**Polity**

Saturday, 28 May 2022

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State legislatures

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**Importance of Polity in different stages of examination:**

**Preliminary examination:**

* + The number of questions is not fixed. But around 10-12 to 25 questions can be asked.
  + Political affairs-related aspect and others.
  + However, UPSC does not maintain subject consistency in terms of the number of questions they ask. So It may change drastically and they may ask more questions from the polity.

**Mains related aspects:**

* + GS-2 related aspects.
    - Indian Polity.
    - Governance.
    - Welfare measures and social schemes.
    - International relations.

**Distribution of marks in GS2:**

* + Polity - 100-120 marks, Mainly from constitution e.g. On Supreme court, parliament, president, centre-state relation, Governor, Speaker, Secularism, On preamble, etc.
  + Governance- 60-70 marks. Topics like All India services, the role of civil services in Indian democracy, e-governance, civil society, NGO, etc.
  + IR- Around 50 marks.
  + Welfare measures- 30-40 marks.

## Constitution

**Hen and Eggs Analogy of Laws and Constitutions:**

* + The hen represents the mother law (i.e. The Constitution)
  + Eggs represent laws e.g. Representation of People's Act 1951; Citizenship Act, 1955;  Special Marriage Act, Hindu Code Bill, AFSPA, MGNREGA, etc.
  + The constitution is the first law of the country. Every other law comes after the constitution.
  + Date of birth of the constitution: 26 Nov 1949.
  + As the adopted child’s age can be older than the mother, some laws can be older than the constitution. E.g. Indian Penal Code, 1860, Indian Evidence Act, 1872- These laws were created by the British under their constitution.

**Definition of the Constitution**

* + The Constitution is the **fundamental and** the **organic** law of the nation which establishes the **Conception**, **Character**, and **Organization** of the Governance system of the country.
    - Fundamental: First law of the country and all other laws must conform to the constitution.
    - Organic: Which changes with time. For example, as of now, 104 amendments have been made to the Indian constitution.
    - Conception: It conceives, ideas, foundations,  the existence of Government for India.
    - The character of the govt: Provides for the nature of the Government. For example, the Indian govt is democratic, socialist, secular, republic, etc.
    - Organization: The design of the govt e.g. India follows a parliamentary system, the USA follows the Presidential system, etc.

* + The Constitution of the country determines the extent of the power of the state as well as the manner in which these powers are to be exercised.
  + In short, the constitution is the rule book of the nation.

**Customs vis-a-vis Constitution:**

* + The constitution is the supreme law of the land all the other laws and customs in order to be valid shall have to conform to the constitution.
  + The constitution has **special legal sanctity** since it derives its **powers and authority from the people directly**. Besides being the fundamental law of the country.
  + For example, the preamble of the Indian constitution indicates that the constitution of India is created by the people of India.
  + The Constitution of a country also regulates the **relationship between the government and the people**.

* + **Some examples:**
    - The custom of not allowing women aged 10-50 years in **Sabrimala** was termed unconstitutional. It was termed as against article 17 of the constitution.
    - **Section 377** which declared homosexuality a criminal act was struck down by the Supreme court. The crux of the argument given was that one must not be forced into heterosexual behaviours.

**Basic concepts**

* + **Legislature:** It makes laws; Made at two levels- Centre(Union) and States.
  + **Executive:** Implements the laws made by the Legislature.

**Union Level**

* + Indian Parliament is made up of Rajya Sabha and Lok Sabha. Members of these houses are known as MP(Member of Parliament).
  + Presently there are **543** members after the 104th amendment act of the constitution.
  + Rajya Sabha's strength is 245 and its maximum strength is 250.
    - Out of 245, 12 are nominated and the rest 233 are elected.
    - The nomination of grounds of art, science, literature, and social service.

* + **Purpose of LS elections: 2 purposes.**
    - To elect the legislature.
    - To know which party is securing the majority.
    - PM can be from any house – Lok sabha or Rajya sabha.
    - PM chooses ministers both from Rajya sabha and Lok Sabha – This is known as the Council of Ministers(CoM).
    - A minister can be from any party if PM wants.

**State Level**

* + In 6 six states, two houses are there to make the law – Uttar Pradesh, Bihar, Maharashtra, Karnataka, Andhra Pradesh, Telangana.
  + Members of State Legislative Assembly – MLAs
  + Members of State Legislative council – MLC
  + The majority party in the state elections forms the government and the leader of the party is chosen as the Chief Minister.
  + Chief Minister (CM) can be from any house – State Legislative Assembly or State Legislative Council.
  + CM can choose ministers from both houses (if 2 houses are there) – this is known as the Council of Ministers(CoM).
  + CoM implements the laws with the help of bureaucracy.
  + A non-MLA or non-MLC can become a minister but within 6 months he must become an MLA or MLC.
  + MLC are both elected and nominated.

**The making of the Indian Constitution**

* + Under the **Cabinet mission plan**, the body to form the constitution (**constituent assembly**) was formed.
    - Nov 1946, the body was formed.
    - The first meeting of the CA was held on 9th Dec 1946.
  + **Objective resolution(OR)**
    - The philosophy or the theme of the Indian constitution was represented in Objective Resolution which was moved by Pandit Nehru in the **1st session** of the constituent assembly on **13 December 1946.**
    - 13 December 1946: The work of constitution-making started.
    - The OR was moved by Pt. Nehru in the constituent assembly on 13th Dec 1946 and adopted on 22nd Jan 1947.

**The main provisions of OR:**

* + India to be an independent, sovereign, democratic, republic.
  + Indian provinces and other parts of India willing to be part of free and sovereign India shall collectively form a union of India.
  + India to provide freedom of thought, expression, belief, faith, worship, vocation, association, and action.
  + India to provide adequate safeguards for minorities and people from backward and tribal areas.
  + India to attain a rightful and honoured place in the world and make a willing contribution in the promotion of world peace and the welfare of mankind.

**Constitutionalism**

* + **Constitutionalism**is a system having a limited government i.e. a **governance setup** whose powers are not unlimited or arbitrary. Thus, it is a system having a limited government.
    - Unlimited government concentrates the power of governance only in few hands and it leads to corruption, exploitation of the common man, and misuse of power.
  + The provisions through which constitutionalism can be achieved are a democratically formed constitution, separation of powers, checks and balances, an independent judiciary, rule of law, etc.
  + Constitutionalism not only places limits on the powers of administration but also on the power/rights of people so that people will not become undisciplined and can create a situation of anarchy or lawlessness.

**Basic differences between the written and unwritten constitution**

|  |  |
| --- | --- |
| **Written Constitution** | **Unwritten Constitution** |
| In the Written constitution, the country is governed by both constitutional and other statutory laws. However, the statutory laws should be in accordance with the Constitution. | In the unwritten constitution, the collection of all the virtual laws made by the parliament govern the country. |
| A written constitution is one whose articles and provisions are codified into a **single legal document**. | The provisions of the Unwritten Constitution are not codified into a single legal document. |
| In the Written Constitution, there is a **distinction** between the Constitution and other laws. | While in the Unwritten Constitution, there is no distinction between the Constitution and other laws as each and every enactment of the Parliament is seen as part of the Constitution. |
| In a written constitution, the constitution is supreme and all other organs are supposed to follow the constitution. | In the unwritten constitution, **parliament is supreme,** as every enactment of the parliament/legislature becomes part of the constitution. |
| In the written constitution, the judiciary generally enjoys wide powers through which it can declare an enactment of the parliament or action of the executive as unconstitutional on the grounds of it being violative of provisions of the constitution. (**Judicial review)** | In the unwritten constitution, the judiciary has limited power as in this case judiciary can not declare a law passed by the legislature as unconstitutional. |
| Enacted Constitution as created by a special body in a specified period. | It is an evolved constitution as it was not created by a single body on a fixed date rather it is the outcome of joint efforts of different legislatures over the period of time. |
| It can be rigid or flexible varying from country to country. | It is always flexible because all it takes to amend the unwritten constitution is to pass new legislation. |
| A country with a written constitution can be federal or unitary. | Whereas, the countries with unwritten constitutions are always unitary. |

Sou rces 
Government 
of India Act 
of 1935 
British 
2. 
Constitution 
- Constitution 
Irish 
Constitution 
Canadi an 
- Constitution 
Australian 
Constitution 
Weimar 
Constitution 
of Germany 
Soviet 
Constitution 
Features Borrowed 
Federal Scheme, Office of governor, Judiciary, Public 
Service Commissions, Emergency provisions and 
admini strative details. 
Parliamentary govemment, Rule of Law , legislative 
procedure, single citizenship, cabinet system, 
prerogative writs, parliamentary privileges and 
bicamerali sm _ 
Fundamental rights, independence of judiciary, judicial 
review , impeachment of the president, removal of 
Supreme Court and high court judges and post of vice- 
president. 
Directive Principles of State Policy, nomination of 
members to Rajya Sabha and method of election of 
president. 
Federation with a strong Centre, vesting of residuary 
powers in the Centre, appointment of state governors by 
the Centre, and advisory jurisdiction of the Supreme 
Court. 
Concurrent List, freedom of trade, commerce and inter- 
course, and joint sitting of the two Houses of Parliament 
Suspension of Fundamental Rights during Emergency. 
Fundamental duties and the ideal of iustice (social, 

### Preamble

* + It is customary but not compulsory for a constitution to have a Preamble.
  + Unwritten constitutions do not have Preamble but written constitutions may or may not have Preamble.
  + The Government of India act 1935 did **not** have a preamble.
  + The preamble is regarded as the **prelude or introduction**of the constitution. It is the essence or summary of the whole constitution.
  + It declares the basic values on which the constitution is based.
  + As per **Dr. DD Basu**, it contains the philosophy or the theme of the constitution.
  + Nanabhoy Palkiwala called preamble as '**Identity card of the constitution**'
  + It contains the key to unravel the minds of the constitution-makers and tell us the intention that these people have while forming various provisions of the constitution.

* + Many experts believed that preamble is an ornamental part or decorative part of the constitution due to various reasons.
    - It is not enforceable in a court of law.
    - Preamble is in the form of a declaration and it does not confer any substantive powers on the organs of the government nor it can limit those powers.
    - Preamble can not overwrite the specific provisions of the constitution. i.e., the preamble is subordinate to the constitution, and if there is a clash between an article of the constitution and the preamble, then the constitution shall prevail over the preamble.
  + **But, as per the SC,** the preamble can be used to remove the ambiguity surrounding any specific provisions of the Indian constitution, and then the court will come up with the interpretation of the article of the constitution, which matches with the preamble.
    - Thus, the preamble can be used in legal interpretation, understanding of various provisions of the constitution.
  + The preamble declares that the source of all the powers of the constitution **is the people themselves** and the constitution arises from the people only. i.e.. in India, **people are ultimate sovereign.**
    - In the **Kehar Singh Vs UOI case 1989**, this statement was challenged that the constitution derives its powers from the people directly.
      * The supreme court said that the statement, "constitution of India derives its powers from people directly is a legal fiction, but a conclusive assumption which can not be challenged or tested in the court of law."
  + The preamble also contains the enacting clause, where it declares when the constitution of India was enacted and adopted, i.e. on **26th Nov 1949**.
  + It contains the **ideals and the aspiration** of the people of India.
    - 5 Ideals : Sovereignty, socialist, secular, democracy, republic
    - 4 aspirations: Liberty, Justice, Equality, and Fraternity.

**Debate : is preamble part of constitution?**

* + The **traditional view** was that Preamble was not part of the constitution because even if it is to be dropped, the constitution would continue to function.
  + Further, unlike the Constitution, Preamble does not confer any power on the organs of the state, nor it limits those powers, and therefore, Preamble has a limited role to play in the constitution.
  + Supreme Court in the **Re-Berubary case, 1960**held that Preamble was **not part of the Constitution**.

* + However, the **modern view** is that **Preamble is part of the Constitution**, because only if Preamble is a part of the Constitution, then only it can be amended suitably to keep it updated with a modern-day Constitution and its philosophy.
  + Therefore, the Supreme Court in the **Keshavananda Bharati v/s State of Kerala case, 1973,**held that Preamble is a part of the Constitution.

**How many times the Preamble was amended?**

* + The same was amended once through the 42nd Constitutional amendment act, 1976.
  + Addition of 3 words: Secular, socialist, integrity.

**The Ideals mentioned in the Preamble**

**Sovereignty**

* + Sovereignty means that the country's government is totally independent and it does not acknowledge any arbitrary power as supreme w.r.t. the governance of the country, either within its boundary or internationally.

* + The **examples and arguments** were provided for both sides.
    - In the era of LPG (Liberalisation, Privatisation, and Globalisation), it is argued that none of the countries is completely sovereign including India, since the countries are part of the number of international organizations like UN, EU, etc. and various treaties put restraints or pressurize on the decision-making process/capacity of the country, and thus they lose their sovereignty.
    - However, in the case of India, this argument is not completely true since, when India takes its decisions keeping in mind the interests of India and Indians which is the demand of diplomacy and not the loss of sovereignty.
    - Also, in the larger interest of India, if India has to put its foot down, then India does it irrespective of the pressure and India does assert for the national interest.
      * E.g. : S-400 deal, etc.

**Secularism**

* + Secularism means that the state does not acknowledge any religion as its official religion i.e.. the country is not affiliated with only one specific religion.
  + In the case of India, the way secularism is practiced indicates that the state is **neither religious nor irreligious nor anti-religious**. Rather, India is non-religious in character. (agnostic)
  + Western countries are also secular including France, as they also do not have any specific religion as their official religion. However, in the case of western secularism, the state has distanced itself from all the religion equally and the state does not promote any religion actively.
  + The administrative decisions are also not inspired by any religious activity of any religion.
  + However, the Indian state is equally close and appreciative of all religions equally. Indian state accommodates the sentiments and aspirations of all the religions equally. This way all the religions which have made Indian their home get a chance to flourish and grow.
  + Indian style of secularism promotes a sense of security among all the religions which brings harmony to the society.

**Democracy**

* + Democracy is a political system based on the idea of the rule of people.
  + It can be direct or indirect democracy.
  + Whether it is a direct or representative democracy, it is very essential that before decisions are made, everybody must be heard and people are involved in the decision-making process.
  + In India, direct democracy is not possible for the reason that India has a huge population and high illiteracy level, and taking these decisions may not be easy. So, on the behalf of the people, their representative takes the decision.
  + However, if people's representatives do not interact with the people whom they represent, then the same weakens the democracy.
  + Paid media is a big threat to democracy.
  + People not coming to vote or voting for unworthy representatives like criminals also weakens democracy.
  + To strengthen democracy:
    - ECI by conducting elections in a free and fair manner.
    - Independent media and judiciary can also strengthen democracy.
    - A strong civil society, things like NOTA, etc. strengthen democracy.

* + People’s representatives, i.e.., legislators if change their political parties for personal benefits (**political defection),** this can weaken democracy.
    - Anti-defection law is present to prevent legislatures from carrying out political defections.
  + Misuse of law specifically the ones like National Security Act, Sedition law, preventive detention laws to suppress the genuine expressions made by the citizens also weaken democracy.

**Socialism**

* + A political and economic theory of social organization which advocates that the means of production, distribution, and exchange should be owned or regulated by the community as a whole.
  + Socialism creates a scenario where all the members of the society are getting benefitted by the resources of the society & no member is left out.
  + Unlike Marxist socialism which believed in complete nationalization followed in USSR, India believed in**Democratic socialism** or Fabian Socialism.
  + Here private ownership & private enterprise was allowed;
  + But there was some rule which ensures no member of the society concentrates the wealth & nobody is left out from enjoying the resources of the society.
  + This type of socialism was based on the concept of mixed economy, progressive taxation, land ceiling, Govt run welfare schemes, etc.
  + Two important socialistic goals which are mentioned in the Indian Constitution are - Art. 39(b), Art39(c)
    - **Art. 39(b)** --> Says to the state that material resources of the society shall be so distributed so as to serve the common interest of the society;
    - **Art39(c)** -->State must prevent concentration of wealth in fewer hands;
  + **Issues with socialism in India:**
    - The rising level of inequality;
    - High Poverty & Hunger;
    - Level of malnourishment among under 5 year old children;

**Republic**

* + A political system where people are supreme & there is no hereditary ruler;
  + Even the head of the state is elected by people only for a fixed term;

**Justice**

* + The preamble of the Indian constitution mentions political social & economic justice
    - i.e. the Indian constitution promises a comprehensive form of justice
    - Here **political justice** supported by universal adult suffrage under **Art. 326**
    - **Social justice** promised under various provisions of **Part 3**(Fundamental Rights),
      * E.g. : Right to Equality, Right against discrimination, Right against untouchability;
    - **Economic Justice** supported by provisions like FR to vocation(or occupation), and DPSP.

**Liberty**

* + Absence of arbitrary powers exerted by one individual or group over another individual or group.
  + This ensures that everyone gets an opportunity to grow and achieve his potential

**Equality**

* + Preamble talks about equality of status & equality of opportunity;

**Fraternity**

* + It is a feeling of brotherhood among the people of India & is very essential to promote unity & integrity of India;

### Part 1 : UNION AND ITS TERRITORIES

**Article 1**

* + India is a union of states. The name of the country is India i.e. Bharat.
  + The term union of states is less wide than the term territory of India.
  + Ambedkar defended the terms union of states on two grounds over the term federal.
    - India is not the result of the agreement between the state.
    - No state has the right to secede from the union.
  + Although the term federal has not been used in constitution still the Supreme Court upheld federalism in the Basic structure in the SR Bommai case.

**Article 2**

* + It empowers the Indian Parliament, by-laws to admit or establish a new state into the Indian union on such terms and conditions it may be deemed fixed.

**Article 3**

* + Creation of states and reorganization.
  + The president is constitutionally mandated to give prior recommendations for the introduction of the bill.
  + It is mandatory for the president to seek this view of the legislative assembly affected by the bill. (The views expressed by the legislative assembly are not binding on the president and must be given stipulated time if any).
  + Then on the recommendation of the president, the bill is introduced and requires a simple majority in parliament as per Article 4.

**State Reorganization**

**Advantages of New smaller states**

* + It leads to better administration.
  + This will also provide tailor-made solutions to a diversity of problems.
  + It caters to the aspiration of neglected masses and promotes national integration through concretizing democracy.

