contempt.The officials and ministers involved in the case will be thereto made liable for the same.

The Court's unlimited power to compel obedience and compliance of its orders
Under Article 142, the Supreme Court has been given the power to make an order in regard to the contempt of Court. That is, the Supreme Court can compel any person under this Article to obey the order which it has given.

(2) Original Jurisdiction-Article 131
The Supreme Court has original jurisdiction when it comes to matters related to the following-

- Between the Government of India and one or more than one states; or
- Between government of India and one or more states at the different sides; or
- Between two or more than two states.

It is further provided that its jurisdiction shall not cover the matter arising out of any agreement, engagement or any sort of treaty, which was present before the pre-constitutional time and is still in force. It also extends to the matters which provide that this jurisdiction shall not apply to the respected dispute.

Enforcement of Fundamental Rights
Article 32 of the Indian Constitution states that if any fundamental right is infringed, then the person can approach the Supreme Court. This Article provides for the issue of writs which include Habeas corpus, mandamus, Certiorari, Quo warranto, Prohibition.
After issuing these writs one can directly approach the Supreme Court for the enforcement of the Fundamental Rights.

(3) Appellate Jurisdiction–Article 132

Article 132 provides that the appeals for the High Court of any state can be brought up in the Supreme Court for civil as well as criminal matters. It is provided that the case should involve some substantial question of law under Article 134A.

When all of the parameters are met then the certificate is granted under which any person can approach the SC on the basis that his or her case has been wrongly decided.

An appeal in Civil matters

Article 133 talks about the appeal in the case of constitutional matters.
Let's have a look at it-

- It says that the appeal shall lie to the Supreme court only if the High Court certifies that it fulfils the condition given in the Article 134A which says that the matter should contain a substantial question of law and in the opinion of the High Court the matter should be passed on to the Supreme Court.
- This Article again emphasizes in its clause (2) that a question of law should be wrongly decided by the High court.
- In its clause (3), it states that notwithstanding anything stated in this Article, any appeal will not lie before the Supreme Court until the Parliament specifies.

An appeal in Criminal Cases-Article 134

Article 134 says about the appeal to the Supreme Court when the matter is of criminal nature.
Let's have a quick look at it-
The appeal would lie before the Supreme Court when the High Court-

- On appeal, has reversed the acquittal of the person and he has been sentenced to death; or
- Withdraws any case from a subordinate court and has announced the conviction of the person or death sentence; or
- Has considered the case to be fit to be presented before the Supreme Court on the basis of Article 134A.

Certificate for appeal to the Supreme Court

As mentioned earlier in this article, Article 134A provides for a checklist to certify that the case is fit to be presented before the Court. This article basically provides the certificate for the appeal to the Supreme Court.

These checkpoints are as follows-

- If the High Court deems it fit to do so in the motion of its own.
- If the aggrieved party just after the judgment is passed makes an oral application.
- The decisions are to be made with respect to Articles 132(1), Article 133(1) and Article 134(1)

Power of the Supreme Court to withdraw and transfer cases Article 139-A

Article 139A gives power to the Supreme Court to withdraw the cases from the High Court if they are pending and it is believed by the Supreme Court that it involves important question on law.

Another instance in which the Supreme Court can do so is when the Attorney General of India or the aggrieved party writes to the SC mentioning that the case carries a question of law of general importance.

Federal Court's jurisdiction to be exercised by the Supreme Court- Article 135
The federal courts were established before the commencement of the constitution wherein some laws were passed. Now if the provisions which are given under Article 133 and Article 134 do not apply to those laws, then the Supreme Court will have the jurisdiction over it under Article 135.

Appeal by Special Leave- Article 136
Article 136 enables the Supreme Court to grant special leave of appeal for any order, judgment or sentence which is passed by any court or tribunal in the country.
It is regardless of anything contained in the chapter concerning the Union Judiciary and do not apply to any matter concerning Armed forces.

A private party can file an appeal under Art.136 challenging acquittal
Supreme court under Article 136 considers special leave to appeal. But the question of whether the private party has a locus standi to file the appeal has to be understood.
Let's have a look at the cases to know the answer.
A petition was filed by Prisoners Right Forum which was related to a death sentence of the prisoner which was dismissed by N. Anand Venkatesh, who stated that any third person cannot file an appeal regarding it.
And if it is allowed, any bystander will be able to file an appeal revoking the judgment of the subordinate court.

When no challenge to the main judgment
No appeal can be filed against the judgment of the Court which is passed with the consent of the parties. An appeal can only be placed regarding a question of law.

False and misleading statements – Justification to revoke the appeal
When any party presents before the court during the hearing of an appeal, any false statements or the facts which are misleading, then the Supreme court can revoke the appeal.
In SN Aggarwal V. Union of India, false facts were presented which affected the decision and discretion of the court. In this case, it was ruled out that the Supreme court has the power to set aside the appeal and it will be justified.

Tribunals
As the tribunals were set up to reduce the workload on the Courts, any appeal from the tribunals can be presented before the Supreme court until there is no provision of Appellate tribunals. If there is then Appellate tribunals will hear the appeals for the Tribunals.

Power to review its judgments Art 137
Under Article 137, the Supreme Court has the power to review its judgment.It is subjected to the provisions of law and provisions under Article 147.It is basically a mechanism provided to the Supreme Court to amend its mistakes.

Curative Petition
A curative petition is the last remedy provided for any grievances. Its counterpart is the mercy petition which is filed before the President.It was also filed in the famous Delhi rape case.

Ancillary Powers of Supreme Court.
Article 140 enables the president to make law regarding any supplementary right which can be given to the Supreme Court. This right should not be against the provisions of the law.It will enable the Supreme court to work more effectively towards the goal of bringing justice to the people.

Advisory jurisdiction-Article 143
If at any point the President feels like a matter carries substantial question related to law and is of public utility then he can approach the Supreme Court for Advisory jurisdiction. Supreme Court after hearing it may give his opinion to the President. This is the procedure of Advisory jurisdiction which is present in Article 143 of the Constitution.

Law declared by the Supreme Court to be binding on all Courts- Article 141
Supreme Court is the highest organ of law and the decision it takes is of utmost importance. The rule to follow its decision will lay down a structure of procedures which will act as a guideline for the lower courts to follow in cases where similar facts are contained. Article 141 states that the judgment of the Supreme Court is binding on all the lower or subordinate courts.

Supreme Court not bound by its own decisions
Article 141 obligates other subordinate courts to follow the judgments of the Supreme Court and stand by its decision which is the principle of Stare Decisis. But the Supreme Court is not bound by its own judgment. It believes to follow its earlier judgments until there is a case of diminishing circumstances.

Enforcement of Decree and Orders of Supreme Court: Article 142
Article 142 says-

- The Supreme Court in order to make sure that justice is done can pass any order or decree.
- It was further stated in clause (1), that when such order or decree is passed then it will be enforceable in the entire country under the provision made by the law of the Parliament and if there is no provision regarding it then the provision made by the President will be considered.
- The Supreme Court has the power to issue an order or decree in order to secure the attendance of the concerned person, the discovery or production of any of the related documents, or the investigation or punishment of any contempt of itself which will be subjected to the provision laid down by the Parliament.

State Judiciary - High Court: Appointments, transfer, powers, functions and jurisdiction

High Courts are the highest authority in terms of courts in a State. Article 214 to 237 deals with the provisions of High Courts. Article 214 deals with the establishment of the High Court in each state. A High Court consists of a Chief Justice and some other judges who are appointed by the President. There is no fixed limit for the maximum number of judges in a High Court, they are appointed as per the necessity. There will be a separate High Court for each state but after the 7th Constitutional amendment, the same high court can be the court for more than one state. Under Article 241, Parliament has the power to constitute a High Court

for a Union Territory and can also declare any Court to be a High Court for the purpose of the Constitution.

Appointment and transfer of High Court Judges

Prior to the 99th Amendment, every judge of the High Court must be appointed by the President (Article 217). The Chief Justice of the High Court will be appointed by the President, after consultation with the Governor of that state and the Chief Justice of Supreme Court. For the appointment of Judges other than Chief Justice of the High Court President can consult the Chief Justice of that High Court.

Qualifications for being a Judge of High Court

The qualification for appointing a Judge of a High Court is defined under Article 217 (2). The qualifications are-

- Firstly, it must be a citizen of India;
- Secondly, it must have held a judicial office for not less than 10 years within the territory of India;
- Thirdly, it must have been an advocate of High Court for not less than 10 years.

The 44th Amendment Act, 1978 has amended the Explanation to clause 2. Under the present clause (a) of the Explanation- any period during which a person has, after becoming an advocate has held the judicial office or the office as a member of a tribunal or any post under the Union or a State requiring special knowledge of law will be included in computing the period during which he has been an advocate for the purpose of determining his eligibility for appointment as Judge of High Court.

Powers and functions of the High Court

The following are the powers and functions of the High Court:

- It has the power to control over all the courts and tribunals within its jurisdiction except in the matters of Armed Forces under Article 227.
- It has the power to withdraw a case pending before any subordinate court it involves the substantial question of law.
- It is a Court of Record as like the Supreme Court which involves recording of judgements, proceedings etc (Article 215).
- Under the Article 13 & 226 High Court has the power of judicial review. They have the authority to declare any law or ordinance as unconstitutional if it seems to be against the Constitution of India.
- It can appoint the administration staff according to the need and can decide their salaries, allowance etc.
- It issues the rules and regulations for the working of subordinate courts.

To get the information there is a Right to Information Act under this one can get the information. But the judiciary does not fall under the ambit of this Act to maintain the Independence of Judiciary. No court proceedings are questionable under the RTI. In the landmark verdict on 2010, the Delhi High Court had held that the office of the Chief Justice of the Supreme Court comes under the ambit of RTI law, by stating that the judicial independence was not a judge's privilege but a responsibility cast upon them.

Jurisdiction of the High Court

The jurisdiction of the High Court is divided into three parts:

Original or general jurisdiction:
Under Article 215, High Courts have to power to deal with the revenue matters under this jurisdiction. This power has been used in the following matters:

- Disputes relating to the Members of Parliament and the State Legislative Assembly.
- Disputes relating to marriage, law, contempt of court etc.
- Cases which are transferred from other courts to itself as it involves a substantial question of law.

Writ Jurisdiction:
Under Article 226 of the Constitution of India High Courts has the power to issue the writs for the enforcement of fundamental rights or for other purposes. The writs issued by the High Courts are in the nature of *Habeas Corpus, Mandamus, Prohibition, Certiorari and quo warranto.* The jurisdiction of the High Court is not limited for not only the protection of fundamental rights but also for other legal rights. The writ jurisdiction of the High Court is wider than the Supreme Court because High can also issue the writs for the enforcement of legal rights. A person can directly approach the High Court when there is a violation of fundamental right.

Supervisory Jurisdiction:
Article 227 deals with the powers of the superintendence on High Court over all the subordinate courts and tribunals except the matters which are related to Armed Forces. Under this, the High Court issues the general rules and prescribes forms for the regulation of the proceedings and practices of subordinate courts.
The power of the Superintendence is a judicial and administrative power vested in the High Courts. The Supreme Court has no such power of superintendence in comparison with High Courts.

Appellate Jurisdiction:
High Court is the primary court of appeal it means that it has the power to hear the appeals against the judgement of the subordinate courts within their territories.

1. **In Civil Cases:** An appeal can be made in the High Court only against the district court's decisions. An appeal can also be made directly from the subordinate court if there is a question of fact or law involve in it or the dispute involving the value higher than Rs. 5000/-.
2. **In Criminal Cases:** It extends to the cases which are decided by the Sessions and Additional Session Judges. The jurisdiction of the High Court extends to all matters related to State and federal laws. It the session judge has awarded capital punishment or imprisonment for 7 or more than 7 years.
3. **In Constitutional Cases:** If it is certified that the case or the matter involves a question of fact or law.

Anti Defection Law

Emergency Provision
Indian Constitution through Art.352to360 deals about the emergency provisions .There are three types of emergency -

1) **National Emergency** the provisions for national emergency are given under article 352 of Indian Constitution. The ground for national emergency can be war , external aggression and armed rebellion.

Proceedure.

1. The President of India can proclaim national emergency on the written advice of cabinet.
2. The proclamation of the president has to be approved within one month by a majority of not less than two third of the members present and voting and the absolute majority of both the house of parliament.
3. The approval of the parliament is valid only for 6 month at the time and Eid every after 6 month national emergency extended.

THE 44th CONSTITUTION AMEND.AND ART.352

1. The expression internal disturbance was replaced by a more country expression that is armed rebellion.
2. The national emergency to be proclaimed by the President of India on the written advice of the cabinet.
3. Approval of the parliament has to be within one month by a special majority. Earlier the amendment it was to be within two month at by the simple majority.
4. After the 44th amendment the approval of the parliament to be believed only for 6 month at a time. Earlier no such provision.. was there.
5. The fundamental right under article 19 is to be automatically suspended only when the national emergency was proclaimed on the grounds of war or external aggression.
6. under article 359 of the Indian Constitution, article 20 and 21 cannot be suspended during national emergency.
7. Lok Sabha in special session can pass a resolution to discontinue ongoing national emergency. Earlier no such class was there.

Effects. Following are the effects of national emergency under article 352 of the Indian Constitution1-The distribution of power between the centre and state is suspended and the parliament can make any and the subject of state list. 2-The term of the Lok Sabha and the legislative assembly can be extended for not more than one year at a time.

2) State Emergency

Article 356 of the Indian Constitution provides that the president other on the district of the report from the governor or otherwise is satisfied that situation has arisen in which the administration of the state cannot be run on the basis of the Constitution then the president can make a proclamation to that effect. MEANING OF BREAKDOWN OF CONSTITUTIONAL MACHINERIES. Following are the meaning of the term breakdown of the constitutional machinery-

a. if the formation of government is not possible in the state.
b. if a state government face to avoid the administrative direction given by the central government according to the article 365 of the Indian Constitution.
c. in the case of Mumbai in 1994 the supreme court held that the secularism is one of the basic structure of the constitution and if a state government fails to abide by it are it unable to protect it or sab varsh it then it has to be considered that break down of the constitutional machinery in the state.

Procedure

The president's proclamation under the article 356 of the Indian Constitution has to be approved by the parliament within two month by a simple majority. The approval of the parliament cell will valid only for 6 month at a time. It can be extended for another 6 month not beyond 1 years. But if the state emergency is to be continue beyond 1 years then it has to be on two conditions

a- if the national emergency is going on in the country or in army part.

b- the election commission has shown its in ability to to conduct election under the prevailing conditions. These conditions the state emergency cannot be continue beyond 2 years but it can be extended only for six month at a time. also to be noted that if the state emergency is to be continued beyond 3 years the constitution has to be amended for that purpose. In the case of essar Mumbai in 1994 held that president's proclamation under article 356 of the Indian Constitution is subject to the judicial review and the responsibility to provide the relevant document lie with the centre.