**Cons**

* + The creation of smaller gives rise to regionalism and similar demands come up from other regions.
  + It may lead to interstate water disputes.
  + Smaller legislative assemblies have more chances of unstable government. (defection)

**Brief History of state reorganization**

* + Dhar Commission 1948: They rejected one language one-state formula.
  + The INC setup JVP Committee, (Jawaharlal Nehru, Vallabh Bhai Patel, and Pattabhi Sitaramayya.) to studies the recommendations of the Dhar Commission.
    - JVP committee also rejected the creation of a state on a linguistics basis.
  + Against the backdrop of the creation of Andhra Pradesh and similar demands from other regions, the GOI set up the justice **Fazl Ali commission**, which is also known as the State's reorganization commission.
    - The commission has justice Fazl Ali as chairman, Hirdyanam Kunzru, and KM Paniker as members.
    - The commission rejected one language one-state formula but excepted the creation of new states based on Language without compromising National integrity.
    - In pursuance of the report of the Fazl Ali commission, the **State Reorganisation Act 1956 and the 7th CAA** were passed by the parliament.
      * It leads to the creation of 14 states and constitutional bodies such as official linguistic minorities offices

### 

### Part 2: Citizenship

* + A citizen is an individual who enjoys the full membership of the country & he enjoys all the rights that are available in the country.
  + Few rights are exclusively reserved for Indian citizens only & they are not made available to foreigners in India.
    - E.g.: Right under Art.15, 16, 19, 29, 30 & Art. 326;
  + The Constitution of India does not lay down a permanent or comprehensive provision relating to citizenship in India.
  + Part 2 of the Indian Constitution simply describes the classes of persons who would be deemed to be citizens of India at the commencement of the Indian constitution.
  + It has left the detailing of the laws regarding citizenship to be charted out by the Indian parliament.
  + Art. 11 of the Indian constitution confers the power on the Parliament to make the laws on citizenship;
    - Using Art.11 Parliament enacted the **Indian Citizenship act, 1955;**
      * It provides for the acquisition & termination of Indian citizenship **subsequent** to the commencement of the Indian constitution;
  + Indian constitution does **not allow dual citizenship(Art.9)**---->It provides only for single citizenship;
  + **Indian citizenship law is based on 2 legal principles:**
    - **Jus Soli**-->the law of soil
    - **Jus Sanguine**-->law of blood

* + **Indian citizenship act, 1955** which has been amended from time to time provides for 5 ways through which Indian citizenship can be acquired after the commencement of the constitution (BRAND)

* + **Citizenship by birth:**
    - **A person born in India on or after 26th January 1950, but before 1st July 1987 is a citizen of Indian by Birth irrespective of the nationality of the parents;**
    - **A person born in India on or after 1st July 1987 but before 3rd December 2004 is considered a citizen of India by birth if either of his parents is a citizen of India at the time of birth of that person;**
    - **A person born in India on or after 3rd December 2004 is considered a citizen of India by birth if both the parents are a citizen of India;**
      * **Or if one parent is Indian then the other parent must not be an illegal migrant at the time of his birth;**
      * **An illegal migrant is a foreigner who entered India without a valid passport or travel documents or stayed in India beyond the permitted time;**
    - **As per the Citizenship Amendment Act, 2019(CAA) a person will not be considered an illegal migrant into India, if:**
      * **They enter into India from Pakistan or Afghanistan or Bangladesh before 31st December 2014 & If they belong to religions like Hindu, Christian, Sikh, Parsi, Buddhist & Jain;**

* + **Citizenship by incorporation of territory:**
    - **When a new territory is acquired by India, then the individuals living in that territory can be given an option to opt for Indian citizenship;**

* + **Citizenship of India by Descent:**
    - **A person born outside India  on or after 26th January 1950, but before 10th December 1992, is a citizen of India by descent if his father was a citizen of India at the time of the child’s birth;**
    - **A person born outside India on or after 10th December 1992, but before 3rd December 2004 is considered a citizen of India if either of his parents was a citizen of India at the time of his birth;**
    - **A person born outside India, on or after 3rd December 2004 shall not be an Indian citizen unless parents declare that the minor applicant does not hold the passport of any other country, as well as the birth of the baby, was registered at an Indian consulate within 1 year of birth.**
    - ------ (On or after) >= 26th Jan 1950 (Very tough-Only father) <10th Dec 1992;
    - ------ (On or after)>=10th Dec 1992 (Relaxed-   Either father or mother Indian) to (before)< 3rd December 2004
    - ------ >=3rd Dec 2004(Condition—Undertaking)

* + **Citizenship by Registration**
    - **Indian Citizenship through registration can be acquired by eligible applicants who are ordinarily residing in India for a period of a minimum of 7 years before making the application.**
      * **Of these seven years, the applicant must be living in India continuously for 12 months before making an application and for 6 years in aggregate out of 8 years preceding that 1 year.**
    - **For Overseas citizens of India, the period of overall stay in India is one year to get Indian citizenship.**

* + **Citizenship by Naturalisation**
    - **Citizenship of India through naturalization can be acquired by an eligible foreigner who is ordinarily residing in India for 12 years before making the application.**
    - **Of these 12 years, he must be staying in India continuously for one year immediately before making the application and for 11 years in total out of 14 years preceding that one year.**
    - **Under CAA 2019, the refugees from Pakistan or Afghanistan, or Bangladesh if are Hindu, or Christian or Sikh or Parsi or Buddhist or Jain, can acquire Indian citizenship also if their period of stay in India comes out to be 6 years in total.**

* + **Important note related to Citizenship**
    - Neither the constitution nor the parliamentary law makes any distinction between the natural-born and naturalized citizen of India in terms of the rights enjoyed by them.

* + **LOSS OF CITIZENSHIP OF INDIA**
    - **Loss of Citizenship by Renunciation**
      * **A renunciation is a voluntary act on part of an Indian citizen who surrenders his Indian citizenship.**
      * **The government of India may or may not accept the application for renunciation.**
    - **Loss of Citizenship by Termination**
      * **A termination is an act of law where an Indian citizen voluntarily obtains the citizenship of a foreign country without surrendering his Indian citizenship then the law terminates his Indian citizenship.**
    - **Loss of Citizenship by Deprivation**
      * **As an act of punishment where a person can be deprived of his/her Indian citizenship.**
      * **If a person has taken Indian citizenship by fraud or misrepresentation of facts, or**
      * **If the citizen has been ordinarily residing outside India for 7 years or more without due authorization, or**
      * **The citizen unlawfully traded or communicated with the enemy country, or**
      * **The citizens show disloyalty towards the constitution of India.**

**Discussion about different types of majorities in the house**

* + **Simple majority:**
    - More than 50% of the members of the House present and voting.
      * The MPs that are supporting a particular issue should be more than the above-mentioned threshold.
  + **Effective Majority:**
    - 50% of the (Total membership of the House - No of vacancies in the House)
    - Used for removal of speaker of Lok Sabha
  + **Special Majority:**
    - **For the impeachment of President-**
      * 2/3 of the total membership of the House.
    - **To remove judge-**
      * 2/3 of the total members of House present and voting, and the majority of the membership of House (Absolute Majority)
  + **Special majority U/A 368**
    - 2/3rd of (members present and voting) and also the majority of the total membership of the house
    - For any federal provision
      * shall also require to be ratified by the Legislatures of not less than one-half of the States by simple majority
  + **Absolute Majority:**
    - 50% of the total membership of the House.
    - 50% of 543 is **271.5**
      * It is used in the formation of government - Any party that has got a minimum of 272 members, forms the government.

**3 kinds of Right:**

* + **Given by ordinary laws of the legislature:**
    - Rights which are given by ordinary laws of the legislature are called ‘**Ordinary Legal Rights’**
    - **Examples:**
      * Right to have a driving license given by: Motor vehicle act
      * Maternity relief act
      * MNREGA gives the right to have a minimum of 100 days of unskilled work
      * To make any changes in these laws requires laws brought by a **simple majority**
  + **Rights given by Constitution are called constitutional rights**
    - However Indian constitution is divided into various parts
    - Rights given in ‘**Part III’** are called **‘Fundamental right’**
    - Rights that are in the constitution but ‘**outside part III’** are called**‘Constitutional Rights’**
    - **For instance,**
      * Article 300A in part XII
      * Article 301 in Part XIII
      * Article 326 part XV
  + **Note:**All fundamental rights are constitutional rights but not all constitutional rights are a fundamental right
  + The last two sets of rights (FR and constitutional rights) are not easy to amend, they need the procedure to be followed under **special majority under article 368**
  + **Note:** But the difference is, of **justification or reason so compelling** which is needed to be given by legislature for bringing any change in Fundamental rights

### Fundamental Duties

* + **Part IV - A**of the Indian constitution was added by the **42nd Amendment act** inspired by the constitution of the USSR.
    - **Article 51 A**discusses the 11 fundamental duties of every Indian citizen.
      * **Article 51A (a)**is a Fundamental duty to abide by the constitution and respect its ideals and institutions, National Flag, and National anthem.
      * **Article 51 A (b)** to cherish and follow the noble ideals which inspired the national struggle for freedom.
      * **Article 51 A (c)**to uphold and protect the sovereignty, unity, and integrity of India
      * **Article 51A(d)**To defend the country and render national service when called upon to do so.
        + E.g.: to be ready to serve the country in case of war.
      * **Article 51A(e)**To promote harmony and spirit of common brotherhood, renounce practices derogatory to the dignity of the women.
      * **Article 51A(f)**To value and preserve the rich heritage of our composite culture of India.
      * **Article 51 A(g)**To protect and improve the natural environment including forests, lakes, rivers, and wildlife, and to have compassion for living creatures.
      * **Article 51A(h)**To develop scientific temper and humanism, and the spirit of inquiry and reform.
      * **Article 51A(i)**To safeguard public property and abjure violence.
      * **Article 51A(J)**To strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement.
      * **Article 51A(k)**Introduced by the 86th amendment act, under which it is an FD for all the parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years.

* + The Constitution of India does not carry the provision for direct enforcement of these duties that is there is no sanction to prevent their violation however Parliament can enforce them through suitable legislation.
  + The SC clarified that FDs can act as a reference to understanding the limits of Fundamental Rights.
  + FDs are non-justiciable. However, the purpose of their inclusion in the constitution was to bring awareness among the citizens regarding their role in strengthening democracy.
  + However, just a mention of the duties in the constitution will not serve the purpose, rather opinion building through active media and civil society is a must besides changing the value system which puts the nation first over the Individual or the family.
  + The SC clarified that FDs not only put a limit on the actions of the citizens but on the state as well.

|  |  |
| --- | --- |
| **PARLIAMENTARY SYSTEM OF GOVERNMENT** | **PRESIDENTIAL SYSTEM OF GOVERNMENT** |
| * + - The executive is part of the Legislature     - Ministers are from Parliament only and if not, they need to acquire the membership of Parliament within a reasonable time which is 6 months.     - The real powers are with the Council of ministers which is responsible for the popular house.       * i.e.. CoM is headed by PM is in the office enjoys the confidence of Lok Sabha.       * President is only a nominal head.     - Puts greater stress on the idea of the **accountability** of the Executive       * i.e. Executive is more accountable/ responsible even if less stable. | * + - There is a clear differentiation of power between the Executive and Legislature.     - President chooses his/her team of ministers from amongst the citizens at large and they are not members of Parliament.     - President has the real Executive powers and he is playing both the roles of being Head of State and Head of the Government.     - Puts greater stress on the idea of **stability** of the Executive even if it is less accountable. |

### PART III: Fundamental Right (FR)

* + FRs of the Indian constitution is inspired by**the Bill of Rights**in the American constitution
  + Rights under part III of the constitution are called FRs not only because these rights are provided by the fundamental law of the country but because these rights are the most indispensable assets for an individual to achieve his fullest physical, intellectual and spiritual potential
  + These rights prevent states from becoming arbitrary or authoritarian and thus these rights are Fundamental for a civilized society
  + These are also fundamental because the state can’t take away these rights
  + Any law which infringes them can be declared null and void
  + FRs are very essential for the healthy functioning of democracy and thus FRs are called as the **cornerstone of Indian democracy**

* + Part 3 and 4 together constitute the conscience or intellectual component of the constitution

* + **Difference between FRs and other/ordinary legal right:**
    - The difference between the two lies between enforceability between the two that is:
      * Ordinary legal right is protected and enforced by ordinary law of the land whereas an FR is protected and guaranteed by the constitution itself
    - Ordinary rights can be amended by the legislature through an ordinary process of law-making however FRs can be changed only by amending the constitution itself
    - In case of violation of FRs one can directly approach the SC directly and get the concern addressed however in case of violation of ordinary right the aggrieved can approach a subordinate court or high court but not directly to SC
    - FRs primarily protects an individual against the actions of the state however a few FRs are available against the state as well as private individuals
      * **For example:**
        + Right against untouchability, right against exploitation, right to life
    - FRs are not absolute since they are subjected to reasonable restrictions and responsibilities attached to them provided these restrictions should not be arbitrary
    - FRs can be of nature of **negative injunction or positive commandments**
    - **FRs in nature of negative injunctions** are negatively worded rights that prohibit the state from taking certain actions
      * For example:
        + Article 14
        + Article 16(2)
    - **FRs in nature of positive commandments**are positively worded FRs conferring certain benefits upon individuals
      * For example:
        + Right under Article 19 or Article 25

* + **The doctrine of Eclipse:**
    - According to **Article 13(1)**, all the ‘LAWS’ enforced in India immediately before the commencement of the constitution shall be unconstitutional and void if they violate one or more provisions of part III of the Indian constitution **to the extent of such violation**
    - **In Bhika Ji Narayan v/s state of Madhya Pradesh case 1955:**
      * SC applied the principle of the eclipse and held that a pre-constitutional law that is infringing upon FR can be given the protection that is the law may be made dormant but not dead and can be revived in the future if any amendment is able to remove the clash between the law and the FR
      * Thus, the law can be brought under the shadow of FRs and it will remain in the shadow and it will not be enforced till the time conflict is there
    - **SC in Deepchand v/s State of UP case 1959:**
      * Held that doctrine of the eclipse can be applied only to pre-constitutional law and not post-constitutional law since post-constitutional law which is violating the FRs is unconstitutional **‘ab Initio'**
  + **Article 13(2)**
    - Says that State shall not make any law that takes away or abridges one or more FRs and if any such law is passed by legislature then the law shall be unconstitutional and void to the extent of its inconsistency with FR

**The debate around Amend ability of Fundamental Rights**

* + Seemingly against the spirit of Article 13(2), the **First Amendment Act 1951**amended **Part 3** of the constitution and **introduced article 15(4)** which appears to be going against article 15(1).
  + The 1st Amendment Act also amended **Article 19(6)**through which reasonable restrictions were put on the right to occupation/vocation.
  + It also introduced the **ninth schedule in** the Constitution which took away the power of judicial review with respect to the laws added in the ninth schedule, on the ground of the laws was violative of FR's.
    - However, In IR Coelho case, Supreme court held that JR is part of 'basic structure' of the constitution. Laws under 9th Schedule will fall under JR if they are in violation of fundamental right

* + In Shankari Prasad vs UOI case 1951,**the 1st Constitutional Amendment Act**was challenged before the Supreme on the ground that it was violative of **Art 13(2).**
    - **Shankari Prasad vs UOI case 1951**
      * The judgment came in the favour of Parliament.
      * The ruling said that **Parliament enjoys 2 types of legislative powers**:
        + Ordinary legislative power.
        + Constitutional legislative power under article 368.

If parliament makes use of its constitutional legislative powers under article 368, then the outcome is the **constitutional amendment act.**

The same is not covered in the definition of LAW as provided under Article 13(3).

Thus, it will not fall under the scope of Article 13(2) or is not a violation of Article 13(2).

मतलब Constitutional Amendment is not a law.

* + - * + However, if parliament makes use of its ordinary legislative power, then the outcome will be called LAW, which will come under the scope of Article 13(2) and would be void if it goes against one or more FR's.
    - Thus, the SC in the Shankari Prasad case held that the **parliament under article 368 can amend any part** of the constitution including the FR's.

* + **Golak Nath Vs State of Punjab 1967**
    - In this case, SC overruled its earlier decision and held that Article 368 contains only the **procedure** to amend the Constitution but it does not confer the Parliament with the **power** to amend the constitution.
    - Thus, under article 368, parliament can not amend any part of the constitution including FR's.
    - However, Parliament responded by passing the **24th Amendment Act 1971.**
    - The title of article 368 amended, which now read as **"The Power and Procedure to Amend the Constitution"**.

* + In the **Keshavananda Bharti vs State of Kerala case 1973**, the 24th AA, among other things, was challenged before the SC.
    - **Keshavananda Bharti Vs State of Kerala Case 1973**
      * The SC upheld the Constitutional validity of the 24th AA.
      * It declared that the Parliament by the **virtue of its powers under Article 368**can amend any part of the Constitution under Art 368, including the FR's.
      * However, **no amendment should disturb the "Basic Structure"**of the Indian Constitution.
        + The SC did not define, what the basic structure of the constitution is. However, in a number of cases, the court has explained or mentioned the provisions of the Indian constitution which together make the basic structure of the Indian constitution.
        + The basic structure includes those parts of the constitution without which the constitution may lose its basic character.
        + Following are the examples of the aspects/components of the basic structure:

The sovereignty of India, Power of judicial review, separation of power, the mandate to build a welfare state, secularism, socialism, the supremacy of the constitution, access to justice, etc.

**Categorization of Fundamental Rights**

* + Right to Equality: Article 14-18
  + Right to Freedom: Article 19-22
  + Right Against Exploitation: Article 23-24
  + Right to Freedom of Religion: Article 25-28
  + Cultural and Educational Rights: Article 29-30
  + Right to constitutional remedy: Article 32.

**Right to Equality**

* + **Article 14**
    - Art 14 says that the State shall not deny to any person - Equality before Law or Equal Protection of Law.

**Equality Before Law**

* + This concept originated in England.
  + It's a **negatively worded concept** which means the absence of privileges enjoyed by an individual in the eyes of Law.
  + This means all persons, irrespective of their rank and position, are equal before Law and they shall be treated equally.
  + However, there are a few exceptions to equality before the law.
    - For example, the President of India, or Governor of a state is not answerable to any court.
      * No criminal proceedings can be initiated or continued against President or Governor.
      * No civil proceedings in which relief is claimed can be instituted/started against the President or governor except before serving a 2 months notice.
      * Privileges of Parliament, etc. related aspects.