Effects
Following are the effects of the state emergency-- the council of minister of the state government is dismissed and the legislative assembly can be either dissolved are can be kept under suspended animation and the President of India can take over the legislative and executive powers vested in all organs of the state government except that of the high court.

3) Financial Emergency

Financial emergency is to be proclaimed under article 368 of the Indian Constitution. If the financial stability are credibility of India are of any part there of 3 is the ground for financial emergency .

Procedure
gattu the proclamation of the financial emergency is to be made by the President of India under article 360 e and elimination has to be approved by the parliament within 2 month by simple majority. The financial emergency automatically comes to an end on the date of the end of the financial year means on 31st march. .

Effect
The financial emergency has to be proclaimed the parliament has power to make such provisions that all the money bills and financial Bill passed by the state legislature must be reserved by the governor for the reconsideration of the president of India also parliament has power to make such provisions regarding the bottle of salaries and allowances of all are some section of officials including the judges of the supreme court and high court. it is to be noted that there is no financial emergency has to be proclaimed in India till the date .

Election Commission of India (Articles 324 to 329)

The Election Commission of India is an autonomous constitutional authority responsible for administering election processes in India at national, state and district level. The body administers elections to the Lok Sabha, Rajya Sabha, state Legislative Assemblies, state legislative Councils, and the offices of the President and Vice President of the country. The Election Commission operates under the authority of Constitution per Article 324, and subsequently enacted Representation of the People Act.

The commission has the powers under the Constitution, to act in an appropriate manner when the enacted laws make insufficient provisions to deal with a given situation in the conduct of an election. Being a constitutional authority, Election Commission is amongst the few institutions which function with both autonomy and freedom, along with the country’s higher judiciary, the Union Public Service Commission and the Comptroller and Auditor General of India.

The commission was established in 1950 and originally only had a Chief Election Commissioner. Two additional Commissioners were appointed to the commission for the first time on 16 October 1989 (on the eve of the 1989 General Election), but they had a very short tenure, ending on 1 January 1990.

The Election Commissioner Amendment Act, 1989 was adopted on 1 January 1990 which turned the commission into a multi-member body: a 3-member Commission has been in operation since then and the decisions by the commission are made by a majority vote. The Chief Election Commissioner and the two Election Commissioners who are usually retired IAS officers draw salaries and allowances at par with those of the Judges of the Supreme Court of India as per the Chief Election Commissioner and other Election Commissioners (Conditions of Service) Rules, 1992.

The commission is served by its secretariat located in New Delhi. The Election Commissioners are assisted by Deputy Election Commissioners, who are generally IAS officers. They are further assisted by Directors General, Principal Secretaries, and Secretaries and Under Secretaries.

At the state level, Election Commission is assisted by the Chief Electoral Officer of the State, who is an IAS officer of Principal Secretary rank. At the district and constituency levels, the District Magistrates (in their capacity as District Election Officers), Electoral Registration Officers and Returning Officers perform election work.

Part XV of the Constitution entitled as **Elections** constitutes a code in itself, providing the groundwork for the enactment of appropriate laws and the setting up of suitable machinery for the conduct of elections.

a) Election Commission (Article 324)

Article 324 provided for the appointment of an Election Commission to superintend, direct and control the elections. The Commission is an all-India body having jurisdiction over elections to Parliament, State Legislatures, offices of the President and Vice-President.

The constitution of one central body, the Election Commission, having control over the entire election process in the country, is done to prevent injustice, which could be done by regional, State Governments, discriminating against any section of the people in the matters relating to elections. The Commission is constituted as an autonomous and independent body, with a view, to ensure the conduct of **free and fair elections**, which feature is held to be a **basic structure of the Constitution**. It has been said to be the most important arbitrator on holding of the elections.

Constitution of the Election Commission

Clause (2) of Article 324 provides that 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. Until Parliament makes any law in that behalf, the Chief Election Commissioner and other Election Commissioners are appointed by the President. When any other Election Commissioner is so appointed, the Chief Election Commissioner; shall act as the Chairman of the Election Commission

The President may also appoint, after consultation with the Election Commission, such Regional Commissioners as he may consider necessary to assist the Election Commission in the performance of its functions.{6} The conditions of service and tenure of office of the

Election Commissioners and the Regional Commissioners shall be such as the President may by rule determine. These rules, however, are subject to any law made by Parliament in this respect.

Chief Election Commissioner vis-a-vis other Election Commissioners

Proviso to Clause (5) of Article 324 says that the Chief Election Commissioner shall not be removed from his office except in like manner and on the like grounds as a Judge of the Supreme Court and the conditions of service of the Chief Election Commissioner shall not be varied to his disadvantage after his appointment. It is thus clear that the Election Commissioners do not hold the same position as does the Chief Election Commissioner. While the CEO is the creation of the Constitution, the number of other Election Commissioners is determined by the President. While the CEC can be removed from his office in the manner provided in the Proviso to Clause (5) of Article 324, the other Commissioners hold their office during the pleasure of the President, subject to any law made by Parliament in this regard. Again, while the conditions of service of the CEC cannot be varied to his disadvantage, the conditions of service of other Commissioners are determined by President by rule, subject to any law made by Parliament in this regard.

Multi-member Election Commission

Prompted by the Supreme Court's observation in S. S. Dhanoa's case {9} and also in the wake of certain controversial decisions taken by the CEC resulting in serious confrontation between the Commission and the Government of India, the latter decided to provide for a Multi-member Election Commission.

Independence of Election Commission

The Constitution envisages the setting up of an independent, autonomous Election Commission. To secure independence of action, Article 324 contains the following provisions:

a. That the CEC shall not be removed from his office except in the like manner and on the like grounds as a Judge of the Supreme Court.
b. That the conditions of service of the CEC shall not be varied to his disadvantage after his appointment.

The CEO is, therefore, protected against political and executive influence and for that reason, he can discharge his functions without fear, favour or pressure from the executive or the party in power. Even the tenure of office of other Election Commissioners and the Regional Commissioners is also free of the executive control in so far, none of them can be removed from office except on the recommendation of the CEC. This check on the executive's power is to safeguard the independence of not only these functionaries but the Election Commission as a body.

Functions of the Election Commission

The Election Commission performs the following functions:

a. The superintendence, direction and control of the preparation of electoral rolls for all elections to Parliament and to the Legislature of every State and of elections to the offices of President and Vice-President.
b. The conduct of all the elections mentioned.
c. To advise the President or the Governor of a State, as the case may be, on the question of disqualification of any Member of Parliament or a member of a State Legislature, respectively. {

Article 324 has been held to be plenary in character, vesting the whole responsibility

in the Election Commission for national and State elections. The power conferred on the Commission under Article 324 (1) is subjected to two limitations, namely:

i. When Parliament or any State Legislature has made a valid law relating to or in connection with elections, the Commission shall act in conformity with such law.
ii. The Commission while exercising power shall conform to the rule of law, act bone fide and be amenable to the norms of natural justice.

Superintendence, Direction and Control of Elections

The expression **superintendence, direction and control and the conduct of all elections** in Article 324 (1) has been held to include such powers which though not specifically provided but are necessary to be exercised for effectively accomplishing the task of holding the elections to their completion. It would, therefore be legitimate, on the part of the Commission, to make general provisions even in anticipation or in the light of experience, in respect of matters relating to symbols.

In the interest of free and fair elections, for the safety and security of electors and with a view to prevent intimidation and victimisation of electors, the Commission has full power to direct the manner of counting of votes.

Directives issued by the Election Commission for transfer of those officers from one district to another, who had completed more than four years of stay in one district, have been held not ultra vires Article 324(1).

Fixing Schedule for Elections-Exclusive Domain of Election Commission

The Apex Court in Special Reference No. 1 of 2002, {was referred to, questions relating to power of the Election Commission under Article 324, fixing the schedule for holding elections to the Legislative Assembly of a State, in the light of the mandate of Article 174(1).

The question cropped up out of the situation then existing in the State of Gujarat. The Legislative Assembly of the State, which was to complete its term on 18-3-2003, was dissolved on 19-7-2002 by the Governor on being advised by the Chief Minister. Since the last sitting of the Assembly was held on 3-4-2002, the Election Commission was required to complete the elections to the Assembly by the date, so as to comply with the Article 174(1) mandate.

The Election Commission, on its part, recommended the invocation of Article 356 in the State, as the situation in the State, in their opinion was not suitable to hold, early, free and fair elections, so as to comply with the requirement of Article 174(1)

A Constitution Bench of five Judges of the Supreme Court, answering the questions set out in the Reference, reported as follows:

i. Article 174(1), which is a complete code in itself deals only with a live Legislature.
ii. Article 174(1) does not provide for any period of limitation for holding elections within six months from the date of last sitting of the Session of the dissolved Assembly.
iii. There is no provision, expressly providing for any period of limitation for constituting a fresh Legislative Assembly on the premature dissolution of the previous Legislative Assembly.
iv. The entire matter relating the elections is entrusted to the Election Commission.
v. The general power of superintendence, direction, control and conduct of election, although vested in the Election Commission under Article 324(1), yet is subjected to

any law either made by the Parliament or State Legislature, as the case may be, which is also subject to the provisions of the Constitution

vi. The Election Commission is required to take steps for holding elections immediately on expiration of the term of the Assembly or its dissolution, although no period has been provided for.

vii. In view of the provisions of Articles 109, 110 and 111 and analogous Articles for State Assembly, on the premature dissolution of the Legislative Assembly, the Election Commission is required to initiate immediate steps for holding election for constituting Legislative Assembly on the first occasion and in any case within six months from the date of premature dissolution of the Assembly.

b) One General Electoral Roll for every Constituency (Article 325)

Article 325 provides:
There shall be one general electoral roll for every territorial constituency for election to either House of Parliament or to the House or either House of the Legislature of a State and no person shall be ineligible for inclusion in any such roll or claim to be included in any special electoral roll for any such constituency on grounds only of religion, race, caste, sex or any of them.

Section 22 of the Representation of the People Act, 1950 empowers the Electoral Registration Officer of a constituency to delete the name of a person from the Electoral Roll on certain grounds. It has been held that such deletion must be done only after giving to the person concerned meaningful opportunity of hearing and after following requisite procedure.

System of Adult Suffrage (Article 326)
Article 326 incorporates the system of adult suffrage for elections to the Lok Sabha and the Legislative Assembly of every State. According to this system, a person to be registered as a voter for these elections must comply with the following requirements:

i. He must be a citizen of India.

ii. He must not be less than 18 years of age on the appointed day. {He must not be otherwise disqualified under the Constitution or any law made by the appropriate Legislature on the ground of non-residence, unsoundness of mind, crime, corrupt or illegal practice.

Parliament has enacted the Representation of People Act, 1950 which requires a person, to be registered as a voter, to fulfill the following conditions:

i. He must be a citizen of India.

ii. He must not be declared to be of unsound mind by competent court.

iii. He must not be disqualified from voting under a law relating to corrupt and illegal practices or other offences in connection with elections.

No person is entitled to be registered in the electoral roll for more than one constituency or of any constituency more than once. A person shall be disqualified from voting at any election for 6 years if he is convicted of any of the specified offences punishable with imprisonment or who, upon the trial of an election petition is found guilty of any corrupt practice. This disqualification may, however, be removed by the Election Commission, for reasons recorded by it in writing.

Every person enrolled in the electoral roll by an authority empowered by law to prepare the electoral roll or to include a name therein, is entitled to cast a vote unless disqualified under law

Right to Vote Not a Fundamental Right
The right to vote or stand as a candidate for election is a creature of statute or a special law and must be subject to the limitations imposed by it. These rights are not absolute rights, nor are held to be constitutional rights. Though fundamental to democracy, the right to elect is neither a fundamental right nor a common law right. So, is the right to be elected and the right to dispute an election.

c) Enactment of laws with respect to Elections (Articles 327 and 328)
Article 327 provides that Parliament may, from time to time, by law, make provisions with respect to all matters relating to, or in connection with, elections to either House of Parliament or the Legislature of a State. The law may include provisions for the preparation of electoral rolls, the delimitation of constituencies and all other matters necessary for securing the due constitution of such House or Houses. The law so made shall be subject to the provisions of the Constitution. Similar power is conferred by Article 328 on the Legislature of a State with respect to the elections to the Houses of the State Legislature. The power of the State Legislature is subjected to the provisions of the Constitution and any law made by Parliament.

In the exercise of the power conferred by Article 327, Parliament has enacted the Representation of the People Acts, 1950 and 1951 and the Delimitation Commission Act, 1952. The Election Commission is to act not inconsistent with these Acts.

d) Settlement of Election Disputes (Article 329)
Clause (a) of Article 329 provides that the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies made or purported to be made under Article 327 or Article 328 shall not be called in question in any Court.

Clause (b) of Article 329 as amended by the Constitution (19th Amendment) Act, 1966, provides that notwithstanding anything in the Constitution, no election to either House of Parliament or the Legislature of a State shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by the appropriate Legislature. In pursuance of this Clause, Parliament enacted the Representation of the People Act, 1951. The Act has vested the power to decide any election petition, in the High Courts.
Court hearing an election petition.

Delimitation Commission
The delimitation of constituencies as enshrined in Articles 82 and 170 is a necessary process, as important as the elections themselves. It is to take place after every census so that all Parliamentary and State Assembly constituencies are re-drawn on the basis of population. Since the population keeps on shifting, it becomes necessary to readjust the boundaries of constituencies, so that there should be true representation of the people in the elections held to serve the purpose in a democracy. The delimitation is supposed to take place every 10 years. It is done by Delimitation Commission.

The Notification issued based on the report of the Delimitation Commission is held to be final and binding. It would have the effect of law. } No government can make any changes or choose to alter it. It cannot be challenged before any Court either. {66} If a person felt that he was not given due opportunity of being heard or felt that the Commission was not following the procedure prescribed, he could have approached the High Court, prior to issuance of the final Notification and sought appropriate directions

Any objection to delimitation of constituencies can only be entertained by the Commission before the date specified and not after its publication in the Official Gazette. The object is that no voter should be allowed to hold up an election indefinitely, by questioning the delimitation of the constituencies, from Court to Court.

Though the delimitation for the purpose of dividing the State into territorial constituencies is a mandate of the Constitution and is basic feature of democracy contemplated in the Constitution, but re-adjustment of the extent and boundaries of such territorial constituencies upon completion of each census is not such a mandate, nor it is contemplated to be the basic feature of democracy. In the event, no census takes place, there would be no re-adjustment and there being no mandate in the Constitution to take census, readjustment of the extent and boundaries of territorial constituencies is an uncertainty and accordingly, it is said, cannot be said to be the basic feature of democracy contemplated in the Constitution.