**Equal protection of the law**

* + The concept originated in the USA.
  + It is a **positively worded** concept that means equality of treatment in equal circumstances i.e., like should be treated as alike.
  + It does not mean the uniform application of the law under all circumstances.
  + Rather, it takes into account situational variations must be taken into consideration before applying the law.
  + **Thus, article 14 guarantees 'Equality only among the Equals.'**
  + Equal Protection of Law provides for a form of discrimination which is called **Protective/Positive discrimination** under which the reservation policy is valid.

**Rule of Law**

* + The concept of England has been incorporated under the idea of the right to equality.
    - i.e. for rule of law, equality before the law is a must.
    - Rule of Law means that the Law is Supreme i.e. **" Lex Supremus",**and there is absolute supremacy of Law of the Country as opposed to the influence of any arbitrary power.
    - It is the adoption of the Rule of Law, which has changed the idea of administration from **"Rex Lex" (King is the Law) to "Lex Rex"(Law is the King)**.
    - Today the law is king and the king is not the law.
      * Example: CCI put a fine on Reliance for delaying the gas extraction from KG Basin.
      * This is very much essential to maintain order in society.
  + **Principles of Rule of Law**
    - No man/woman can be punished or made to suffer except for violation of Law and such a violation shall also be established in the ordinary court of Land.
    - All persons are subject to ordinary law of the Land without any distinction.
      * i.e.. all can sue and can get sued before the court.
    - The third principle of rule of law as applied in India is a modification of the 3rd principle of the rule of law as applicable in England because, in England, every action of the legislature is supreme.
    - In India, the Constitution is the supreme law and all the laws passed by the legislature must be consistent with the provisions of the Indian Constitution.

* + **Article 15 (Right against discrimination)**
    - **Article 15(1) :**
      * The state shall not discriminate against citizens only on the grounds of religion, race, caste, sex, place of birth, or any of them.
      * These conditions alone are not sufficient grounds to have discrimination done under Equal protection of Law but these conditions must be accompanied by some other circumstances to carry out the discrimination.
      * For example, aspects related to biological differences.
    - **Article 15(2) :**
      * Prohibits state and individual both from discriminating against citizens only on the ground of religion, race, caste, sex, place of birth, or any of them, in having access to public places like parks, hotels, entertainment hubs, or well, tank, ghats, roads maintained of state's fund.
      * This article fights several types of social evils like untouchability, communalism, racial discrimination, etc.
    - **Article 15(3):**
      * It states that the state can make special provisions for the welfare of women and children.
    - **Article 15(4):**
      * The article was introduced by First Amendment Act, 1951.
      * It empowers the state to make special provisions for the advancement of socially and educationally backward classes of citizens or SCs and STs.
    - **Article 15(5):**
      * The article was introduced by 93rd Amendment Act, 2005.
      * It empowers the state to make special provisions for the admission of backward classes of citizens in educational institutions whether public or private including aided and unaided private educational institutions except for minority educational institutions.
    - **Article 15(6):**
      * The article was introduced by 103rd Amendment Act, 2019.
      * It provided for reservation up to 10% for economically weaker sections(EWS) in educational institutions whether public or private including aided and unaided educational institutions except in minority educational institutions.

* + **Article-16: Equality of Opportunity in Matters of Public Employment**
    - **Article 16(1)**
      * Provides for equality of opportunity for all sections of citizens in the matters of public employment
    - **Article 16(2)**
      * Prohibits the State from discriminating against citizens in matters of public employment only on the **ground of religion, race, caste, sex, place of birth, residence, descent**, or any of them is having access to public employment
    - **Article 16(3)**
      * **Parliament** is empowered to provide by Law, **"Residence"** as a ground or qualification to gain certain categories of Public Employment under the state.
    - **Article 16(4)**
      * This empowers the State to make special provisions in the favour of backward classes of citizens in reserving the posts of the nature of public employment if the backward class is not adequately represented under the State and the said class of citizens is socially and educationally backward.
      * This **does not mean t**hat the people from the above communities have the **right to the reservation**, rather it is the prerogative of the Government to provide reservation

**Evolution of Reservation in India**

* + **Indira Sawhney Vs Union of India Case-1992 also known as Mandal case**
    - SC in Indira Sawhney Vs Union of India Case-1992 clarified the legal position reservation policy
    - The court held that the **27% reservation for OBCs** in public jobs was constitutionally valid
    - However, the SC directed the State to identify the **creamy layer**among the OBCs and remove them from the benefit of reservations.
    - The Court held that ordinarily, reservation in the favour of backward classes**shall not exceed 50%**of the total seats.
    - The SC also held that reservation should be a one-time benefit that can be availed at the entry-level only.
    - Thus the SC declared that the reservation given to SC/STs in the promotion be unconstitutional and void.
    - However, Parliament responded by adding Article 16(4A) through 77th Amendment Act-1995 which provided for reservation in promotion to SCs/STs.
  + **Article 16(5)**
    - Empowers the State to prescribe religion as a ground or qualification of recruitment of candidates in certain categories of public employment.
  + **Article 16(6): 103rd Amendment Act**
    - Empowers the State to reserve 10% of total seats for economically weaker sections in public employment.

* + **Article 17: Abolition of Untouchability**
    - Article 17 provides a fundamental right against untouchability in absolute form without any limitation or exception
    - Neither the constitution nor Parliamentary law defines untouchability.
    - Rather the judiciary has defined it as a social practice where a person only on the basis of his birth is looked down upon and discriminated against wrongly
    - The SC expanded the definition by declaring that any practice in which an individual or a group is considered polluted or impure and discriminated against would also amount to the practice of untouchability
    - Untouchability Offences Act-1955, which prescribed for the punishment for practicing untouchability has been renamed and strengthened as Civil Rights Protection Act-1976.

* + **ARTICLE 18: Abolition of Titles**
    - **Article 18(1)**
      * Prohibits the State from conferring any titles except for military or academic distinction.
      * National awards, also called Padma Awards started in 1954 are regarded as decorations or awards and not titles.
        + And therefore the awardee is not supposed to use them as a prefix or suffix with their name.
    - **Article 18(2)**
      * Prohibits the citizens of India from accepting any title from a foreign State.
    - **Article 18(3)**
      * A foreigner holding any office of profit or trust under the Indian State can not accept any Title from a foreign State without the consent of the President.

**Right to Freedom**

* + **Article 19**
    - It provides the right to six freedoms. It confers six democratic rights on every citizen which are essential for the healthy functioning of democracy.
    - **Article 19 (1) (a):** It provides for the freedom of speech and expression. It guarantees to all citizens a right to speech and expression.
      * After Article 21, the right to speech and expression has undergone the most liberal interpretation at the hands of the Supreme Court. Court also held that the freedom of speech and expression is an **inalienable adjunct** (extension) of the right to life.
      * Supreme Court explained that freedom of speech and expression can come in various forms. For example, national flag hoisting is also a way to express one’s feelings towards the country and thus is allowed under Article 19 (1) (a).
      * Supreme Court also explained that **participating in sports** is also a way to express oneself. And therefore participating in sports is a derived fundamental right under Article 19 (1) (a).
      * The court explained that the right of a citizen to express the views and opinions of others is also part of the freedom under **Article 19 (1) (a).** This gives origin to the **freedom of the press**.
      * Freedom of Speech & Expression also includes the **right to political dissent** i.e. the right to disagree from the views of the government. This gives rise to the right to multiparty democracy.
      * Freedom of speech and expression also includes the right to have access to information as a fundamental right and RTI Act tells how we can access this information as our fundamental right.
      * The Freedom of Speech & Expression is not limited by the boundaries of the country and the citizens enjoy them even while traveling abroad.

**Restriction**

* + Freedom of speech and expression is not an absolute right, rather it is a restricted right that can be restricted on the grounds of the security and sovereignty of India maintaining friendly relations with other countries, public order, morality, etc.

* + **Article 19 (1) (b)**
    - It provides Fundamental Right to assemble. It includes a peaceful assembly to protest or carrying out a procession.
  + **Article 19 (1) (c)**
    - It guarantees the right to form an association. It includes the right to form the political association and the right to form trade unions as well as the right to form cooperative societies which were added by the 97th Amendment Act 2011.
    - The right to form a trade union does not mean having the fundamental Right to strike. The right to strike may be a legal right but it is not a fundamental right.
    - SC declared in 1998 under the **Bharat Kumar case that Bandh was illegal**.
      * Reason: It involves an element of the force as well as disturbs public order and business.

**Restriction**

* + **Article 33** of the Indian Constitution empowers the Parliament to impose restrictions on a fundamental right available to the armed forces using this provision Parliament has passed a number of laws under which armed forces have been denied the fundamental right to form political associations in the interest of the security of India.

* + **Article 19 (1) (d)**
    - It guarantees to every citizen a right to move freely throughout the territory of India. That is no part of India shall be made inaccessible to the citizens.
    - However, their right can be **restricted** on the ground of security of India, public order, the interest of tribal, health, etc.

* + **Article 19 (1) €**
    - Freedom of residence and settlement throughout India. However, it is also restricted on the same ground as given above.
  + **Article 19 (1) (f)**
    - It was provided for the right to property but now removed from the list of Fundamental Right and made non Fundamental Right under Article 300A as per the 44th Amendment Act.
  + **Article 19 (1) (g)**
    - It guarantees every Indian citizen right to vocation i.e. profession or a trade or occupation of one’s choice.
    - However, the state can impose restrictions on it in the form of qualifications in certain professions, in the public interest, the state can even take over a business or a trade partially or completely provided it is in the public interest.

* + **Article 20**
    - It provides three types of protection to an individual against the coercive powers of the state i.e. protection with respect to conviction for the offenses.
    - **Article 20(1)**:
      * It prohibits the state from enacting **Ex-Post-Facto criminal legislation.**
        + Ex-post facto legislation means enacting a law and giving it a retrospective effect.
        + Under Article 20(1) no man/woman shall be convicted and sentenced for an act that was not a criminal act at the time of its commissioning.
    - **Article 20(2):**
      * The state is prohibited from practicing Double Jeopardy.
      * This means no person shall be punished more than once in a court of law for commissioning a single offense.
    - **Article 20 (3):**
      * Prohibits the state from compelling an individual to provide self-incriminating evidence.
        + Example of Narco test case, A.K Telgi.

* + **Article 21: Right to life**
    - No person shall be deprived of his life or personal liberty except according to procedure established by law.
    - As per the Supreme Court of India, Article 21 does not merely guarantee a right to life rather it guarantees a **right to a dignified life.**
    - As per the Supreme Court of India, Article 21 is not a single right rather it is a composite right and has given rise to the largest number of inferred or derived Fundamental Rights.
      * For example, the Right to life includes, right to primary education, the right to a corruption-free environment, the right against cruel punishment, the right to a clean environment, the right to health of the workers, the right to privacy, the right to marry, right to the internet, right to reputation, etc.
    - Article 21 emerged as the most evolved article under the constitution of India.
      * According to Supreme Court, all other Fundamental Rights revolve around Article 21, and without the right to life enjoyed by an individual, all other Fundamental Rights will become meaningless.
    - Thus, article 21 has emerged as fundamental of all the fundamental rights.
    - It can also be seen that all the FRs, and DPSPs ultimately aimed to achieve a quality life which is promised under article 21.
    - Thus article 21 is regarded as the backbone of part 3 and part 4 of the Indian constitution.
    - Right to life under article 21, brings out the difference between a police state and a constitutional state.

**Procedure Established by the Law (PEBL)**

* + The concept **originated in England** and under this doctrine when a person is deprived of his life or liberty then the court will examine the three things which are as follows:
    - Is there any law in existence that authorizes the authorities/executive to deprive the individual of his life or liberty?
    - The court will also examine whether the law was made by competent authority/legislature?
    - Were all the procedures correctly followed while enacting the law?
    - The court however will **not examine the fairness of the law** or the motive of the lawmakers behind the law. Thus under the PEBL, the court cannot declare the law as unconstitutional or void.
  + The doctrine of PEBL relies more on the good sense of the legislature and the strength of public opinion in the country.
  + Thus, the Doctrine of the PEBL extends protection to an individual only against the arbitrary action of the executive but not that of the legislature.

**Due process of law**

* + Under this doctrine, the courts while examining the law will not only look at the law from the point of view of the competence of the legislature that passes the law and also that whether the legislature followed the proper procedures while enacting the law.
  + The court will also subject the law to check **whether the law is fair or not.**
  + Thus, due process of law provides protection to an individual against the arbitrary action of the executive as well as legislature.
  + Indian Constitution, under Article 21, has provided only for Procedure Established by Law(PEBL).
  + However, the Supreme Court of India in the **Maneka Gandhi case in,1978** interpreted Article 21 to include the Doctrine of Due Process of Law(DPL) under Article-21.

**The Principle of Natural Justice**

* + **This is a set of 3 principles:**
    - No man shall be punished unheard.
    - Nobody can be the judge of his own case.
    - The authorities must act bonafide.
  + Thepurposeof these principles that every action or decision must be supported by a justified reason.
  + These principles ensure that the absence of arbitrariness in action.
  + According to the Supreme Court, these principles are universal in nature i.e., they are binding upon all the authorities.
  + The SC declared that these principles have **not been explicitly incorporated in the Indian Constitution.**
    - However, Supreme Court clarified that these principles are **inherent in the Indian Constitution** and can be found related to article 14 and article 21.
    - The court held that these principles are so important for the orderly functioning of society that they are regarded as part of the basic structure of the Indian Constitution.

* + **Article 21A: 86th Amendmen**t
    - **Article 21-A** Was introduced by the **86th amendment 2002**under which the State shall provide**free and compulsory education** to all children age **six to fourteen as provided by Law.**
      * Free education can be forced upon the state, whereas compulsory education is the responsibility of parents as well as the state therefore 86 the Amendment act also introduced a Fundamental duty under article 51-A(K) under which it is the duty of every citizen who is a parent or guardian to provide the opportunity of education to the child aged 6-14 years
  + **Article 22:** **Protection against arrest and detention in certain cases.**
    - Protection against arrest and detention in certain cases but article 22 does not guarantee against arrest or detention
    - Article 22 comes into play after the arrest of the person, not before that
    - Article 22 confers 3 rights on a person who is arrested or detained
      * No person who is arrested shall be detained in custody without informing him of the ground of his arrest and he shall be entitled to consult an attorney of his choice SC declared that the arrested person has a right to have his friends relatives or some other known person informed about his arrest
      * The arrested person shall be produced before the nearest Judicial Magistrate within 24 hours of arrest, no person shall be detained beyond the period for which his detention was authorized by the Magistrate
      * The protections under article 22 may not be made available to the persons detained under preventive detention law and enemy aliens

**Right against exploitation**

* + **ARTICLE 23: Right against exploitation**
    - **Article 23(1)**
      * Prohibits traffic in human beings, begar, and every other forced labour.
      * Begar: Work without pay;
      * Forced Labour: To be forced to work against one's will.
    - **Article 23(2)**
      * Empowers the State to compel the individual to provide service with or without payment, provided it is in public interest.
  + **ARTICLE 24: Prohibition of Employment of Children**
    - Children aged less than 14 years are prohibited from being employed in hazardous employment.
    - Child Labour (Prohibition and Regulation) Act-1986:
      * Now, by the Amendment to the Act in 2016, a **child less than 14 years** of age would not be allowed to work anywhere, including the hazardous occupations.

**Right to Freedom of Religion**

* + **Article 25: Freedom of Conscience and Free Profession, Practice, and Propagation of Religion.**
    - Guarantees to all individuals twofold freedom of religion which includes-
    - **Right to freedom of conscience**
      * Absolute inner freedom of an individual to mould his religious belief and faith
      * When inner freedom takes an outward expression then it is right to profess practice or propagate a religion of one's choice
    - **Right to profess**
      * Right to profess means the right of an individual to spell out his religious belief freely and openly
    - **Right to practice**
      * The right to practice means the right of an individual to follow the rituals prescribed by one's religion
      * This includes the right to display symbols and sign associated with one religion for example Kirpan, Burka
    - **Right to Propagate**
      * This means the right to spell out one's religious teachings for the edification of others.
      * SC in **Father Stanislaus vs the State of MP-1977**
        + The SC clarified that the FR of a person to transmit or spread by explaining the content can not be questioned.
        + However, there is no FR to convert others to one's own religion.
        + Recently SC has also clarified that the Right to faith and belief enjoyed by the individual is absolute and the state can not interfere in it in any manner but in the case of religious conduct and practice the state is free to regulate it in the larger interest of society

* + **Article 26: Freedom to Manage Religious Affairs**
    - Freedom of religious denomination to manage their religious affairs subject to Public Order, Morality, and Health.
    - Art 26 also allows every religious denomination to have the right to own and it also allows them to establish and maintain institutions for religious charitable purposes.

* + **Article 27**
    - It truly brings out the secular character of the Indian state.
    - Freedom as to payment of taxes for promotion of any particular religion.
    - Article 27 prohibits the state from spending tax collections for the promotion and maintenance of any particular religious denomination.
    - However, Article 27 **does not prohibit the state** from spending the tax collections for the promotion and maintenance **of all religions without any discrimination.**
    - Similarly, Article 27 does not prohibit the state from spending non-tax collections, collected in the form of a **fee or donation** in spending for the promotion and maintenance even of a particular religion.

* + **Article 28**
    - It deals with giving/imparting instructions that are religious in nature in educational institutions.
    - **It divided all the educational institutions into 4 categories.**
      * Educational institutions, which are completely owned and administered by the state.
        + no religious instructions whatsoever can be imparted.
      * Educational Institutions, which are privately owned and managed but aided by the state.
        + religious instructions can be imparted, but students cannot be compelled to attend them.
      * Educational institutions, which are privately owned and managed but are unaided by the state.
        + religious instructions can be imparted, but students cannot be compelled to attend them.
      * Educational institutions, which are administered by the state but are founded through religious endowment or charitable trust.
        + religious instructions can be imparted and can be made compulsory for the students to attend them.