Tribunals

Administrative Tribunals in India

Introduction

In Administrative law, the term 'tribunal' is used in a significant sense and refers to only the adjudicatory bodies which lie outside the sphere of the ordinary judicial system. Technically in India, the judicial powers are vested in the Courts which aims to safeguard the rights of the individuals and promotes justice. Therefore, to institute an effective system of the judiciary with fewer complexities, the judicial powers are delegated to the administrative authorities, thus, giving rise to administrative tribunals or administrative adjudicatory bodies which holds quasi-judicial features.

Growth of Administrative Tribunals

The 42nd Amendment to the Constitution introduced Part XIV-A which included Article 323A and 323B providing for constitution of tribunals dealing with administrative matters and other issues. According to these provisions of the Constitution, tribunals are to be organized and established in such a manner that they do not violate the integrity of the judicial system given in the Constitution which forms the basic structure of the Constitution.
The introduction of Article 323A and 323B was done with the primary objective of excluding the jurisdiction of the High Courts under Article 226 and 227, except the jurisdiction of the Supreme Court under Article 136 and for originating an efficacious alternative institutional mechanism or authority for specific judicial cases.

The purpose of establishing tribunals to the exclusion of the jurisdiction of the High Courts was done to reduce the pendency and lower the burden of cases. Therefore, tribunals are organised as a part of civil and criminal court system under the supremacy of the Supreme Court of India.

From a functional point of view, an administrative tribunal is neither an exclusively judicial body nor an absolute administrative body but is somewhere between the two. That is why an administrative tribunal is also called 'quasi-judicial' body.

Characteristics of Administrative Tribunals

The following are the few attributes of the administrative tribunals which make them quite disparate from the ordinary courts:

1. Administrative tribunals must have statutory origin i.e. they must be created by any statute.
2. They must have some features of the ordinary courts but not all.
3. An administrative tribunal performs the quasi-judicial and judicial functions and is bound to act judicially in every circumstance.
4. They are not adhered by strict rules of evidence and procedure.
5. Administrative tribunals are independent and not subject to any administrative interference in the discharge of judicial or quasi-judicial functions.
6. In the procedural matters, an administrative tribunal possesses the powers of a court to summon witnesses, to administer oaths and to compel the production of documents, etc.
7. These tribunals are bound to abide by the principle of natural justice.
8. A fair, open and impartial act is the indispensable requisite of the administrative tribunals.
9. The prerogative writs of certiorari and prohibition are available against the decisions of administrative tribunals.

Categories of Administrative Tribunals

Administrative Tribunals for service matter [Article 323A]

Article 323A provides the establishment of administrative tribunals by law made by Parliament for the adjudication of disputes and complaints related to the recruitment and conditions of service of Government servants under the Central Government and the State Government. It includes the employees of any local or other authority within the territory of India or under the control of the Government of India or of a corporation owned or controlled by the Government.

The establishment of such tribunals must be at the centre and state level separately for each state or for two or more states. The law must incorporate the provisions for the jurisdiction, power and authority to be exercised by tribunals; the procedure to be followed by tribunals; the exclusion of the jurisdiction of all other courts except the Supreme Court of India.

Tribunals for other matters [Article 323B]

Article 323B empowers the Parliament and the State Legislature to establish tribunals for the adjudication of any dispute or complaint with respect to the matters specified under clause (2) of Article 323B. Some of the matters given under clause (2) are a levy, assessment, collection and enforcement of any tax; foreign exchange and export; industrial and labour disputes; production, procurement, supply and distribution of foodstuffs; rent and it's regulation and control and tenancy issues etc. Such a law must define the jurisdiction, powers of such tribunals and lays down the procedure to be followed.

In the landmark case of *L. Chandra Kumar v. Union of India[1]*, the court reached various conclusions as to jurisdictional powers of the tribunal constituted under Articles 323A and 323B. The Supreme Court struck down clause 2(d) of Article 323A and clause 3(d) of Article

323B on the ground that they excluded the jurisdiction of the High Courts and the Supreme Court under Article 226/227 and 32 respectively.
The SC ruled that the tribunals created under Article 323A and 323B would continue to be the courts of the first instance in their respective areas for which they are constituted. The litigants are not allowed to approach the High Courts directly by overlooking the jurisdiction of the concerned tribunal.

No appeal for the decision of the tribunal would lie directly before the Supreme Court under Article 136 but instead, the aggrieved party would be entitled to move the High Court under Article 226 and 227 and after the decision of the Division Bench of the High Court, the party may approach the Apex Court under Article 136.

Distinction between Courts and Tribunals

Courts	**Administrative Tribunal**
A Court of law is a part of the traditional judicial system.	The administrative tribunal is an agency created by a statue endowed with judicial powers.
A Court of law is vested with general jurisdiction over all the matters.	It deals with service matters and is vested with limited jurisdiction to decide a particular issue.
It is strictly bound by all the rules of evidence and by the procedure of the Code of Civil Procedure.	It is not bound by the rules of the Evidence Act and the CPC unless the statute which creates the tribunal imposes such an obligation.
It is presided over by an officer expert in the law.	It is not mandatory in every case that the members need to be trained and experts in law.
The decision of the court is objective in nature primarily based on the evidence and materials produced before the court.	The decision is subjective i.e. at times it may decide the matters taking into account the policy and expediency.
It is bound by precedents, the principle of res judicata and the principle of natural justice.	It is not obligatory to follow precedents and principle of res judicata but the principle of natural justice must be followed.
It can decide the validity of legislation.	It cannot decide the validity of legislation.
The courts do not follow investigatory or inquisition functions rather it decides the case on the basis of evidence.	Many tribunals perform investigatory functions as well along with its quasi-judicial functions.

The Administrative Tribunals Act, 1985
In pursuance of the provisions in Article 323A, Parliament passed the Administrative Tribunal Act, 1985, providing for all the matters falling within the clause(1) of Article 323-A. According to this Act, there must be a Central Administrative Tribunal (CAT) at the centre and a State Administrative Tribunal (SAT) at the state level for every state.

The tribunal is competent to declare the constitutionality of the relevant laws and statutes. The Act extends to, in so far as it is related to the Central Administrative Tribunal, to the whole of India and in relation to the Administrative tribunals for states, it is applicable to the whole of India except the State of Jammu and Kashmir (Section 1).

Objective for the establishment of Administrative Tribunals
1. To relieve congestion in courts or to lower the burden of cases in courts.
2. To provide for speedier disposal of disputes relating to the service matters.

Applicability of the Act

According to Section 2 of the Administrative Tribunals Act, 1985, the act applies to all Central Government employees except –

- The members of the naval, military or air force or any other armed forces of the Union
- Any officer or servant of the Supreme Court or any High Courts
- Any person appointed to the secretariat staff of either House of the Parliament.

Composition of the Tribunals and Bench

Section 4 of this Act describes the composition of the tribunals and bench. Each tribunal shall consist of a Chairman, Vice Chairman, Judicial and Administrative members. Every bench must include at least one judicial and one administrative member. The benches of the Central Tribunal shall ordinarily sit at New Delhi, Allahabad, Calcutta, Madras, Bombay and such other place as the Central Government specifies. The Chairman may transfer the Vice Chairman or other members from one bench to another bench.

Qualification and Appointment of Members

Section 6 of the Administrative Tribunals Act, 1985, lays the provisions specifying the qualifications and appointment of the members of tribunals.

Chairman: To be appointed as a chairman, a person must have the following qualifications-

- He is or has been a judge of a High Court or
- He has held the office of Vice Chairman for two years or
- He has held the post of secretary to the Government of India or
- He has held any other post carrying the scale pay of secretary.