**Cultural and educational rights**

* + **Article 29**
    - It deals with the protection of the interest of minorities.
    - **Article 29(1):**
      * Any section of an Indian citizen residing in India, having a distinct language, script, or culture shall have the right to conserve the same.
      * Though the title of article 29 is the protection of the interests of the minorities, however, the language of Article 29(1) extends this right to all the sections of citizens who are residing in India.
    - **Article 29(2):**
      * No citizen shall be denied admission in educational institutions only on the grounds of religion, race, caste, language, or any of them.
      * **Note: 'Sex**' is not mentioned in the article and hence admission can be denied only on the ground of sex as in Girl's schools, Boys school, etc.
  + **Article 30**
    - Deals with the right of minority communities to establish and administer educational institutions in their own way.
    - It classifies the minorities on the basis of religion and language.

**Right to constitutional remedies**

* + **Article 32**
    - It provides for Rights to Constitutional remedies.
    - It confers the power, on Supreme Court (SC) to issue appropriate orders, directions, or writs to enforce fundamental rights if found violated.
    - It allows the individual to directly approach the Supreme Court in case of violation of fundamental rights.
    - Thus Article 32 contains the legal remedy in case the fundamental rights of an individual are violated.
    - It is Article 32 that makes all other fundamental rights real and enforceable i.e., Article provides teeth to all other fundamental rights.
      * This article is very important for the healthy functioning of democracy.
    - For all these reasons, Dr. Ambedkar described Article 32 as the heart and the soul of the whole Indian constitution.

**Writs**

* + A Writ is a customized/specific type of order.
  + The concept of the writ has been adopted from England.
  + Power to issue the writ is writ jurisdiction.
  + Under Indian Constitution, the writ jurisdiction is enjoyed by the Supreme Court (under Article 32) and the High court (under Article 226).
  + Writ jurisdiction enables the court to issue appropriate writs for the enforcement of the rights of an individual.
  + Writ jurisdiction also implicitly confers the power of judicial review upon the Supreme Court and High Courts.
  + Under Article 32(3), **Parliament** has the power to confer writ jurisdiction by means of law on any other body (Other than Supreme Court and High Courts).

**Types of Writs**

* + **Habeas Corpus:**
    - Habeas Corpus means 'To have Body'.
    - When an individual is detained without any legal justification or is missing, then the writ of Habeas Corpus can be issued by the court ordering the relevant authority to bring the person before the court and the court can release him in case he/she is detained illegally.
    - Writs can be filed before the court by an individual or an organization and not necessarily by the aggrieved/victim himself.
    - In the case of Habeas Corpus, the principle of Locus Standi may not apply.
    - The principle of **Locus Standi** involves the right of a person to go to the court and get his rights implemented since the person himself is under detention and cannot go to the court himself.
    - The writ of *habeas corpus* can be issued against both public authorities as well as private individuals.
    - Not issued when
      * (a) detention is lawful
      * (b) the proceeding is for contempt of a legislature or a court,
      * (c) detention is by a competent court,
      * (d) detention is outside the jurisdiction of the court.

* + **Mandamus:**
    - It literally means ‘We Command’;
    - Therefore this writ is issued in the nature of command by Judiciary against a public authority or a person holding a public office;
    - The purpose of mandamus is to command a public authority to do or not to do certain acts in the nature of public duty.
      * Mandamus can be issued to implement a public or legal right, but not a private right;
      * Mandamus cannot be issued against the President or Governor;
      * It can also not be issued against the authorities which are making use of their discretionary powers.
        + (E.g.: Speaker certifying a bill as a money bill)
  + **Prohibition:**
    - It is the writ issued only against judicial or a quasi-judicial body;
      * (Quasi-judicial refers to a non-judicial body that can interpret the law. E.g.: NGT-National Green Tribunal)
    - It ensures that these bodies remain within the limits of their jurisdiction;
    - If such a body takes up a case in excess of its jurisdiction, then the writ of prohibition can be issued by the higher judicial body to prohibit them from proceeding with the case;
      * (Here judgement has not come, proceeding going on);
      * (If the judgement has come then, Certiorari issued)
    - (E.g.: NGT taking a case which is beyond their scope; In response, SC can issue prohibition orders because it is beyond the jurisdiction of NGT)

* + **Certiorari:**
    - It is similar to prohibition except that it is issued to quash a judgement, direction or order which were issued by a lower judicial or quasi-judicial body by going in excess of its jurisdiction;
      * (Here the judgement has come)
  + **Quo warranto:**
    - It literally means -->What is your “authority”;
    - Its purpose is to ensure that a person holding a public office is qualified or competent to hold that office;

* + **Writ jurisdiction differences of SC(Art. 32) & HC(Art.226)**

|  |  |
| --- | --- |
| **Supreme Court-SC (Art.32):** | **High Court-HC (Art. 226):** |
| * + - Under Art.32 SC can issue writs only for the enforcement of FRs(Fundamental Rights); | * + - HCs can issue writs under Art.226 not only for the enforcement of FRs but also for other legal rights; |
| * + - The constitution places a duty on SC to enforce a FR.ie., SC has to implement the FR if found violated. | * + - HCs may or may not implement these rights & may suggest some other remedy; |
| * + - The writ jurisdiction of SC extends to the whole of India. | * + - The writ jurisdiction of HC is limited by the territorial jurisdiction of the HC. |

* + However, the Writ jurisdiction of HC is much wider-->(For other legal rights also they can issue writs)
    - [Rights can be FR(under Part III), outside FR but written in the constitution(E.g.: Art 300A-Right to Property), Legal rights outside the constitution(E.g.: Right to Information)]
  + Thus we see that the writ jurisdiction of HCs(Art.226) is more than SC under Art.32

### PART IV of the Indian Constitution DPSP(Directive Principles of State Policy)

* + Part IV of the Indian Constitution contains DPSP which are in the nature of directions, to the executive & the legislative wing of the state
  + They are to be observed while formulating laws and policies.
  + These principles aim at establishing ***social and economic democracy***.
  + These principles want to establish a welfare state as against a regulatory state;
  + A regulatory state is one that performs only one main function which is to maintain law and order & carry out day to day administrative routine functions.
  + The welfare state performs a dual function whereby they promote the economic, social and cultural development of people along with performing regulatory functions.
  + These principles are in the nature of instructions to the state & they carry the aims of the people which the state must have in mind while formulating laws and policies.
  + They are***non-justiciable*** and cannot be enforced in a court of law.
  + They are referred to as ***positive obligations*** on the state.

* + **Some DPSPs:**
    - Art.38 - says that the State shall strive to promote the welfare of people by:
      * securing a social order in which political, economic & social justice shall prevail in all the institutions of national life
      * Reducing the inequality of income & eliminating the inequality of status & opportunities.
    - Article 39 The State shall, in particular, direct its policy towards securing—
      * Art.39(a) --> the state must ensure that men & women equally have the right to the means of livelihood;
      * Art. 39(b)-->ownership and control of material resources of the community should be so distributed so as to sub-serve the common good;
      * Art. 39(c)-->Prevent the concentration of wealth in fewer hands;
      * Art.39(d)-->Equal pay for equal work for both men & women;
      * Art. 39(e)-->People should not be forced by economic needs to take a vocation which is not suitable to their age or strength;
    - **Art.39A-**->Ensure justice to all & free legal aid to the poor;
    - Art.40-->Organise village panchayats across India;
    - Art.41-->Provide the right to work & assistance to old, sick and disabled;
    - Art. 42-->Provide humane work conditions & maternity relief;
    - Art.43-->Secure living wage & social-cultural opportunities to all workers & promote cottage industry;
    - Art.43A-->Ensure participation of workers in the management of industries;
      * Added via 42nd CAA, 1976;
    - Art.43B-->Promote cooperative societies;
      * 97th CAA
    - Art.44-->Bring Uniform Civil Code;
    - Art.45-->Provide early childhood care & education for children up to the age 6 years;
    - Art.46-->Promote educational & economic interest of SC & ST & other weaker sections & prevent their exploitation;
    - Art.47-->Promote public health & nutrition & prohibit the consumption of intoxicating drinks and drugs;
      * E.g.: Mid-day meal scheme, the Food security act, etc.
    - Art.48 --> Organise agriculture & animal husbandry on scientific lines &  ***prevent the slaughter of cow,*** calves & other milch & drought animals.
    - Art.48A-->Protect and improve environment & safeguard forest and wildlife;
    - Art.49-->Protect monuments and objects of national importance;
    - Art.50-->Separate judiciary from the executive in public services of the state;
    - Art.51-->Promotion of international peace

**RELATIONSHIP BETWEEN FUNDAMENTAL RIGHTS AND  DIRECTIVE PRINCIPLES OF STATE POLICIES (DPSP)**

* + **Art 37 states that** directive principles are not enforceable in a court of law however, still they are fundamental in the governance of the country and it is the duty of the state to incorporate the directive principles in the policy formulated or laws enacted.

* + **SC in State of Madras Vs Champakam Durairajan Case 1951** held that:  “the law made to enforce the Directive Principles cannot override the Fundamental Rights and they have to conform and run subsidiary to Fundamental Rights.
    - In case of conflict between Fundamental Rights and DPSP, the Fundamental Rights will prevail”.
  + However, realizing the importance of implementing the DPSP in order to establish a welfare state the SC in **Re- Kerala Education Bill case 1957** adopted a theory of **Harmonious Construction** and held that **"**though Directive Principles can not override  FR nevertheless in determining the scope and ambit of FR the court cannot completely ignoring the DPSP and should try to give effect to both of them as much as possible".
    - The court held that: "there is no inherent conflict between FR and DPSP and it is the responsibility of the Courts to interpret of the constitution in such a way so as to implement the DPSP along with ensuring non-violation FR"
    - Supreme Court clarified that DPSP is relevant to understand the limits or restrictions on Fundamental Rights.
    - The court also clarified that if it is not possible to have both of them then the courts must implement the FR in preference to Directive Principles.
  + Thus on the basis of the above interpretation, the **SC held Bank Nationalization Act 1969 and Privy Purse Abolition Act 1971**which were enacted by Parliament to give effect to Principles under article 39 (b) and 39 (c) to be unconstitutional and void on the ground that these laws violated FR under article 14,19 and 31, however, Parliament held that this interpretation by Court will obstruct the enactment of social legislation in larger interest of society.

* + The Parliament **enacted the 25th amendment 1971** which introduced art 31 C in the constitution of India.
    - Article 31 C read that “ if State enacts a law to give effect to two principles under art 39 (b) and 39 (c) and in the process, if the law violates under art 14, 19, or 31 then the law cannot be declared unconstitutional on this ground".
  + 25th Amendment Act 1971 was however upheld by the Supreme Court in **Keshvananda Bharti Vs State of Kerala Case 1973.**
  + Now, Parliament enacted the **42nd amendment 1976** through which art 31C was again amended and in the amended form it stated that:
    - *"*if the state enacts a law to give effect to all or any directive principles and in the process, the law violates Fundamental Rights under art 14, 19, or 31 then the law shall not be held unconstitutional and void merely on this ground"
  + Further, Parliament through **44th amendment Act 1978** removed the Right to Property under article 19 (1) (f) and Article 31 from the list of FR.
    - Now the **SC in Minerva Mills Case 1980**, held that the changes introduced in article 31C through the 42nd amendment act were **unconstitutional** because they disturbed the fine balance between Part III and Part IV and this balance itself is a part of the basic structure of the Indian Constitution.
      * The court also declared that the power of Judicial review was the part of **Basic Structure of the Indian Constitution.**
  + Thus the current situation is under article 31C the law enacted to implement the directives under articles 39 (b) and 39 (c) can prevail over 2 fundamental rights i.e. under art 14 and 19.

**UNIFORM CIVIL CODE (ART 44)**

* + **Uniform Civil Code implies that all**the sections of our society irrespective of their religion shall be treated equally according to a **National Civil Code** which shall be made keeping in mind the modern scientific values and shall apply uniformly to all irrespective of religion.
  + Uniform Civil Code covers areas like marriage, divorce, maintenance, adoption, inheritance, etc.
  + UCC will prevent the exploitation of women particularly and enhance their status.
  + Some aspects of Civil matters is already codified uniformly under the **Civil Procedure Code, Evidence Code, Transfer of Property Act,**etc.
  + It is also argued that acts like marriage, divorce, adoption, maintenance are secular by nature and the state can regulate them equally for all and that will not be a violation of the Right to Religion under art 25 and 26.

**Directives to the State outside Part 4:**

* + Though Part 4 formally deals with the provisions of Directive Principles of the State Policy there are some directives in other parts also.
  + These Directives are also non-justiciable in nature.
    - **Article 335** directs that the claims of Scheduled Caste(SC) & Schedule Tribes(ST) must be taken into consideration consistently along with the maintenance of efficiency of Administration while making appointments to the services of the Govt.
    - **Art. 350A--**directs the States & the local authorities within the states to arrange for adequate facilities for instructions in mother tongue at the primary stage to the children of Linguistic minorities;
      * (It was added by the 7th CAA, 1956)
    - **Article 351-->** directs the Govt to promote the spread of Hindi;
      * It may serve as the medium of expression of all the elements of the composite culture of India;

**Importance of DPSP:**

* + DPs(Directive Principles) have not been given automatic legal enforceability.
  + Not because they are inferior to any other part of the constitution.
  + But because they being the **positive obligation** of the state **requires time & material resources at the disposa**l of the state for their effective implementation which may not be possible in a limited timeframe.
  + **Dr BR Ambedkar** pointed out that these principles if implemented well have the potential to establish a welfare state & any Govt responsible to people shall have to implement them.
    - Otherwise, the Govt will be answerable to people in the next elections.
  + These principles may not be enforceable in the court of law, but they are enforceable in the court of people.
  + These principles also act as the testing ground to measure the performance of the Govt.
  + These principles may not enjoy legal sanctions, but they enjoy political sanctions.
  + They act as a lighthouse constantly reminding the Govt of their responsibility of taking the country towards welfarism.

**Fundamental Rights(FRs) vs DPSPs:**

|  |  |
| --- | --- |
| **FUNDAMENTAL RIGHTS** | **DPSPs (DIRECTIVE PRINCIPLES OF STATE POLICY)** |
| * + - They are enforceable in the court of law. | * + - They are non-justiciable & therefore cannot be enforced in a court of law. |
| * + - They are mostly negative obligations of the state     - (They prohibit the state from taking action). | * + - They are the positive affirmation on the state. |
| * + - FRs primarily provide for political democracy. | * + - DPSPs seek to establish Social & economic democracy. |
| * + - FRs represent something static where basic rights are conferred upon individuals & the aim is to conserve those rights. | * + - DPSPs represent something dynamic where the state has to keep on taking action to achieve the goals provided in the principles. |
| * + - FRs focus on individuals;     - Hence they are personal & individualistic. | * + - DPs promote the welfare of the community;     - Hence they are sectarian & socialistic. |
| * + - Courts are bound to declare a law unconstitutional if it is violating FR's. | * + - Courts cannot declare a law unconstitutional merely on the ground that the law is violating DPSPs. |

## The Union executive

* + The Union executive comprises of President, Vice President, Prime Minister, Council of Minister and Attorney General.

**THE PRESIDENT OF INDIA**

* + **Article 53** confers the executive powers of the Union in the President of India and he shall discharge the executive function on his own or through an officer subordinate to him.
  + President is the executive head of the Union as well as the highest constitutional functionary - All the decisions of the Union Executive are taken in the name of the President.
  + He is the first citizen of India and the Supreme Commander of the Armed Forces.
  + The executive powers vested in the President are to exercised with the aid and advice of Union COM **under article 74**.

* + **Article 74** in its original form read about the Council of Ministers(CoM) headed by the Prime Minister to aid and advise the President.
    - However, it was not explicitly clear whether the President of India is bound by the advice or not.
    - The **42nd CAA, 1976** made the President to bound to the aid and advice of the CoM

* + The**44th CAA, 1978**amended **Article 74**again and in the amended form it says that the President of India may require a CoM to reconsider upon the advice given by CoM to him.
    - However, the President shall act in accordance with the advice given to him after such reconsideration.

* + **Qualifications for contesting the elections of the President (58):**
    - He/She- Should be a citizen of India.
    - Age should not be less than**35 years.**
    - Should be qualified to be elected to Lok Sabha.
    - He must not be holding any office of profit under the state.
      * However, in this context, the office of the President, Vice-President, Governor of the State, Minister of Union, or State is not considered to be Office of Profit.

* + If the President elected is MP of either House or a member of the state legislature, then it is deemed that he has vacated his seat in the House before entering the office.
  + However, for the purpose of election to the office, The office of the President, The Vice President, Governor, Minister of Union or state are not regarded as the office of Profit.
    - If the president is MP of either house or state legislature then he must resign before taking the office of the President else it will be deemed that he has vacated his seat in the house before entering the office.

* + **Oath(60) -** Chief Justice of India conducts oath to the President.

* + **Term of office(56)**
    - The President of India holds the office for 5 years and he can get re-elected any number of times.
    - There can be a vacancy in the office of the President, due to Resignation, impeachment or death of the President.
      * Then the next Presidential elections must be conducted within 6 months till that time Vice president will act as President.
    - If the President of India is absent from office or unable to discharge his functions then the Vice President acts as President for that time period after taking an oath conducted by Chief Justice of India.

* + **Elections of the President (55)**
    - Secretary-general Lok sabha and secretary-general Rajya sabha are the ex-officio returning officers of the Presidential and the vice-presidential elections.
    - They take turns to preside over the Presidential and the vice-presidential election.
    - The nomination papers for the Presidential elections candidates shall be proposed by not less than 50 electors and this proposal shall be seconded by not less than 50 electors.
    - The disputes relating to the election of the President shall be **heard by the Supreme court and its decision is fina**l.
    - If in the case of election of President is declared void on any ground then the decisions taken in his name prior to that shall not become invalid on this ground.
    - The President of India is elected indirectly by an electoral college consisting of :
      * Elected members of both the Houses of Parliament
      * Elected members of all the state legislative assemblies.
      * After 70th CAA, 1992 Delhi and Pondicherry legislative assemblies were also involved in the election of the President.
      * State on one hand and Parliament on the other are equally represented in the electoral college.
      * This means that the President of India represents the nation and all the states at the federal level
      * The President of India is elected by a system of single transferable vote system.
        + The voting shall be held via secret Ballot.

**Proportional Representation System:**

* + Under this system, the states are represented in the electoral college of the President in accordance with the population of the states as per the **1971 census.**
  + This has been fixed up to the year 2026 through **84th CAA, 2001.**
  + Vote value of one MP = (Total vote value of all MLAs of all states/Total number of elected MPs).
  + Vote value of an MLA= (Total population of that state/Total number of elected MLAs in that state)\*(1/1000)

**Single Transferable Vote System:**

* + Under this system, the elector has a right to indicate more than one preference of the candidate and he can indicate as many preferences as there are candidates in the contest.
  + In the first round of counting, only the first preference votes are considered and if a candidate obtains more than 50% of the value of the valid votes then he will win the election.
  + If not then the candidate with the least number of first preference votes is eliminated and the second preferences of his votes are distributed among the rest of the candidates, and again a majority of 50% is seen.
  + This process continues till a candidate obtains a desired majority of 50%.

* + **Impeachment**
    - Article 61 : President is impeached by Parliament on the grounds of**"violation of the constitution".**
    - However, the Constitution did not describe which actions of the President amount to a violation of the constitution.
    - The motion seeking the impeachment of the President shall be **introduced in the form of the Resolution** in**either House of the Parliament.**
      * In order to be introduced, the Resolution must be supported by not less than **1/4th of the total membership of the House.**
      * The Resolution can be taken up in the House for passage only after the expiry of **14 days notice** served upon him.
    - The motion is passed by a majority of not less than**2/3rd of the total membership of the House.**
    - After it is passed in the House, it is transmitted to the other House, which acts as the investigating House.
      * The second House investigates the charges against the President or may cause the charges to be investigated.
      * President has a right to defend himself before the second House either by himself or through a Lawyer.
      * The functions performed by the second House are **quasi-judicial in nature.**
      * If the second House also passes the motion by a majority of not less than 2/3rd of the total membership then the President stands impeached.
      * All the decisions taken in name of the President or by the President, shall continue to remain valid even after his impeachment.
      * There can be a judicial review of impeachment.
      * Impeachment of the President is the **Legislative action.**

* + **Role of President upon receiving various bills/veto power of President**
    - Parliament passes four types of Bills:
      * **Constitutional Amendment Bill**under article 368 when presented to the President, he is bound to give his assent.
      * **Money Bill:**
        + When a Money Bill is passed by the Parliament and presented to the President, he has 2 options:

Give his **assent** to the Money Bill or

Apply **absolute Veto**.

However, he can apply absolute veto not in his own discretion but only on the advice of the Council of Ministers.

Under Absolute veto, President declares that he withholds the assent to the Bill.

But he can not send the money bill for reconsideration of the house.

* + - * **Ordinary Bill or Financial Bill:**
        + In the case of Ordinary or Financial Bill, President of India has got **four options**-

He may give his assent and the Bill becomes an Act.

He may withhold the assent to the Bill.

It is called **Absolute veto**.

President can not apply Absolute veto on his own but only on the advice of Union CoM's.

He may refer the Bill back to Parliament for reconsideration with or without his suggestions. (**Article 111**)

This is called a **suspensive veto.**

If Parliament passes the Bill for the second time in its original or modified form, then the President is bound to give his assent.

President of India may even allow the Bill to stay on his table for an indefinite period without his assent.

This is known as the application of **Pocket veto**.

* + - * + President exercises Suspensive and Pocket Veto in his discretion but Absolute veto on the advice of CoM's.

* + **Ordinance Making Power of the President (Article 123)**
    - Ordinance making power enables the smooth functioning of government in the rapidly changing environment
    - The ordinance-making power is a legislative power, co-extensive and co-terminus with the legislative power of the Parliament.
      * Because it has the same force and effect as an act of Parliament
    - The ordinance is issued, when one or both the Houses of Parliament are not in session, but the issue, requires immediate legislation
    - The ordinance can be used to issue new legislation or amend or repeal already existing ordinances or legislation.
    - There are some safeguards in place to check the possible misuse of an ordinance-making power.
      * Ordinances are subject to judicial review.
      * The President of India can ask the government to reconsider the ordinances
      * The ordinance needs to approve by both the houses within six weeks of reassembly of the houses
    - The ordinance making power of the President, in reality, is the power of CoM
    - In **DC Wadhwa Vs State of Bihar (1987**):
      * SC held that the governor re-promulgating the ordinance, with no effort made to get it passed in the assembly, is a fraud on the constitution of India

* + **DISCRETIONARY POWERS OF THE PRESIDENT:**
    - The Constitution of India has not explicitly acknowledged the discretionary powers of the President.
    - However, reading of various provisions of the constitution indicates that President has discretionary powers.
      * E.g.: Under**Article 74** President of India can ask the Govt to reconsider their advice sent to the President of India.

* + **Article.78** - Under this article, PM(Prime Minister) has a duty to inform the President about the affairs of the administration & the proposed legislation.
    - Thus President has the right to be informed on these issues.
    - He can use his discretion to call the PM & ask for such information.
    - Under **Art.78(c)**-->President can refer to the individual decision of a minister for the collective consideration of the CoM's for enforcing the collective responsibility on the CoM's.

* + Under the conventions established in England, the President of India enjoys the right to warn & the right to encourage the CoM (Council of Ministers);
    - President can give warning to the Govt-->only by **convention**(Not mentioned in the constitution);
    - This power is taken from the UK(United Kingdom)-->In UK, the Queen can give a warning.
  + Pocket and suspensive veto are used by him in his own discretion.
  + Under **Art.85** the Houses of the Parliament shall be summoned in such a way that no more than 6 months lapse between 2 successive sessions.
    - (Indian constitution has not mentioned that how many session has to be held each year;)
    - Normally the President summons the session of Parliament on the advice of CoM(Council of Ministers) in the form of 3 regular sessions every year.
    - But if the CoM's does not advise the President to call the session & In this process 6 months period passes between 2 sessions, then, in that case, President can use his discretion & may summon the houses of the Parliament even without the advice of the Govt.
  + When no political party or coalition of political parties enjoys a majority in LS(Lok Sabha), then the President may enjoy the discretionary power in LS to invite the leader of any political party to form the Govt (Coalition).
  + The President is bound to act according to the advice of CoM in dissolving LS if only it (the Govt) enjoys a majority in LS.
    - Otherwise, the President has the discretion to dissolve or not to dissolve the LS.
  + In the case of a **caretaker govt** where the only day to day administrative decisions are to be taken, then it is the president who decides which are the decisions of necessity.
    - (Caretaker government is a temporary government that performs some governmental duties and functions in a country until a regular government is elected or formed).

* + **ADMINISTRATIVE/EXECUTIVE POWERS OF THE PRESIDENT:**
    - All the executive functions of the union govt are carried out in the name of the president.
    - Similarly, the president appoints the PM, other ministers of the Union, Attorney General, CAG(Comptroller & Auditor General), Judges of SC/HC, Governor of the state, etc.
    - In fact, every appointment of the union Govt is made in the name of the President or under his authority.
    - Similarly, the President of India removes these officers from office using his administrative powers.

* + **MILITARY POWERS:**
    - President is the supreme commander of the armed forces.
    - He declares war & peace.
  + **LEGISLATIVE POWERS OF THE PRESIDENT:**
    - President is an integral part of the Parliament.
    - It is quite visible from the fact that the bill passed by the Parliament does not become law until it gets the assent of the President.
    - President of India summons the Houses of Parliament & also prorogues the Houses.
    - He dissolves the LS.
    - President nominates 12 members to RS(Rajya Sabha).
    - He may address the houses of the Parliament jointly or separately at the commencement of the 1st session of the Parliament.
    - Every year he delivers an address.
    - President of India causes certain reports & statements to be laid before the Parliament.
    - E.g.: Annual Financial Statement, Report of CAG, recommendations of FC(Finance Commission), report of UPSC, Report of National Commission of SC, ST & Backward classes.
    - Certain bills cannot be introduced in Parliament without the recommendation of the President.
    - E.g.: Money bill, Financial Bill, or a bill under Art.3

* + **FINANCIAL POWERS:**
    - President of India causes the budget to be laid before Parliament.
    - Money Bill can be introduced only with his prior recommendation.
    - No demand for grants except on his recommendation.
      * (Demand for Grants is the form in which estimates of expenditure from the Consolidated Fund of India are included in the annual financial statement and required to be voted upon in the LS)
    - Money can be released from the Contingency fund only after the sanction of the President.
    - President constitutes the FC(Finance Commission) after every 5 years.

* + **DIPLOMATIC POWERS:**
    - President of India is the face of India;
    - President represents the country in the international forums.
    - International treaties & forums are signed in his name.
    - He sends and receives the ambassadors.

* + **POWERS OF THE PRESIDENT UNDER ART.72:**
    - Under the Art.72, President of India has the power to grant pardon, reprieve, respite, remission, commutation.

      * **Pardon**-->Here the President completely absolves the offender of all the punishment.
        + MSP - no change, special, postpone.
      * **Remission**-->Reduction of sentence without changing its character.
      * **Respite**--> Awarding lesser punishment due to special grounds of the convict.
        + E.g.: Pregnancy, physical disability, etc.
      * **Reprieve**-->Temporary stay or postpone the execution of sentence, specially in case of death sentence.
      * **Commutation**--> Substitution of one form of punishment for another which is of a lighter character.
        + E.g. : Death sentence to Life imprisonment.
      * The President of India can give such relief in the cases of Judgments delivered by military courts also.
      * It takes the decisions on the advice of Union CoM.
    - At the state level, the Governor can also give such relief including pardon.
    - However, the Governor cannot pardon death, & also Governor cannot give relief to the convicts of military courts.
    - Judicial review of the President’s power under Art.72 is possible on limited grounds.

* + **Power and Position of the Indian President**

**Authority/ position of President**

* + A school of thought believes that the President of India is only a rubber stamp having no real powers. Though, some believe that this office has got some real powers.
  + If the authority is seen from the perspective of the constitution, then it appears that he is very powerful since he is the first person of the country and the highest constitutional authority having elaborate powers on the decisions of the Union government is taken in the name of the President.

* + However, a careful analysis indicates that his powers are mostly the powers of the union council of ministers (Article 74).

**The perspective of the Supreme Court**

* + The Supreme Court in a number of cases like **Ram Jawaya, Shamsher Singh, Cooper**, etc has clarified that the Indian constitution provides for the parliamentary system of the government where the head of the state is a nominal head and the real executive powers are vested in the union council of ministers responsible to the popular house.
  + The court clarifies that the decisions of the union executive are taken in the name of the President but they are actually taken by the union council of ministers.
  + Whenever the constitution says that it is the satisfaction of the President then it is not his personal satisfaction but the satisfaction of the union council of ministers.
  + The court explains that even when the Lok Sabha is dissolved, there shall be a caretaker council of ministers to aid and advise of the President in his executive functions.
  + Dr. Ambedkar observed that the President of India occupies the same position as occupied by the king or queen of England as he represents the country but does not rule and thus is the figurehead.
  + He is the constitutional head of the state but not the head of the government.

**The actual functioning of the President**

* + Regarding the actual functioning of the President, it is observed that there have been some Presidents who were referred activists as they use their power and office to strengthen the democracy and on many occasions opposed the government for the right cause.
  + However, there were some Presidents who were referred to as the Prime Minister’s President mostly agreeing with their views and never asserting their office.
  + The Former President of India R. Venkatraman observed that the Indian President is acting like an **emergency lamp** who is not asserting himself in normal situations. However, whenever there is a threat to the democracy then he asserts himself using the available powers and saves the democracy from entering into a crisis.

**Governor**

* + The state executive comprises of governor, chief minister, com and advocate general.
  + Governor is the nominal head of the executive, while the real power lay with the CoM headed by Chief Minister.
  + Chief Minister is the real head of the executive.
  + The governor is appointed by the president and is an agent of the centre.
  + This provision has been borrowed from Canada.
  + He must be a citizen of India and minimum 35 years of age.
  + The constituent assembly avoided the election of governor due to following reasons -
    - It may lead to conflict with Chief Minister.
    - The nominal head functions as de-jure and there is no need to spend time, energy and resources on elections.
    - Constitution of India in article 163 explicitly provides for discretion for governor. And in case of president in article 74, there is no explicit discretion but it is implied or situational.
      * The governor can exercise his discretion
        + In recommending president rule,
        + In reserving a bill of state legislature for the consideration of president
      * Thus, in normal circumstances and with the spirit of parliamentary democracy, the governor shall act on the aid and advice of the CoM but he can exercise the discretion of nation occasionally.

**VICE PRESIDENT**

* + The office of the Indian Vice President is modelled on the lines of the American Vice President. The Vice President of India is elected indirectly by an electoral college consisting of the members of both the Houses of the Parliament unlike the Presidential election the electoral college for the Vice President election does not include the state legislators and it also includes the nominated MPs.

* + It is because the Vice President of India mostly works as a chairman Rajya Sabha and rarely acts as the President so he is not representative of the Union as well as of the states the way President is.
  + Elections to the Vice President are held on the similar as the President i.e. conducted by the Election Commission of India through Proportional Representation using single transferrable vote and the voting is held through a secret vote.
    - The winner has to get more than 50% of the votes to win the elections.

* + **Qualifications to contest the office of Vice President of India**
    - Citizens of India
    - Age should not be less than 35 years
    - Qualified to be elected as a member of the Rajya Sabha
    - Must not be holding any office of Profit under state (UT, state, central government)
      * In this context, the sitting President, Vice President, Governor of the state, minister of the union, or any state is not considered as an office of Profit.
  + **Nomination -** Nomination for the Vice Presidential candidate must be proposed by at least 20 electors and seconded by another 20.
  + **Oath** to the Vice President is administered by the President or a person appointed on his behalf by him for the purpose of some person appointed on his behalf by him for the purpose.

* + **Resignation and removal of the Vice President**
    - Tenure of the Vice President - the Vice President of India holds office for 5 years though he can resign by addressing the resignation to the President.
    - Vice President of India can be removed from office before 5 years by a resolution of the Rajya Sabha passed by majority of all the then members of the House and agreed by the LS also.
    - However, such a resolution can be moved in the Rajya Sabha only after the expiry of a 14 days notice served upon the Vice President.
    - The Constitution of India has not provided for any ground to remove the Vice President of India.

* + The **election** of a new Vice President must be conducted before the expiry of the existing  Vice President.
    - If there is a vacancy due to the resignation, removal, or death of the vice president then the election for the new Vice President must be held as soon as possible.
  + Vice President of India is the ex officio chairman of the Rajya Sabha (even the American Vice President is the chairman of the American Senate)
    - If the Vice President of India acts as the President due to vacancy in the office of President due to resignation, death, or removal of the President then he can do so only for a maximum of 6 months because within 6 months the vacancy to the office of President is to be filled through elections.
      * However, if the President is sitting but is unable to discharge his function as a President due to illness, absence, or any other reason, then he remains in office as the acting President until the President resumes his office.
      * The American Vice President if acts as the President due to vacancy in the office of the President, then he remains the President for the full remainder of the unexpired term of the President and not just for a maximum of 6 months as with the case in India.
        + This means that the Indian Vice President was not supposed to occupy a powerful office as the American Vice President by our constitution.

Indian Vice President is also referred to as his **“superfluous highness”.**

* + The Constitution of India did not specify any emoluments for the Vice President of India and he draws emoluments as the ex officio chairman of the Rajya Sabha however, while acting as the President he draws all the emoluments which are drawn for the President.

**Central principles of parliamentary form of government are -**

* + President is head of the states and the PM is head of government.
  + The real executive powers are exercised by the COM headed by PM.
  + Members of the COM are drawn from parliament only.
  + COM  is collectively responsible for the popular house.
  + COM is composed of three categories of ministers.

**Cabinet Ministers**

* + These are the senior-most ministers and if they are given a portfolio, they always head the ministry.
  + They have a right to attend every cabinet meeting.

**Minister of state**

* + They are the second rank ministers who are normally not given independent charge of a ministry.
  + However, PM in his discretion can appoint a minister of state as head of independent ministry also.
  + He will be referred to as MoS with independent charge.
  + He can attend the cabinet meetings only when called.

**Deputy ministers**

* + They are not given an independent ministry.
  + They are appointed to assist the cabinet minister or MoS or both in discharging their official duties.

**Cabinet**

* + COM is a composite body that includes three categories of ministers but being a large body it seldom meets at one time in full capacity.
  + However, a body within the COM consisting of all the cabinet ministers called the cabinet is a compact body that meets regularly and takes all the important policy decisions.
  + The cabinet is headed by the PM.
  + Union cabinet is the highest decision-making body of the country's administration.
  + It largely runs the administration of the country and decides on the legislations to be introduced in the parliament.
  + The collective decision of the cabinet automatically becomes the decision of COM which is then binding on all the ministers.
  + The original constitution didn't recognize the cabinet and it existed and functioned under the conventions established in England.
  + The 44th amendment act 1978, introduced the term cabinet in Article 352.
  + Thus, now it enjoys constitutional recognition.
  + The cabinet is assisted by the cabinet secretariat, which is bureaucratically headed by the cabinet secretary, the senior-most civil servant of the country.
  + Cabinet meetings deliberations are exempted under the RTI act.
  + No noting is allowed without the permission of the PM.
  + **Collective responsibility**
    - U/a 75(3) the COM is collectively responsible to the Lok Sabha.
    - Once a collective decision is taken by the cabinet where the decision may relate to a single ministry, it is seen as a collective decision of com for which consequence will come on the whole COM.
    - If a collective decision is defeated in Lok Sabha then it amounts to the defeat of the entire COM and then if the government is not able to prove its majority the whole govt shall resign not merely the minister concerned.
    - There may be differences among the ministers on a particular issue at the stage of discussion in the cabinet.
    - But once a collective decision is taken all the ministers shall sink their decision and wholeheartedly support the collective decision.
    - The purpose of collective responsibility is to ensure that the government speaks one language and moves in a specific direction and there is no chaos in decision-making.