Vice-Chairman: A person is qualified for the post of Vice-Chairman if he-

- Is or has been a judge of the High Court or
- Has for 2 years held the post of Secretary to the Government or holding any other post carrying the same pay scale under the Central or State Governments or
- Has held for 5 years the post of an Additional Secretary to the Government of India or any other post carrying the scales of pay of Additional Secretary.

Judicial Member: A person to be appointed as a judicial member must-

- Be or have been a judge of the High Court or
- Have been a member of Indian Legal Service and has held a post in Grade I of the service for at least 3 years.

Administrative Member: A person to be appointed as an Administrative member must-

- Have held the post of an Additional Secretary to the Government of India or another equivalent post for at least 2 years, or
- Have held the post of a Joint Secretary to the Government of India or other equivalent post, or
- Have adequate administrative experience.

The Chairman, Vice-Chairman and other members shall be appointed by the President. The Judicial Members shall be appointed by the President with the consultation of the Chief Justice of India. The Chairman, Vice-Chairman and other members of the State Tribunal shall be appointed by the President after consultation with the Governor of the concerned state.

Term of Office

According to Section 8 of the Act, the Chairman, Vice-Chairman and other members of the tribunal shall hold the office for a term of 5 years or until he attains-

1. Age of 65 years, in the case of the Chairman or Vice-Chairman

2. Age of 62 years in the case of other members

Resignation and Removal

Section 9 of the Act prescribes the procedure of resignation by any member and removal of any member.

The Chairman, Vice-Chairman or other members may resign from his post by writing to the President. They shall be removed from their office only by an order made by the President on the ground of proved misbehaviour or incapacity after an enquiry made by a judge of the Supreme Court. They shall have the right to be informed of the charges against them and shall be given a reasonable opportunity of hearing. The Central Government may make rules to regulate the procedure for the investigation of the charges against them.

Jurisdiction of Central Tribunal

Section 14 states that the Central Tribunal from the day of the appointment shall exercise all the jurisdiction, powers and authority in relation to the following matters which were within the jurisdiction of other courts (except the Supreme Court) before the enactment of this Act:

1. Recruitment of any civil service of Union or All India service or civil post under the Union or civilian employees of defence services;
2. All service matters of the above-mentioned employees, and also of employees of any local or other authority within the territory of India or under the control of the Government of India or any corporation or society owned or controlled by the Government;
3. All service matters of such persons whose services have been placed by the State Government or any local or other authority or any corporation at the disposal of the Central Government.

Procedure and Powers of Tribunals

Section 22 of the Administrative Tribunals Act, 1985 lays down the powers and procedure of tribunals discussed below-

1. A tribunal is not bound to follow the procedure laid down by the Code of Civil Procedure, 1908. It has the power to regulate its own procedure but must abide by the principle of natural justice.
2. A tribunal shall decide the applications and cases made to it as rapidly as possible and every application shall be decided after scrutinizing the documents and written submissions and perceiving the oral arguments.
3. Tribunals have the same powers as vested by the civil courts under the Code of Civil Procedure, 1908, while trying a suit, with regard to the following subject-matter-
4. Summoning and enforcing the attendance of any person and examining him on oath;
5. Production of documents;
6. Receiving evidence on affidavits;
7. Ask for any public record or document from any office under Section 123 and 124 of the Indian Evidence Act, 1872;
8. Issuing commissions for the examination of witnesses and documents;
9. Reviewing its decisions;
10. Deciding the case ex-parte;
11. Setting aside any order passed by it ex-parte;
12. Any other matter prescribed by the Central Government.
13. Leading Case Laws

Advantages of Administrative Tribunals

The concept of administrative tribunals was introduced because it has certain advantages over ordinary courts. Few of them are mentioned below-

- **Flexibility:** The introduction of administrative tribunals engendered flexibility and versatility in the judicial system of India. Unlike the procedures of the ordinary court which are stringent and inflexible, the administrative tribunals have a quite informal and easy-going procedure.
- Speedy Justice: The core objective of the administrative tribunal is to deliver quick and quality justice. Since the procedure here is not so complex, so, it is easy to decide the matters quickly and efficiently.
- Less Expensive: The Administrative Tribunals take less time to solve the cases as compared to the ordinary courts. As a result, the expenses are reduced. On the other hand, the ordinary courts have cumbrous and slow-going, thus, making the litigation costly. Therefore, the administrative tribunals are cheaper than ordinary courts.
- Quality Justice: If we consider the present scenario, the administrative tribunals are the best and the most effective method of providing adequate and quality justice in less time.
- Relief to Courts: The system of administrative adjudication has lowered down the burden of the cases on the ordinary courts.

Drawbacks of Administrative Tribunals

Although, administrative tribunals play a very crucial role in the welfare of modern society, yet it has some defects in it. Some of the criticisms of the administrative tribunal are discussed below-

- **Against the Rule of Law:** It can be observed that the establishment of the administrative tribunals has repudiated the concept of rule of law. Rule of law was propounded to promote equality before the law and supremacy of ordinary law over the arbitrary functioning of the government. The administrative tribunals somewhere restrict the ambit of the rule of law by providing separate laws and procedures for certain matters.
- Lack of specified procedure: The administrative adjudicatory bodies do not have any rigid set of rules and procedures. Thus, there is a chance of violation of the principle of natural justice.
- No prediction of future decisions: Since the administrative tribunals do not follow precedents, it is not possible to predict future decisions.
- Scope of Arbitrariness: The civil and criminal courts work on a uniform code of procedure as prescribed under C.P.C and Cr.P.C respectively. But the administrative tribunals have no such stringent procedure. They are allowed to make their own procedure which may lead to arbitrariness in the functioning of these tribunals.
- Absence of legal expertise: It is not necessary that the members of the administrative tribunals must belong to a legal background. They may be the experts of different fields but not essentially trained in judicial work. Therefore, they may lack the required legal expertise which is an indispensable part of resolving disputes.

Human Rights & Its Commission

Meaning of Human Rights

Human beings are born equal in dignity and rights. These are moral claims which are inalienable and inherent in all individuals by virtue of their humanity alone, irrespective of caste, colour, creed, and place of birth, sex, cultural difference or any other consideration. These claims are articulated and formulated in what is today known as human rights. Human

rights are sometimes referred to as fundamental rights, basic rights, inherent rights, natural rights and birth rights.

Definition of Human Rights

Dr. Justice Durga Das Basu defines "Human rights are those minimal rights, which every individual must have against the State, or other public authority, by virtue of his being a 'member of human family' irrespective of any consideration. Durga Das Basu's definition brings out the essence of human rights.

The Universal Declaration of Human Rights (UDHR), 1948, defines human rights as "rights derived from the inherent dignity of the human person." Human rights when they are guaranteed by a written constitution are known as "Fundamental Rights" because a written constitution is the fundamental law of the state.