* + **Individual responsibility**
    - U/a 75(2) the ministers are responsible to the President.
    - Ministers hold office during the pleasure of the president however, since the advice of the PM is available in this regard, President cannot remove a minister on his own,
    - Thus in practice, the minister holds office during the pleasure of PM.
    - This way the ministers can be made disciplined and also there may be a case where individual ministers disagree with the collective decision of the cabinets and refuse to resign.
    - In that case, using individual responsibility he will be dropped from the COM and then a collective decision is taken for which the government can be held collectively responsible.

**POWERS AND POSITIONS OF PM OF INDIA**

* + Primarily there are 2 schools of thought talking about the position of PM of India,
  + One believed that PM is best described as **primus inter pares** i.e., first among equals this means the powers of the government or union executive are with the COM.
  + However, the other school of thought believes that PM is the chief stone of cabinet arch i.e., he is not first among equals rather he is the most important in COM.
    - The above statement is proven from the following facts -
      * When PM resigns or dies the COM automatically goes out of office.
      * Nobody will dare to offend the PM.
      * It is his prerogative to select his ministerial colleagues and then distribute the portfolios among them
      * PM is the chief spokesman of the COM.
      * It is the PM who convenes a meeting of the cabinet and decides its agenda therefore through cabinet meetings PM can give a general direction to the administration of the country.
      * PM has a right to call an answer from any minister.
      * It is the duty of the PM to inform the President about the affairs of the COM and the parliament.
      * He is a link between the president and parliament as well as between the president and the government.
      * It is the prerogative of the PM to announce important policy decisions to the country and to the parliament.
      * PM of India has the power to ensure that a collective decision is taken by the government for which the government can be held collectively responsible.
      * This shows that PM is the most important political person in the whole of COM.
  + However, in a coalition government, PM's position is not very strong.
    - If PM is a person who brought victory to his party in the elections, then his position will be strong as a PM.

* + **Priministerial form of government**
    - The prime ministerial form of government is a parliamentary form of government in which were PM dominates over the cabinet.
    - It is seen where a single party enjoys an absolute majority in the parliament, or when PM is the undisputed leader of his party or is charismatic.
    - PM's decisions are generally not opposed by the cabinet and accepted.
    - The decisions taken are not necessarily collective in nature and thus going against the spirit of parliamentary democracy.
    - The only advantage of the system is that decisions may be taken faster giving a clear direction to the administration of the country which may be very essential in a time of crisis.
    - However, the decisions taken may be hasty or the decision taken may be in the nature of securing then serving the larger interest of the country.
    - This defeats the concept of collective responsibility because in reality the government is held responsible for collective but for individual decisions.

* + **Cabinet form of government**
    - It is a style of govt within the parliamentary form in his cabinet that dominates over the PM.
    - Though the PM exercises his influence on the decision-making process yet he is not in a position to override.
    - Here, the decisions taken by the cabinet are truly collective and taken after much deliberation.
    - Thus the decisions are safe and maintain the spirit of collective responsibility.
    - However, decisions may get delayed which is quite harmful in the period of crisis.

* + **Conventions**
    - The convention is the unwritten rules that are not in the constitution but emerge on the basis of use and familiarity.
    - It is regarded as binding on all the organs of government.
    - Ordinarily, conventions have to be followed.
      * Conventions are flexible and they don't involve the hassles of constitutional interpretation.
    - They lubricate administrative machinery and helps in the smooth functioning of the administration.
      * Examples -
        + COM shall resign after having lost the majority in Lok Sabha.
        + 3 Regular sessions of parliament.
        + Formation of a caretaker government.
        + President giving assent to a money bill.
        + If speaker Lok sabha is from the ruling party then deputy speaker Lok sabha shall be elected from opposition only.

* + **Kitchen cabinet**
    - A kitchen cabinet is in which political authority is exercised without clear responsibility.
  + **Shadow Cabinet**
    - The shadow cabinet is a notional cabinet formed by the main opposition party in a parliamentary form of government.
    - It functions well where there is a two-party political system.
    - A shadow cabinet is headed by the opposition leader who is called shadow PM.
    - He appoints the members of his political party from the parliament as shadow ministers and distributes the portfolio among them.
      * A shadow minister leads the opposition whenever a discussion takes place on his subject.
      * This helps in bringing out the weaknesses in the government working in a better way and also trains the MPs in the art of administration even when they are in opposition.
      * The system works well in England but is absent in India because of too many political parties in opposition.

* + **Caretaker government**
    - A caretaker government is one that comes in existence when the council of ministers losses the confidence of Lok sabha or when PM dies or when Lok Sabha stands dissolved.
      * A caretaker government is a government in an **interregnum**.
    - It lasts till a new government is formed.
    - The caretaker comes into existence because of the **Article 74** which says that the president shall have a COM, to aid and advice while discharging his executive functions.
      * SC clarified in 1975, that a caretaker govt is a govt out of necessity.
      * Constitution is silent on caretaker government and its riles and functions according to the convention.
      * A caretaker government is there to take routine administration and is not supposed to take important policy decisions or enter into a treaty with a foreign state or commit the next government financially.
    - However, if in the national interest they have to take important policy decisions then they can do so with the consent of the president. Thus we see that the caretaker government is put in a restrictive mould only.

**Parliamentary v/s presidential System**

* + In the presidential form of government, the president is the real executive head of the state elected by the people for a fixed term.
  + In the presidential system, the president is not responsible to the legislature.
  + He chooses his team of ministers from among citizens at large who are not members of the legislature.
  + Whereas in the parliamentary system the real executive powers is with COM headed by PM and the COM is responsible to the legislature.

**Benefits of a parliamentary system of government for India**

* + The parliamentary system is more suitable for India since the remembers of COM are drawn from the legislature only.
  + The legislature is a mini nation, thus it ensures better **representation** for almost all the sections of India's heterogeneous population in government.
  + Parliamentary also provides for a more **responsible** government.
  + There is a direct continuous and concurrent control of people and parliament over the executive/ COM which is better than the periodic control on the government seen in the presidential system.
  + In a parliamentary system, there is close cooperation and coordination between executive and legislature which ensures smooth functioning of the government.
  + On the other hand in the presidential system, there is a complete separation between executive and legislature leading to frequent clashes, leading to deadlock, and constitutional crisis.

* + Indian's are familiar with the parliamentary system since British time which makes sense to continue with it.
  + In the parliamentary form of government, there are direct elections to choose the MP not the head of the government a sit happens in the presidential.
  + This way it is good in a country like India which is heterogeneous in population composition because of which had we gone for direct election of the PM, no single leader would be able to get the necessary majority of votes to win the elections by overcoming the barriers of caste, religion, region, language and get elected.
  + Also, in the current system, the local parliamentarians can raise the aspirations of the local population at the levels of governance in a better way thus strengthening democracy.

**Analysis of parliamentary system**

* + Though often political instability is given as a strong reason, however, the reality is the same parliamentary system has not caused unstable governments in countries like UK and Canada.
  + But, it is more common in India.
    - However, the reason is not the system, rather the misuse of the system.
      * In which political defection is very common and significant.
      * So, there is a need to strengthen **anti-defection law**. Also, no party is so popular that it can maintain its stability in every situation.
    - Some more steps can be taken to maintain accountability.
      * For example - the no-confidence motion, replacing with a better option called a constructive motion of no-confidence.

**The constructive motion of no-confidence**

* + It is a system used in **Germany** in which opposition introduces two motions simultaneously in the lower house of the parliament.
  + The first motion expresses the lack of confidence of the house in the COM.
  + The second motion expressed confidence of the house in the leader from the opposition.
  + Both the motions are put to vote simultaneously, if both the motions are passed, it amounts to the house expressing a lack of confidence in the government and virtually electing the next PM from the opposition.
  + This way the current government goes out of the office and the new government comes to power without any re-election.
  + However, if the first motion is passed and the second is defeated, then the same COM will continue because the opposition though proving a lack of confidence in the government failed to become an alternative government.
  + The system prevents the opposition from voting out the government irresponsibly.

**De-merits of parliamentary form of government**

* + In a parliamentary form of government, the legislative control of the government over the legislature was expected to be a big advantage of the system.
  + But, in reality, this control is more of a myth because it is the executive that can dominate the legislature.
  + Political defection among the members of the legislature has a great political significance in the parliamentary form of government as it can make the government unstable which can lead to corruption.
  + Because political instability is much more in the parliamentary system the COM is more concerned about its political survival than the administrative efficiency of the country's administration.
  + In a presidential system, unlike the parliamentary system, the head of the government can pick experts from various fields to become his minister.
  + People elect only the representative of the parliament and while doing so they may be guided by parochial tendencies and thus they may lack a national perspective while voting.
  + On the other hand, if people have to elect the head of the government directly the way they do in the presidential system then it will make people have a national perspective while voting.

### Attorney General of India (Article 76)

* + Lawyer for the government.
  + AGI is the first law officer of the government of India.
  + Appointed by the president.
    - AGI is appointed for 3 years (as per law, not the constitution).
    - If he continues for 3 years or not will depend on the President.
  + To be appointed as AGI the person must be qualified to be appointed as judge of SC.
  + He advises the government of India on legal matters.
  + He performs the legal duties which are assigned to him by the president.
    - In the performance of his legal duties, AGI has a right of audience in all the courts of India.
    - He is entitled to take part in the proceedings of the parliament and the parliamentary committees without the voting right.
  + He represents the union before the courts but is also allowed to take up private practice provided the other party is not, state.
  + He is not a member of the cabinet and has no right to vote in it.
  + He is not a government servant, nor a full-time council of the government.
    - He is given a retainer (not salary) which is equal to the salary of the SC Judge.
  + His office is the office of profit as a matter of convention attorney general resigns with the government.
  + The new government appoints a new attorney general.
  + He is assisted by the solicitor general and additional solicitor general and both these positions are statutory by nature.
  + AGI is constitutional posts.

# 

### EMERGENCY PROVISIONS

**National Emergency**

* + It is a unitary feature.
  + These provisions have been incorporated in the constitution to empower the union to deal with exigencies.
  + National emergency can be invoked on grounds mentioned in **Article 352** – external aggression, war, and armed rebellion.
  + The term internal disturbance was replaced with the term armed rebellion because interiors disturbance was more of a vague term.

* + Every proclamation must be approved by both the houses of parliament with a special majority i.e., absolute majority plus 2/3rd members present and voting.
    - This must be done within one month of the proclamation.
  + If the Lok Sabha is dissolved it shall be approved by Rajya Sabha and within 30 days of the new Lok Sabha coming to life.

**Effects on Fundamental Rights**

* + During the proclamation of national emergency fundamental rights are also affected.

**Article 358**

* + It leads to the automatic suspension of article 19.
  + It can only come into operation if a national emergency is declared on the ground of external aggression or war.
  + Fundamental rights are automatically suspended and there is no restriction on the state to take away rights under article 19.

**Article 359**

* + When a national emergency is declared on any ground.
  + Only those fundamental rights are affected which are mentioned in the presidential order.
  + Rights as such are not suspended but the remedy is suspended.
  + No presidential proclamation can suspend the operation of Articles 20 and 21.

**Effect of life of houses**

* + The concept of periodic approval was incorporated through the 44th constitutional amendment wherein every 6 months national emergency shall be periodically approved by both the houses of parliament.
  + During the national emergency, the tenure of Lok Sabha can be extended by N number of years but one year at a time.
    - The same as above applies to the state legislative assembly.
  + But, life cannot be extended 6 months after the emergency ceases to be in operation.
  + If at any time members of Lok Sabha (not less than 1/10th), give notice to the speaker (president if the house is not in session) that they want to revoke a national emergency then a special session must be called within 14 days.
  + If that session passes the revocation by simple majority emergency stands revoked.

**Relationship between centre and state during a national emergency**

* + **Executive**
    - **During a national emergency, the centre can give any direction to the state regarding any matter, how executive powers are to be exercised.**
  + **Legislative**
    - **During a national emergency, parliament is empowered to legislate on the state list, but it cannot authorize any other authority.**
    - **The validity of the law shall be maximum, 6 months after the emergency ceases to be in operation.**

**FINANCIAL EMERGENCY**

* + Under Article 360 of the constitution, if the president is satisfied that a situation has arisen, threatening the financial stability/credit of India, a financial emergency can be invoked.
  + It empowers the president to direct, reservation of money bills of state for his consideration and reduction of salaries of all classes of persons including SC and HC judges.
  + The executive authority of the centre, also extends to giving directions to the states, to observe canons to financial propriety.
  + In stark contrast with a national emergency, a financial emergency is not required to be approved by the special majority but a **simple majority**.
  + There is no requirement to get that approved periodically.
  + No special power has been bestowed upon Lok Sabha to seek its revocation by calling for a special session.

**President Rule**

* + Article 356 of the constitution provides for the provision of the president's rule.
  + It can be imposed when the state can not be carried as per the constitution.

**Effect on Legislative Relation**

* + The state legislative assembly is put under suspended animation and it can be dissolved only after both the Houses of Parliament have approved the president rule by simple majority.
  + During the president's rule, parliament can legislate on a state list or it can empower the president to legislate on the state list.
  + The President in consultation with MPs for that state makes laws and those laws are called **Presidential Act.**
    - The validity of these laws remains till the time they are repealed to by the state legislature.
  + The promulgation of President rule does not affect the judiciary.
  + The executive(COM) stands dismissed and the president takes over the executive power.
  + The state is run by the governor (agent of the centre) along with the advisor added by the centre.

**SR Bommai judgment 1994**

* + A change in the government at the centre will not lead to change in the government at the state.
  + Secularism is the basic structure of the constitution.
  + The strength of the government always is tested only on the floor of the house.
  + The state legislative assembly can only be dissolved after the president's rule has been approved by both houses through a simple majority.

**Rameshwar Prasad vs. Union of India (UOI)**

* + Imposition of the president, dissolution of SLA, etc can be judicially reviewed on the ground of malafide.
  + The decision taken by the president on the recommendation of COM shall be defended by the union, not the president.
  + The apex court also went to the extent of stating that if malafide confirmed them dissolved LA was to be brought back to life.

### Judiciary

* + Judiciary plays an important role in adjudicating disputes between different units, citizens, etc.
  + In a written constitution with federal features, the judiciary has added responsibility upholding the supremacy of the constitution.
  + The SC in India sits at the apex along with a chain of HC and subordinate courts.
  + We have integrated judiciary whereas in the USA there is the different setup of federal and state judiciary.
    - In an integrated judiciary, all the courts implement laws passed by both state legislature and parliament.
    - In the USA the federal Supreme Court is confined to implementing federal laws, constitution interpretation, etc.
  + While the due process of law incorporated in the US constitution gives wide and plenary powers to their judiciary but procedure established by law in India gives limited power those the Supreme Court (SC).
    - However, in **the Menka Gandhi Case SC** ruled that while judicially reviewing we can also check the fairness justiciability and reasonable of law.
  + The SC can be the final interpretation of the constitution and custodian of the constitution.

**Appointment of Judges**

**1st judges case, 1981**

* + The terms consultation doesn’t always mean concurrent in Article 124(2).
  + The recommendation can be CJI can be rejected by the executive on strong grounds.
  + This judgment in away gives primacy to the executive.

**2nd Judges Case**

* + The SC advocates on **Record association vs. UOI 1993**, the term consultation means concurrence.
  + The initiation comes from Chief Justice and the name comes for the second time after reconsideration is binding of the executive.
  + The CJI shall consult the polarity of the judges i.e. two senior-most judges.
  + The outgoing CJI shall forward the name next in line to be appointed as CJI which will be binding on the executive.

**Reference(Re) 3rd judges case 1998**

* + The collegium shall consist of CJI + 4 senior more judges.
  + All opinions must be in writing.
  + The collegium shall only forward the name (CJI forwards) if there is consensus and even if two judges are against the name it shall not be forwarded.
  + If the name is forwarded by the CJI alone it will not be binding on the government.

**4th Judges Case**

* + The SC in this landmark verdict declared the entire 99th CAA unconstitutional.
  + The National Judicial Appointment Act (NJAC) was also declared unconstitutional.

**Grounds for Unconstitutionality**

* + Judicial Independence is the basic structure of the constitution and it was violated by the said amendment.
  + The NJAC as envisaged with terms like eminent jurist, law minister is not mentioned in the original constitution.
    - Cannot be incorporated.
  + The power bestowed upon Parliament to decide over the procedure to be followed in NJAC is unconstitutional and a violation of the constitution.
  + **On allegations of executives, non-involvement the apex court ruled** - "appointments are not entirely being made within the prerogative of the judiciary and checks and balances are ensured by the participation of executive".
  + The 99th CAA drifts away from the original scheme of judicial appointment as envisaged in the original constitution deeply disturbing the independence of the judiciary and separation of powers.
  + In response to the apex court verdict, the government is pushing for the finalization of the memorandum of the procedure with respect to the collegium.

**SC Judgement on RTI**

* + Central information officer of India vs Subhash Chander Aggarwal.
  + The apex court brought the office of CJI within the purview of RTI.
  + The discussion in the collegium at the input stage will not be shared but the names forwarded at the output stage through RTI.
  + If a piece of information sought is not serving the public purpose it can be denied and the decision is to be taken on a case by case basis.
  + The disclosure will bring in transparency, which will aid Judicial Independence.
  + Judicial Independence cannot be taken as a refuge.

**JURISDICTION**

**Writ jurisdiction**

* + SC u/a 32, can be approached for enforcement and violation of fundamental rights.
  + The SC has time and again ruled that it is better to approach HC first in matters of fundamental rights violations.
  + The writ jurisdiction of SC is narrower than the writ jurisdiction of HC because HC can exercise writ jurisdiction on any matter whereas the writ jurisdiction is confined to Fundamental Rights.

**Original Jurisdiction (131)**

* + SC as the federal court has original jurisdiction in federal matters such as disputes between centre and states, two or more states, etc.

**Advisory Jurisdiction (143)**

* + U/a 143 of the constitution, the president cans seek the advice of SC on any question of law or fact of public importance.
  + The advice rendered by SC is not binding on the president.
  + It is not binding on the SC to give advice also except on matters such as pre-constitutional treaties etc.

**Appellate Jurisdiction**

* + In civil and constitutional matters, an appeal can be filed in SC.
  + If HC certifies that it involves a substantial question of law or interpretation of the constitution.
  + In criminal matters, the appeal is limited to the situations where HC reverses the acquittal to a harsher punishment such as a life sentence, the death penalty.

**Appeal by special leave (136)**

* + This is the distinct and unique power of SC.
  + It is discretionary in nature.
  + It allows to challenge the judgment of any court except military courts directly in SC.

**Removal Of HC/SC judges**

* + Proven misbehaviour or incapacity.
  + It has not been defined in the constitution or any piece of legislation.

**Majority required**

* + The procedure is mention in the judge's inquiry act 1968, a motion to be introduced is to be signed by 50 members in RS or 100 members sin LS.
  + It can be rejected by the speaker or the chairman as the case may be.
  + If it is passed by the requisite majority by both the houses, the judge shall be removed by the president in the same session.

**PIL**

* + The concept is inspired by the USA.
  + It is also known as **Pro Bono Publico**.
  + The PIL promotes group interests rather than individual interests.
  + The SC though has ruled that there cannot be a strict restriction.
  + The power of PIL is derived from the power of the Judicial Review.
  + Only SC and HC can entertain PIL.
  + It is also known as judge-made law.
  + The term PIL or the mechanism is not mentioned in any law or Indian constitution.
  + PIL is further the cause of marginalized sections, issues affecting the public at large.
    - Ex- Right to clean environment, abolition of bonded labour, etc.

# 

**JUDICIAL REVIEW**

* + The term judicial review is not explicitly mentioned in the constitution.
  + Although the term is not mentioned still the elements of Judicial Review are found in articles such as 13, 32, 131 etc.
  + Judicial review is the basic structure of the constitution.
  + The validity of the constitutional amendment can be challenged on grounds of violating fundamental rights or in conflict with the constitution itself.
  + **The purpose of judicial review is**
    - a) Uphold the supremacy of the constitution (supreme lex)
    - b) Ensure the sanctity of the rights guaranteed especially fundamental rights.
    - c) Ensure that spirit of federalism is not violated leading to federal imbalance.
    - d) It also upholds the principle of constitutionalism

* + **Constitutional morality -** the spirit of the constitution must be reflected.
    - Dr. BR Ambedkar has brought the term into Indian jurisprudence.
    - Constitutionalism - Limited government
    - *Constitutional morality is adherence to the core principles of constitutional morality.*
    - *The spirit of the constitution must be revered by all.*
    - *It leads to effective coordination between different units in event of differences and finding solutions to them.*

* + **Due process of law and Procedure established by law**
    - Due process of law gives wider powers of judicial review wherein the judiciary can examine the reasonability of the piece of legislation/executive action with wider amplitude.
    - In a procedure established by law, the power of judicial review is relatively limited.
    - The Supreme Court in the Menaka Gandhi case imported the spirit of due process of law to an extent by liberal interpretation of Article 21.
    - Both essence rights tests and rights tests form part of the basic structure.
    - In a rights test, the validity of that action is evaluated on a broader framework and not confined to explicit interpretation or core values.

* + **Judicial review has single-handedly led to the genesis of other instruments such as public interest litigation, judicial activism, etc.**
    - This has expanded the rights of the citizens in an unprecedented manner.
    - E.g.- Article 21 right to life includes the right to a clean environment, the right to reputation, the right to speedy trials, etc.
    - The essence of rights test - only core idea is taken into consideration Article 21
    - Rights test - Including core essence and other domains also. E.g.- right to clean environment, etc.

**IR Coelho case**

* + The supreme court in the landmark verdict ruled that the laws that have been inserted inside the 9th schedule do not enjoy a blanket immunity.
  + All laws that have been inserted post 24th April 1973 shall be open for judicial review on grounds of violation of fundamental rights especially the trinity 14,19 and 21.
  + The judicial review as ruled before is again reiterated to be the basic structure of the constitution.

**JUDICIAL ACTIVISM**

* + Judicial activism is when judges participate in law making process.
  + The term judicial activism is not explicitly mentioned in the constitution or defined anywhere.
  + Judicial activism is seen as the judiciary forcing the other two organs to impart their constitutional duties.
  + It leads to an assertive role played by the judiciary to fill the void left by the executive and legislature.
  + Judicial activism as such is not bad but judicial adventurism or overreach is seen as a violation of powers.
  + In judicial adventurism or overreach, the judiciary transgresses the boundary of the separation of powers and gives policy prescriptions, interferes in the policymaking.
    - E.g.- Ban on the sale of liquor within 500 meters of national state highways.
  + Judicial activism has led to the expansion of rights wherein the ambit of rights has been expanded by the Supreme Court/ high courts.
  + The concept of judicial activism largely comes into play in PIL cases.

**Contempt of Court, 1971**

* + The provision of the contempt of court is necessary to ensure the independence of the judiciary and does prohibit the vested interest from tarnishing the image of the judiciary.
  + Contempt can be classified into civil contempt and criminal contempt as per the Contempt of Court Act 1971.
  + Civil contempt is wilful disobedience whereas criminal contempt is scandalizing or lowering the dignity of the court in the dispensation of justice.
  + **COC is one of the grounds of restriction under Article 19 (1) (a).**
    - In Suo moto cases, no prior permission is required from Attorney General (AG) while in other cases it is required.
    - The Apex court has ruled that contempt of court is a constitutional power vested in the Supreme court and it does not derive its authority from statutory provisions.

* + **Mulgaonkar principles** - in the landmark Mulgaonkar case, the supreme court in a 2:1 verdict upheld the right to fair and constructive criticism of judicial pronouncements.
    - The Apex court, thus, ruled that if the cause of justice is not obstructed it will not be seen as contempt of court.
    - In a recent verdict, Apex court found a senior advocate of the Supreme court guilty of contempt of court.
    - The senior advocate made an opinion over social media against the serving chief justice.
    - Judicial independence cannot be hostage to unrestricted freedom of speech and expression.

### Judicial doctrines

* + Doctrine of Severability
    - If a portion of a contract or law is deemed invalid, the remaining portions of the contract or law can still be enforced.
    - In other words, the invalid or unenforceable portion can be "severed" from the rest of the contract or law, allowing the remaining portions to remain in effect.
    - This doctrine is used to avoid invalidating an entire contract or law due to a small, insignificant issue.
    - Introduced in **RMDC Vs Union of India case**

* + Doctrine of Waiver
    - Waiver is when a person intentionally and with full knowledge, gives away his right to exercise or chooses not to exercise that right which the person would otherwise possess.
    - The doctrine of waiver is based on the principle that a person is the best judge of his own interest.

* + Doctrine of Eclipse
    - The Doctrine of Eclipse states that any law which is inconsistent with fundamental rights is not invalid. It is not totally dead but overshadowed by the fundamental right. The inconsistency (conflict) can be removed by constitutional amendment.

* + Doctrine of Territorial Nexus
    - laws made by a state legislature are not applicable outside that state, except when there is a sufficient nexus between the state and the object. This doctrine derives its authority from Article 245 of the Indian Constitution.

* + Doctrine of Pith and Substance
    - In the context of federalism. It is used to determine the true subject matter or "pith and substance" of a law or statute, in order to determine which level of government has the constitutional authority to enact it.
    - The courts will look at the true purpose or subject matter of the law or statute, and not just its form or wording.
    - This doctrine comes into play when the legislation incidentally encroaches upon some other list or legislative competence.
    - With the applicability of this doctrine, any incidental encroachment is ignored/overlooked and the law is saved from being declared invalid.

* + Doctrine of Colourable Legislation
    - If a legislature lacks the jurisdiction to enact laws on a specific subject directly, it cannot make laws on it indirectly.
    - Law is invalid if it is passed in the guise of one subject matter but in reality it is aimed at achieving something else that is outside the legislative competence of the government body.
    - This means that a law or statute will be deemed invalid if it is passed with the appearance of being constitutional, but in fact, it is intended to achieve an unconstitutional purpose.
    - In simple terms, what cannot be done directly, cannot be done indirectly also.
    - The court checks the form as well as the substance of the law and also the legislative competence.
    - The SC in the **State of Bihar Vs Kameshwar Singh and Gajapati Narayan case** brought this doctrine into Indian jurisprudence.

* + Doctrine of Implied Powers
    - It holds that government bodies have certain powers that are not explicitly stated in the Constitution, but are implied by the express powers that are given to them.

* + The doctrine of implied powers is intended to ensure that government bodies have the necessary powers to perform their constitutional duties, while at the same time preserving the principle of limited government.

* + Doctrine of Incidental and Ancillary Powers
    - If a legislative body has the power to legislate on a particular matter(incidental) , then they have the power to legislate on ancillary topics related to that matter. Unless that ancillary topic is mentioned explicitly under the jurisdiction of another legislative body

* + The doctrine of incidental and ancillary powers is intended to ensure that government bodies have the necessary powers to perform their constitutional duties, while at the same time preserving the principle of limited government.

* + Doctrine of Precedent
    - The doctrine of precedent, also known as **stare decisis**, is a legal principle that states that courts should follow the decisions of higher courts in cases that have similar facts and legal issues. This means that when a court decides a case, its decision sets a precedent for future cases with similar facts and issues.
    - The doctrine of precedent is based on the idea that consistent and predictable decisions promote fairness and stability in the legal system.
    - The principle of precedent is applied in a hierarchical system, Supreme Court, has the authority to create binding precedent for all lower courts within that jurisdiction.

* + Doctrine of Occupied Field
    - If a specific area of law or regulation has been extensively regulated by a government body, other government bodies are generally prohibited from regulating that same area.
    - The idea behind this doctrine is that the government body that has been regulating the area has the expertise and knowledge to do so effectively, and therefore other government bodies should not interfere.
    - Seventh schedule establish the occupational field of subjects for The union and states.

* + Doctrine of Prospective Overruling
    - It dictates that a decision made in a particular case would have operation only in the future and will not carry any retrospective effect on any past decisions.

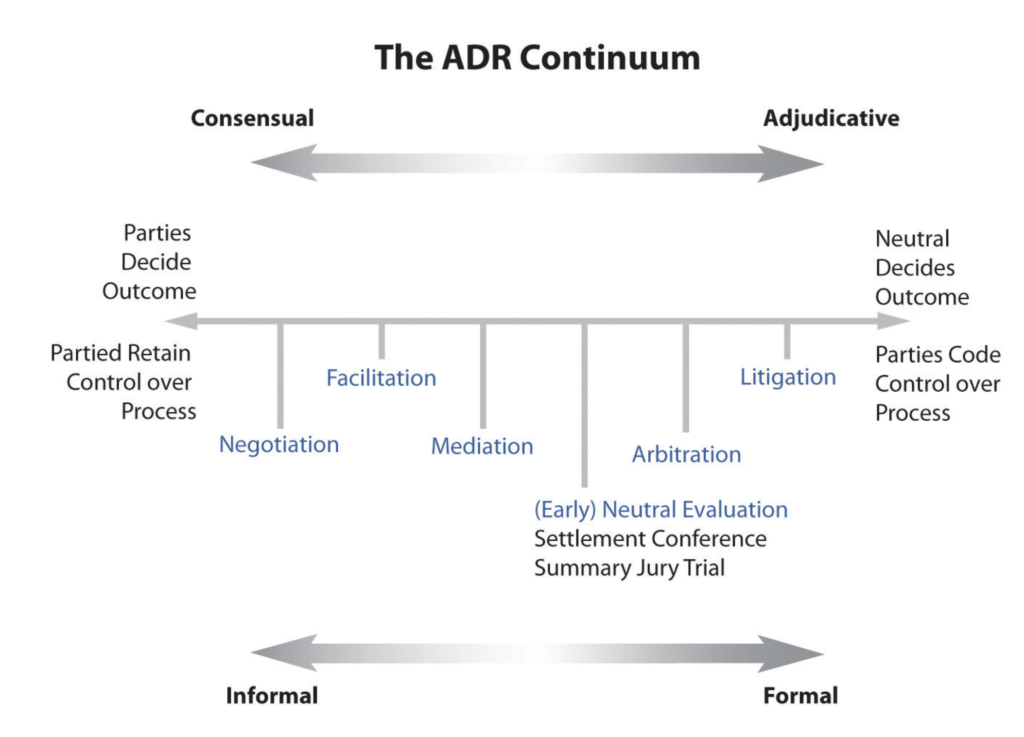
* + Doctrine of Harmonious Construction
    - A provision of the statute should not be interpreted or construed in isolation but as a whole, so as to remove any inconsistency or repugnancy
    - The doctrine deals with the 7th schedule predominantly, wherein, there can be an overlap of legislation with respect to different lists in the 7th schedule and subjects therein.
    - **The Tikaramaji Vs State of UP -**
      * The court ruled that entries should be given wide amplitude and harmony should be achieved between different entries and lists.

* + Doctrine of Liberal Interpretation
    - Also known as the doctrine of beneficial construction, is a legal principle that states that laws and statutes should be interpreted in a way that is favourable to the person or entity being affected by the law or statute.
    - This means that when interpreting and applying a law or statute, the courts should strive to find the most favourable interpretation for the person or entity being affected, and should avoid interpreting the law or statute in a way that is overly restrictive or harsh.

* + Doctrine of Parens Patriae
    - Duty of king/state to look after the interest of those who are not able to look after themselves.
  + Executive doctrine
    - The doctrine of eminent domain is pertaining to the power of the sovereign to acquire property of an individual for public use without the necessity of his/her consent.

**Alternate Dispute resolution**

**NMAL**



**GRAM NAYALAYAS AND LOK ADALATS**

* + Both are not constitutional but statutory courts.

**Gram Nayalayas**

* + Gram Nayalayas - came into from Gram Nayalayas act 2008. Came into force in 2009.
  + The cases which are mentioned in schedules in Gram Nayalayas act, only those cases can be taken by Gram Nayalayas.
  + Not ADR.
    - Judgment is not binding.
    - More of a mobile court.
    - Both civil and small criminal cases.

**Lok Adalat's**

* + Lok Adalat came in by Legal services authorities act 1987 to implement article 39A (free legal aid)
  + It is an alternate dispute resolution mechanism.
  + It can take up to only civil cases and criminal cases only which are compoundable.
  + Amendment in 2002 added permanent Lok Adalat's for utility services. Here, a term of settlement is given.
  + If parties do not arrive at a compromise then the case is sent back to conventional courts.
  + Awards are final and binding, no appeal can be filed against the award.
  + Established to provide inexpensive and speedy justice.

### ELECTIONS

* + Elections of Lok Sabha, Rajya Sabha, President, and Vice-President, comes under the purview of the Election Commission of India.
  + Panchayati Raj and urban local body elections by the state election commission.

**Constitutional Provisions**

* + **Article 324** - establishes ECI for superintendence, direction, and control of elections;
    - Free and fair elections.
  + **Article 325** - Uniform voter list and non-discrimination on the basis of religion, race, caste, and sex;
    - The place of residence is not mentioned.
  + **Article 326** - Universal adult suffrage;
    - 61st CAA reduced the age of voting from 21 to 18.
    - The right to vote is a constitutional right.
    - Disqualification subject to the law by the appropriate legislature on grounds of non-residence, unsoundness of mind, crime, or corrupt or illegal practice

* + **Article 327**- Power of Parliament to make laws w.r.t. Parliamentary and State Legislature (Elections, Electoral Rolls, Delimitation and all other matters)
    - Parliament passed RPA 1950 and RPA 1951 under this.
    - Voter’s qualification, Administrative machinery, Preparation of electoral rolls, Election-related offenses, disputes.
    - Provision of delimitation, Disqualifications, Allocation of seats etc.
    - Registration & Recognition of Political Parties.

* + **Article 328**-  If the parliament has not made a law, then the state legislature can fill the void. With respect to state legislature elections.

* + **Article 329** – Bar to interference by courts in electoral matters
    - Elections disputed are to be decided by an election petition presented to such authority decided by parliament (327) or state legislature if parliament has not decided.

**Delimitation Commission**

* + Demarcates geographical constituencies for the purpose of elections.
  + Reservation in constituencies is decided by delimitation commission.
  + U/a 329 Anything related to delimitation cannot be challenged in a court of law.
    - Elections cannot be challenged except by an election petition by an authority decided by parliament.
  + The Union government constitutes a Delimitation Commission headed by a retired Supreme Court judge.,

**Statutory provisions**

* + **RPA 1950 and RPA 1951.**

**Practice**

* + The press conference made by ECI and dates of elections is announced.
  + There is a notification by President for inviting nominations.
  + Once dates are announced model code of conduct will be active.
  + Exit polls.
  + NRI voting etc.
  + Paid News.
  + Simultaneous voting of elections.

* + **Schedules**
    - Schedule 1- allocation of seats in the house of people.
    - Schedule 2 - total number of seats in the legislative assembly.
    - Schedule 3 - Allocation of seats in the legislative council.
    - Schedule 4 - local authorities for purpose of election to the legislative council.

* + **Terms**
    - **CEO -** Chief Electoral officer. A senior-most civil servant from a particular cadre is appointed as CEO.
    - **DEO -** District Election Officer. DM of the district. Supervises the election.
    - **ERO**- Electoral registration officer. The stamp signature on the voter ID card is of ERO.
      * **AERO**- Assistant electoral registration officer. Supports ERO.

* + **Features of RPA 1950** 
    - The matters related to delimitation.
    - Allocation of seats in the house of people, number of seats.
    - Allocation of seats to the legislative council.
    - Office of CEO, DEO, ERO, and AERO.
    - Electoral rolls and all related matters.

* + **Major features of RPA 1951** 
    - Qualification for elections of Lok Sabha, Rajya Sabha, legislative assembly, and legislative council.
    - Disqualification of MPs and MLAs.
    - Disqualification from voting.
    - Administrative machinery for the conduct of elections.
    - Registration of political parties.
    - Election disputes.
    - Corrupt practices and electoral offenses.
    - By-elections.
    - The returning officer is designated to receive nomination papers and is solely responsible for the declaration of results.
    - The chief electoral officer is the overall head of the entire electoral process of the state.