Characteristics and Nature of Human Rights

Following are the characteristics of human rights:

1. **Human Rights are Inalienable** - Human rights are conferred on an individual due to the very nature of his existence. They are inherent in all individuals irrespective of their caste, creed, religion, sex and nationality. Human rights are conferred to an individual even after his death. The different rituals in different religions bear testimony to this fact.
2. **Human Rights are Essential and Necessary -** In the absence of human rights, the moral, physical, social and spiritual welfare of an individual is impossible. Human rights are also essential as they provide suitable conditions for material and moral upliftment of the people.
3. **Human Rights are in connection with human dignity** - To treat another individual with dignity irrespective of the fact that the person is a male or female, rich or poor etc. is concerned with human dignity. For eg. In 1993, India has enacted a law that forbids the practice of carrying human excreta. This law is called Employment of Manual Scavengers and Dry Latrines (Prohibition) Act.
4. **Human Rights are Irrevocable:** Human rights are irrevocable. They cannot be taken away by any power or authority because these rights originate with the social nature of man in the society of human beings and they belong to a person simply because he is a human being. As such human rights have similarities to moral rights.
5. **Human Rights are Necessary for the fulfillment of purpose of life**: Human life has a purpose. The term "human right" is applied to those conditions which are essential for the fulfillment of this purpose. No government has the power to curtail or take away the rights which are sacrosanct, inviolable and immutable.
6. **Human Rights are Universal –** Human rights are not a monopoly of any privileged class of people. Human rights are universal in nature, without consideration and without exception. The values such as divinity, dignity and equality which form the basis of these rights are inherent in human nature.
7. **Human Rights are never absolute –** Man is a social animal and he lives in a civic society, which always put certain restrictions on the enjoyment of his rights and freedoms. Human rights as such are those limited powers or claims, which are contributory to the common good and which are recognized and guaranteed by the State, through its laws to the individuals. As such each right has certain limitations.
8. **Human Rights are Dynamic** - Human rights are not static, they are dynamic. Human rights go on expanding with socio-eco-cultural and political developments within the State. Judges have to interpret laws in such ways as are in tune with the changed social values. For eg. The right to be cared for in sickness has now been extended to include free

medical treatment in public hospitals under the Public Health Scheme, free medical examinations in schools, and the provisions for especially equipped schools for the physically handicapped.

9. **Rights as limits to state power** - Human rights imply that every individual has legitimate claims upon his or her society for certain freedom and benefits. So human rights limit the state's power. These may be in the form of negative restrictions, on the powers of the State, from violating the inalienable freedoms of the individuals, or in the nature of demands on the State, i.e. positive obligations of the State. For eg. Six freedoms that are enumerated under the right to liberty forbid the State from interfering with the individual.

National Human Rights Commission (NHRC)

- NHRC of India is an independent statutory body established on **12 October, 1993** as per provisions of Protection of Human Rights Act, 1993, later amended in 2006.NHRC has celebrated its Silver Jubilee (25 years) on October 12, 2018. Its headquarter is located in New Delhi.It is the watchdog of human rights in the country, i.e. the rights related to life, liberty, equality and dignity of the individual guaranteed by Indian Constitution or embodied in the international covenants and enforceable by courts in India.It was established in conformity with the **Paris Principles,** adopted for the promotion and protection of human rights in Paris (October, 1991) and endorsed by the General Assembly of the United Nations on 20 December, 1993.

What are Human Rights?

- As per UN definition these rights are inherent to all human beings, regardless of race, sex, nationality, ethnicity, language, religion, or any other status.
- Human rights include the right to life and liberty, freedom from slavery and torture, freedom of opinion and expression, the right to work and education, and many more.
- These are entitled to everyone, without any discrimination.

Background

- **Universal Declaration of Human Rights (UDHR)** was adopted by the United Nations General Assembly in Paris on 10 December 1948.It is a milestone declaration in the history of human rights which sets out, for the first time, fundamental human rights to be universally protected. **Human Rights Day** is observed every year on **10 December,** which is the anniversary of the UDHR. In 2018, Human Rights Day marked the 70th anniversary the declaration. In due time the growing importance of strengthening national human rights institutions has been recognized and in 1991, a UN meeting in Paris has developed a detailed set of principles i.e. **Paris Principles**. These principles became the foundation for the establishment and operation of national human rights institutions.
- In pursuant to these principles, India has enacted the **Protection of Human Rights Act, 1993,** with a view to bring about greater accountability and strengthening of the human rights in the country. This act also authorized State Governments to establish State Human Right Commission.

The Human Rights Council

- The Human Rights Council is an inter-governmental body created by the United Nations General Assembly resolution on 15 March 2006.
- It has replaced the former United Nations Commission on Human Rights.
- It is responsible for strengthening the promotion and protection of human rights around the globe and for addressing situations of human rights violations and make recommendations on them.

- It has the ability to discuss all thematic human rights issues and situations that require its attention throughout the year. It meets at the UN Office at Geneva.
- The Council is made up of 47 United Nations Member States which are elected by the UN General Assembly.

Structure of the Commission

- NHRC is a multi-member body which consists of a Chairman and seven other members. Out of the seven members, three are ex-officio member.
- **President appoints the Chairman and members** of NHRC on recommendation of high-powered committee headed by Prime Minister.
- The Chairperson and the members of the NHRC are appointed for 5 years or till the age of 70 years, whichever is earlier.
- They can be removed only on the **charges of proved misbehavior or incapacity,** if proved by an inquiry conducted by a Supreme Court Judge.
- Commission also has five **Specialized Divisions** i.e. Law Division, Investigation Division, Policy Research & Programmes Division, Training Division and Administration Division.
- The chairman and the members of **State Commission are appointed by the Governor** in consultation with the Chief Minister, Home Minister, Speaker of Legislative Assembly and Leader of the Opposition in the State Legislative Assembly.

Functions and Powers of NHRC

- NHRC investigates grievances regarding the violation of human rights either suo moto or after receiving a petition.
- It has the power to interfere in any judicial proceedings involving any allegation of violation of human rights.
- It can visit any jail or any other institution under the control of the State Government to see the living conditions of the inmates and to make recommendations thereon.
- It can review the safeguards provided under the constitution or any law for the protection of the human rights and can recommend appropriate remedial measures.
- NHRC undertakes and promotes research in the field of human rights.
- NHRC works to spread human rights literacy among various sections of society and promotes awareness of the safeguards available for the protection of these rights through publications, media, seminars and other means.
- The Commission takes an independent stand while providing opinions for the protection of human rights within the parlance of the Constitution or in law for the time being enforced.
- It has the powers of a civil court and can grant interim relief.
- It also has the authority to recommend payment of compensation or damages.
- NHRC credibility is duly reflected in large number of complaints received every year and the trust reposed in it by the citizens.
- It can recommend to both the central and state governments to take suitable steps to prevent the violation of Human Rights. It submits its annual report to the President of India who causes it to be laid before each House of Parliament.

Limitations of NHRC

- NHRC does not have any mechanism of investigation. In majority cases, it asks the concerned Central and State Governments to investigate the cases of the violation of Human Rights

- It has been termed as 'India's teasing illusion' by Soli Sorabjee (former Attorney-General of India) due to its incapacity to render any practical relief to the aggrieved party.
- NHRC can only make recommendations, without the power to enforce decisions.
- Many times NHRC is viewed as post-retirement destinations for judges and bureaucrats with political affiliation moreover, inadequacy of funds also hamper its working.
- A large number of grievances go unaddressed because NHRC cannot investigate the complaint registered after one year of incident.
- Government often out rightly rejects recommendation of NHRC or there is partial compliance to these recommendations.
- State human rights commissions cannot call for information from the national government, which means that they are implicitly denied the power to investigate armed forces under national control.
- National Human Rights Commission powers related to violations of human rights by the armed forces have been largely restricted.

Suggestions

- There is need for complete revamping of NHRC to make it more effective and truly a watchdog of human right violations in the country.
- NHRC efficacy can be enhanced by government if commission decisions are made enforceable.
- There is need to change in composition of commission by including members from civil society and activists.
- NHRC needs to develop an independent cadre of staff with appropriate experience.
- Many laws in India are very old and archaic in nature by amending which government can bring more transparency in regulations.
- To improve and strengthen the human rights situation in India, state and non state actors need to work in tandem.

Anti- defection Law in India

Introduction

Politics is normally the pursuit of power. To be in power, a party or a combination of political parties must have the support of majority of the members of the House. For mustering the numerical strength use of corrupt and malpractices like defection have crept in the system. Today, political morality among legislators in India has taken such a nose-dive, that the very purpose of representation appears to be defeated. Political Defections and splits in parties have been a regular feature of Indian politics for several decades. Political defection among legislators is indeed a matter of great concern, which affects the stability of the governments and is indeed true principles of parliamentary democracy. The problem of defection-switching loyalty from one political party to another has been haunting the Indian polity for over 30 years. Beginning in 1960s, the politics of 'Aya Ram and Gaya Ram' has reached such a level that frequent defections, splits, and the consequent Governmental instability have vitiated the democratic ethos of our polity.

Originally, the Constitution of India carried no reference to political parties and their existence. Since multi-party democracy had not evolved in 1950s and early 1960s, the heat of defections and their implications were not felt. Things however, changed after the 1967 elections. The 1967 elections are thus called a watershed moment in India's democracy.

In 1967, some sixteen states had gone to polls. The Congress lost majority in them and was able to form government only in one state. This was the beginning of coalition era in India. This election also set off a large scale defections. Between 1967 to 1971, some 142 Mps and over 1900 MLAs migrated their political parties. Governments of many states, beginning from Haryana, collapsed. The defectors were awarded with plum ministries in the governments, including Chief Ministership in Haryana. In Haryana, one legislator "Gaya Lal" changed party for three times and thus, all defectors used to be called "Aaya Ram-Gaya Ram". However, the issue was not addressed immediately. It took further 17 years to pass the anti-defection law in 1985. The 52th amendment of the Constitution in 1985 inserted 10th schedule in the constitution with Provisions as to disqualification on ground of defection.

Political Defection

In essence, defection is disloyalty; abandonment of duty or principle or of one's leader or cause. In parliamentary political life, the term has come to connote change of any party affiliation, or allegiance by a member of a legislature. The defector is disloyal not only to the Party on whose ticket he or she has been elected but also commits a breach of faith with the electorate whose votes were secured on the basis of his or her electoral affiliation and promises

The Constitutional (Fifty Second Amendment) Act, 1985

In this amendment, articles 101, 102, 190 and 191 were changed. It laid down the process by which legislators may be disqualified on grounds of defection. As per this process, a member of parliament or state legislature can be disqualified on the following grounds:

Members of a Political Party

- When voluntarily resigned from his party or disobeyed the directives of the party leadership on a vote.
- When does not vote / abstains as per party's whip. However, if the member has taken prior permission, or is condoned by the party within 15 days from such voting or abstention, the member shall not be disqualified.

Independent Members

If a member has been elected as "Independent", he / she would be disqualified if joined a political party.

Nominated Members

Nominated members who were not members of a party could choose to join a party within six months; after that period, they were treated as a party member or independent member.

Exceptions

- If a person is elected as speaker or chairman then he could resign from his party, and rejoin the party if he demitted that post. No disqualification in this case.
- A party could be merged into another if *at least one-thirds of its party legislators voted for the merger*. The law initially permitted splitting of parties, but that has now been made two-third.

As soon as this law was passed, it was met with severe oppositions on logic that it impinged on right to free speech of legislators. A PIL was filed in the Supreme Court in the form of famous *Kihoto Hollohon vs Zachillhu and Others (1992)*. This PIL had challenged the constitutional validity of the law. But SC upheld the constitutional validity of 10th schedule.

Court also decided that the law does not violate any rights of free speech or basic structure of the parliamentary democracy.

However, Supreme Court also made some observations on Section 2(1) (b) of the Tenth schedule. Section 2(1) (b) reads that a member shall be disqualified if he votes or abstains from voting contrary to any direction issued by the political party. The judgement highlighted the need to limit disqualifications to votes *crucial to the existence of the government* and to matters *integral to the electoral programme of the party*, so as not to 'unduly impinge' on the freedom of speech of members.

91st Amendment Act, 2003

Earlier, a 'defection' by **one-third** of the elected members of a political party was considered a 'merger'. The *91st Constitutional Amendment Act, 2003*, changed this. So now at least **two-thirds** of the members of a party have to be in favor of a "merger" for it to have validity in the eyes of the law. The 91st Amendment also makes it mandatory for all those switching political sides – whether singly or in groups – to resign their legislative membership. They now have to seek re-election if they defect.

Summary of Provisions Regarding Tenth Schedule

Conditions of Disqualification

- If a member of a house belonging to a political party:
  - Voluntarily gives up the membership of his political party, or
  - Votes, or does not vote in the legislature, contrary to the directions of his political party.
- However, if the member has taken prior permission, or is condoned by the party within 15 days from such voting or abstention, the member shall not be disqualified.
- If an independent candidate joins a political party after the election.
- If a nominated member joins a party six months after he becomes a member of the legislature.

Power to Disqualify

- The Chairman or the Speaker of the House takes the decision to disqualify a member.
- If a complaint is received with respect to the defection of the Chairman or Speaker, a member of the House elected by that House shall take the decision.

Exceptions – Merger

A person shall not be disqualified if his original political party merges with another, and:

- He and other members of the old political party become members of the new political party, or
- He and other members do not accept the merger and opt to function as a separate group.

This exception shall operate only if not less than **two-thirds** of the members of party in the House have agreed to the merger.

Court's Intervention

All proceedings in relation to any question on disqualification of a member of a House under this Schedule are deemed to be proceedings in Parliament or in the Legislature of a state. No court has any jurisdiction. This was subsequently struck down by the Supreme Court. Currently, the anti-defection law comes under the judicial review of courts.

Various Supreme Court Judgments on Anti-defection Law

Beginning with *Kihoto Hollohon vs Zachillhu And Others (1992)* case, various provisions regarding anti-defection law have been challenged in the Supreme Court. The Key issues and Supreme Court observations are listed below:

Kihota Hollohon vs. Zachilhu and Others (1993)

- **Issue:** If the 10th schedule curtails the freedom of speech and expression and subvert the democratic rights of the elected members in parliament and state legislatures.
- **SC Judgement:** The 10th schedule neither impinges upon the freedom of speech and expression nor subverts the democratic rights of elected members. The 10th schedule is constitutionally valid.
- **Issue:** Is granting finality to the decision of the Speaker/ Chairman is valid.
- **SC Judgement:** This provision is valid however; High Courts and the Supreme Court can exercise judicial review under the Constitution. But the Judicial review should not cover any stage prior to the making of a decision by the Speakers/ Chairmen.

Ravi S Naik v. Union of India (1994)

- **Issue:** If only resignation constitutes "voluntarily giving up" membership of a political party.
- **SC Judgement:** There is a wider meaning of the words "voluntarily giving up membership". The inference can be drawn from the conduct of the members also.

G. Vishwanathan v. Speaker, Tamil Nadu Legislative Assembly (1996)

- **Issue:** If a member is expelled from old party and he joins another party after being expelled, will it be considered as having voluntarily given up his membership?
- **SC Judgement:** Once a member is expelled, he is treated as unattached member in the house but he continues to be a member of the old party as per the Tenth Schedule. If he joins a new party after being expelled, he can be said to have voluntarily given up membership of his old party.