**Returning Officer**

* + An officer designated to receive nomination papers and solely responsible for the declaration of results.
  + DM is returning officer for Lok Sabha Constituency.
  + SDM is RO for an assembly constituency.
  + If more than one Lok Sabha constituency in one district, DM will be RO of one constituency and ADM for another constituency.
  + The chief electoral officer is the overall head of the entire electoral process in the state.
  + Section 62(5) of RPA, 1951 mandates No person shall vote at any election if he/she is confined in a prison

**POLITICAL PARTIES**

* + ECI registers political parties as per RPA 1951.
  + A group of people who want to contest elections.
  + A political party has to register itself under ECI.
    - Once the party is registered then only it gets recognition.
    - More than 700 registered parties but not all recognized.
  + Anyone can form a political party and register itself but only a few parties get **recognition**.
    - Recognition is given on basis of performance
    - Recognized parties are further divided into nationally recognized parties and state-recognized parties.
    - Recognized parties get their symbol registered and are known by that symbol.
    - If the symbol of two political parties is the same then the recognized party will get the symbol.
    - The recognized party in one state can ask ECI to register a symbol for them in other states also.
    - Such parties are not recognized parties in a particular state and if they want to reserve a symbol for them in that state, then before every election they have to make a request for it to ECI.
  + One party can have different symbols in different states.
  + Whenever someone is contesting from a state/nationally recognized party only one proposer is required.
  + Independent candidates, unrecognized party candidates need 10 proposers.
  + Different parties have different posts like congress and BJP has a president and Aam Admi party has a convener.
  + RPA 1951, all political parties must be registered with ECI.

**Anti Defection**

* + It was realized that switching political loyalties and frequent defections hamper the functioning of democracy.
  + The **52nd Amendment Act of 1985** added the **10th schedule** in the constitution which was once amended in **2003**.
  + **Why do we need Anti defection law?**
    - To check unethical democratic behavior.
    - Frequent defections make people lose faith in democratic institutions.
    - Defections lead to unstable governments and mid-term elections, draining money from the public exchequer.
    - The political parties contest elections and people vote based on manifestos, the expected schemes, programs, etc. all get affected due to unstable governments.
  + **Who can be disqualified?**
    - Any decision over this i.e. defection under the 10th schedule is decided by the presiding officer of the house.
    - The SC in the Kihoto Hollohan case ruled that the decision of the speaker is subject to judicial review.
  + **Grounds of disqualification -**
    - An independent member joins a political party.
    - A nominated member joins a political party 6 months after becoming a member.
    - A member of a political party either voting against or abstaining from voting against the whip issued if the act is not condoned by the party within 15 days.
  + **Exemptions from disqualifications -**
    - If two-third of members form a different group or merge.
    - If a person on being elected as speaker, deputy speaker, deputy chairman gives up the party membership.
  + **Way forward**
    - 10th schedule has been in great news and the office of the speaker is always in news due to challenges in SC. It is being suggested that an impartial tribunal should be established to decide over disqualification. It has already been ruled that decision of disqualification is a quasi-judicial act. The speaker normally belongs to the ruling party and impartiality is required. It is of extreme necessity to stipulate a time limit within which the speaker should decide.

**Election symbol order 1968**

* + If one party splits or two parties have the same symbol.
  + All matters relating to symbols are to be dealt with by ECI.
  + Allocation of symbol, recognition, de-recognition of political parties is to be decided by ECI.
  + The group with more officer bearers (posts inside party) or MP/MLAs will be given the symbol, in case of tie new symbol to both parties.

**Model Code of Conduct**

* + The Model Code of Conduct is a set of norms for the guidance of political parties and candidates during the election period, evolved with the consensus of political parties.
  + The Election Commission ensures its observance by political parties including the ruling parties and candidates during the period of elections so that nobody can disturb the level playing field for all political parties involved in the electoral process.

* + In Union of India Vs Harbans Singh Jalal and Others, the Supreme Court Validated Model Code of Conduct.

* + **S. Subramaniam Balaji v/s Government of Tamil Nadu & Others** wherein the court observed that Model Code becomes enforceable from the date of announcement of the election program.
    - **It contains the following 8 parts :**
      * Part I of the Model Code lays stress on certain minimum standards of good behavior and conduct of political parties, candidates, and their workers and supporters during the election campaigns.
      * Parts II and III deal with the holding of public meetings and taking out processions by political parties and candidates.
      * Parts IV and V describe how political parties and candidates should conduct themselves on the polling day and at   
        the polling booths.
      * Part VI exhorts political parties and candidates to bring their complaints to the notice of the observers appointed by the Election Commission for remedial action.
      * Part VII deals with the parties in power, This part is, in essence, the flesh and blood of the Model Code, which deals with several issues relating to Government and its Ministers, such as visits of Ministers, use of Government transport, and Government accommodation, announcements of various schemes and projects, etc.
      * The newly added Part VIII says that election manifestoes shall not contain anything repugnant to the ideals and principles enshrined in the Constitution and further that it shall be consistent with the letter and spirit of other provisions of the Model Code.

**Electoral Disputes**

* + **Corrupt practice:**
    - Corrupt Practices are mentioned in **Section 123 of RPA 1951**.
    - Indulgence in any activity which may aggravate existing differences or create mutual hatred or cause tension between different castes and communities, religious or linguistic is a corrupt practice under Section 123 (3A) of the Representation of the People Act, 1951.

* + **Electoral offense:**
    - Bribery to voters is both a corrupt practice and an electoral offense under Section 123 (1) of the Representation of the People Act, 1951 and Section 171B of the Indian Penal Code, respectively.
    - Intimidation of voters is an electoral offense under Section 135A (C) of the Representation of the People Act, 1951.
  + **Disqualification:**

* + **Section 8 RPA 1951** provides for disqualification on being convicted for certain offenses such as offenses under the Civil Rights Act, promoting animating among groups, prevention of terrorism Act, etc.
  + There are two categories
    - Conviction attracting fine -> disqualification for 6 years
    - Conviction attracting imprisonment -> disqualification for 6 years from the date of release from jail.

* + Offences under section 8(1) - deals with promoting enmity, Rape, FEMA
    - if convicted for imprisonment shall be disqualified with immediate effect
      * राहुल गांधी का चुटिया कटा
  + Offences under section 8(2) - hoarding, profiteering, adulteration of food or drugs, dowry
    - shall be disqualified only if the imprisonment is for 6 months or more.
  + Offences under section 8(3) require imprisonment of at least 2 years for attracting disqualification

* + Will be disqualified for 6 years from the date of release for all other offenses one would be disqualified if convicted for two years or more.
  + **Section 11** RPA 1951, empowers the Election commission of India to remove any disqualification or reduce any disqualification (except corrupt practices under section 8A).

**Criminalization of Politics:**

* + **Main reasons for criminalization –**
    - Vote Bank Politics (Caste, Religion factor).
    - Corruption and money power.
    - Acceptance among masses.
    - Lack of idealism.
    - The Apex Court in 2002 (ADR Case) – ruled that the Nomination papers shall include criminal antecedents, educational qualifications, and financial information to assets, liabilities, etc.
    - Apex Court in People’s Union for Civil Liberties Case provided for NOTA button in EVM.
      * This has led to venting of citizen’s anger and their exhibition of dissent in case of all the candidates are not acceptable to them.
    - Lily Thomas v. Union of India, 2013 – struck down Section 8(4) of RPA, 1951, that allowed the convicted politicians to escape disqualification by acceptance of an appeal in a Higher Court.
      * This has led to a situation where politicians are immediately disqualified on conviction.
    - Corrupt Practices are mentioned in **Section 123 of RPA 1951**.
    - Serving or distributing liquor on polling day and during the forty-eight hours preceding it is an electoral offense under Section 135 (c) of the Representation of the People Act, 1951.

**Electoral Bond**

* + The concept of electoral bonds was introduced through the Finance Act of 2017.
  + The National Commission to review the working of the Constitution also highlighted the High Cost of Elections as the reason for corruption.
  + RBI designated SBI as the bank to sell bonds.
    - It must be exchanged (submitted) within 15 days i.e. they are valid for 15 days from the date of issuance.
  + Must be bought after complying with KYC Norms.
  + The amended Section 182 of the Companies Act 2013 removes the requirement by companies to declare contributions made to political parties through Electoral Bonds.
  + Previously, the companies can maximum contribute up to 7.5% of average last three years average profit – this provision has been done away with no such restriction now.
  + **Conditions for Electoral Bonds:** Only parties registered under the RPA 1951, which secured not less than one percent of the votes polled in the last General Election to the House of the People or the Legislative Assembly of the State.
  + **Positives:**
    - KYC Norms would need the channelizing of black money.
    - In addition to Electoral Bonds Provisions like not taking more than 2,000 cash will limit the use of Black Money.
    - Money being channelled to Political Parties is documented and accounted in banks which may be retrieved by enforcement agencies.
  + **Challenges:**Anonymity.
    - Only SBI designated giving the upper hand to the ruling party to gain information.
    - Removal of 7.5 Percent Cap.
    - Now, even Foreign Companies having majority stake companies can contribute.

**STATE FUNDING OF ELECTIONS**

* + State Funding of elections has been a long pending issue and it is extremely important for free and fair elections.
  + Corporate Funding brings with itself certain negatives such as:
    - Heavily in favour of National Parties and parties that are ruling.
    - The corporates expect policy favour.
  + This will lead to better accountability as the secrecy will pave way for transparency.
  + The **INDRAJEET GUPTA COMMITTEE** ON State Funding of Elections made certain recommendations:
    - State Funding should be in form of KIND.
    - Only to Recognised Political Parties.
    - Complete account should be with the Election Commission of India.
  + **CHALLENGES: The limited** fiscal capacity of the State.
    - If given to Recognised Parties, the Registered Parties would cry foul of violative of Principle of Equality

**Simultaneous Holding of Elections**

* + The idea of simultaneous elections is to conduct elections to Lok Sabha and State Legislative Assemblies at the same time once every five years.

**Positives**

* + Saves time and energy.
  + MCC is in force for very little time.
  + Populist measures and compulsions supposed to be avoided.
  + Money saved in election related expenses.
  + Stability will lead to better decision-making.

**Challenges**

* + The constitution needs to be amended to ensure that there is a confidence motion along with every no-confidence motion.
  + States may not agree to such proposals.
  + Some argue that it may give an edge to national parties.
  + National parties with more finances will be more capable of meeting the financial needs of simultaneous elections.

**NOTA (NONE OF THE ABOVE)**

* + Apex court in People's Union in Civil Liberties Case, 2013 - ruled that rule 49 (o) of conduct of election Rules 1961 is ultra vires with article 19 of the constitution.
  + Apex court directed -
    - Provisions of NOTA shall be introduced in ECI.
    - The right to vote implies the right to reject.
    - Right to secrecy is an integral part of free and fair elections.
    - The arbitrary distinction between a person who voted and one who chooses not to vote on basis of secrecy violates article 14.

**Positives**

* + Voter participation will be high.
  + Voter's frustration is exhibited through NOTA.
  + Political parties may realize over time and will nominate a better candidate.

**Negatives**

* + Will not lead to the defeat of a candidate.
  + NOTA should also be clubbed with the right to recall.

**OPINION AND EXIT POLLS**

**Exit Polls**

* + Provided in **section 126 (a) of RPA, 1951,** restricts the dissemination of voter's choices taken after they have voted.
    - It empowers the ECI to ban any such exit poll.
    - Provision of fine/imprisonment/ both in case of violation.

**Opinion Polls**

* + They are as such not banned explicitly through RPA 1951, but by the provisions of section 126 in RPA, 1951.
    - Opinion polls are banned for 48 hours before the polling ends.

**Proxy voting and NRI voting**

* + NRI - Non-Residential Indian - living outside India.
  + NRI has to register and come to India physically to vote.
  + India does not support e-voting as of now.
  + Postal Voting services are available to government servants posted outside, army personnel (wife of army personnel is allowed), and other classes defined by ECI in consultation with the government.
  + The overseas NRIs can register through form 6A.
  + ECI has expressed that it is technically and administratively ready to implement an electronically transmitted postal ballot system.
  + This will be done through ETPBS, it is yet to be finalized, how the votes will be transmitted to RO.
  + As per RPA 1950, an NRI can vote at his place of residence, as mentioned in his/her passport by being physically present at the polling booth on the polling day.
  + So, as of now, proxy voting and E-voting are not extended to NRIs, this will increase the voter's participation.

**ELECTRONIC VOTING MACHINES**

* + The EVM was mooted by the Election Commission of India in 1977 and the 1st-time machine was used in North Paravur Constituency in Kerala.
  + The RPA-1951 was amended to provide for voting through machines –
    - Section 61A of RPA,1951 provides for Voting Machines at Elections.
    - **Jayalalithaa and Ors** vs. Election Commission of India Positives (Supreme Court Validated EVM’S).
  + **Benefits:**
    - Time saved, Energy saved, Environment – paper-reduction, Better accuracy, fewer chances of interference, Time gap between 2 voters eliminates the chances of booth capturing (90 secs).
  + **Challenges –**
    - The challenge and suspicion towards EVM have reduced its credibility which needs to be restored for the faith of the common person.
    - EVMs challenged by the ECI though have been successful in eliminating the mistrust and fear but the rumours spread by political parties have added fuel to the fire.
    - Any party losing elections has got into a culture of accusing the EVMs.

**VOTER VERIFIED PAPER AUDIT TRAIL**

* + The VVPAT is a machine attached to the EVMs that reflects the vote is given in form of **3 information –**
    - Name of the candidate.
    - Party symbol.
    - Serial number.
  + The Apex Court before 17th Lok Sabha Elections directed that VVPAT shall be matched with EVM for 5 polling booths every Assembly Constituency before the declaration of results by the RO.

**Paid News**

* + Any news analysis in Print media or electronic media for consideration in kind or cash.
  + The Election Commission of India is also taking steps to establish committees at the district level to look into complaints of Paid News.
  + The expenditure should be included in the Candidate’s filed expenditure after elections.
  + Law Commission of India has recommended for provision of Paid News explicitly in RPA 1951.

**Social Media**

* + The arrival of www and the internet has changed communication forever in an unprecedented manner.
  + The menace of social media during elections has led to ECI taking strong steps.
  + ECI has a meeting with the Internet and Mobile Association of India that led to the deviation of the Code of Ethics for self-regulation.
  + Term social media – not mentioned in the RPA.
  + The meeting led to an agreement between ECI and major social media houses (Facebook, WhatsApp, etc.) to notify ECI under sec.126 of RPA – 1951 in case of any campaign within that 48 hours ban limit.
  + The social media Houses also exhibited their intent to self-regulate and collectively work with ECI in achieving the mandate of fair election not marred by communal clashes or posts of similar kind and polarisation over the Internet.

**ELECTION COMMISSION OF INDIA**

* + The Election Commission of India is an autonomous constitutional body.
  + Responsible for administering election processes in India at the national and state levels.
  + 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 the Constitution per **Article 324**and subsequently enacted the 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 President appoints Chief Election Commissioner and Election Commissioners.
    - They have a fixed tenure of six years, or up to the age of 65 years, whichever is earlier.
    - They enjoy the same status and receive salary and perks as available to Judges of the Supreme Court of India.
    - The Chief Election Commissioner can be removed from office only through a **process of removal** similar to that of a Supreme Court judge for by Parliament.
  + Regional Commissioners may be appointed by President in consultation with the Election Commission.
  + Conditions of the service of Chief Election Commissioner shall not be varied to his disadvantage after his appointment.

### Union Territories Part VIII, Article 239 to Article 242

* + **Article 239-:**
    - Administration of Union territories, save as otherwise provided by parliament by Law.
      * UT is to be governed by President through an administrator by such designation.
  + Total 8 UTs.
  + UTs with the legislature are **Delhi, Puducherry, and J & K**.

* + **Article 239A**
    - Provides legislature for Puducherry being a UT, partly elected and partly nominated members, through Parliamentary law.
    - **Case of Puducherry:**30 elected and 3 nominated members by the central government.

* + **Article 239(AA) National Capital Territory (NCT) of Delhi:**
    - NCT of Delhi is an important UT with the legislature.
    - The administrator shall be designated as Lt. Governor.
    - All the members in the legislative assembly shall be directly elected.
      * Council of state, maximum strength is 10% of the legislative assembly ( i.e. 7, including CM).
    - The legislative assembly can make laws on the subject in the state list and concurrent list **except for public order, land, and police**.

**Comparison between Delhi and Puducherry**

* + **Delhi**: 239 AA, all members elected, assembly, and members are mentioned in the constitution, etc.
  + **Puducherry**: 239 A, 30 elected and 3 nominated, the legislature is subjected to act of parliament, etc.

* + **Article 240:** The President of India can make provisions for peace, progress, and good governance of Andaman and Nicobar, Dadra and Nagar Haweli, Daman and Diu, Lakshadweep.
    - Puducherry under article 240, only when the assembly is suspended or dissolved.
      * Such regulation can amend an act of parliament or repeal an act of parliament and shall have the same powers and validity as that of the parliamentary law.

**NCT of Delhi**

* + **National Capital Territory (NCT) Vs Union of India (UoI) Case**
    - Power to administer UT under 239(1) is different from 239(AA) as Delhi has an elected legislature.
    - A democratically elected government must have functional autonomy and LG shall act on the aid and advice of CoM, except public order, police, and land.
    - The provision of referring to the matter to the President is exceptional and not general and must be used sparingly.
    - The Court also called for harmonious functioning and adhering to the spirit of the Constitution.
    - The court also said that the executive power of the Union does not extend, to those areas that come under the jurisdiction of the Delhi assembly.

**Some other relevant aspects:**

* + Constitution under article 239 provides for the appointment of CM by the President.
  + The size of CoM should be 10%.
  + If the administration is not carried under article 239 AA, there can be suspension of that article and assembly is suspended and CoM are dismissed.
    - On the report of LG or otherwise, (similar to President rule but not exactly like the President rule under article 356).

**Major aspects of the NCT amendment Act**

* + The term government would mean the LG.
  + The expression government in any law passed by the assembly shall mean the LG.
  + The LA shall not make rules with respect to matters of day-to-day administration or conduct inquiries.
  + Discretionary power to LG in matters on the aspect where LA can make laws.
  + The decisions shall be taken in the name of LG.
  + The LG is given the power to be consulted and taken an opinion before any decision of the CoM is implemented.

**JAMMU AND KASHMIR**

* + **A Brief History:**
    - This was a princely state; Geographical boundary is contagious with Pakistan;
    - Pakistani tribal attack on 20th October 1947; Raja Hari Singh signed Instrument of Accession on 26th October 1947;
    - Hari Singh agreed to merge with India by giving India powers over only  Defence, communication, and Foreign Affairs;
    - 27th October 1947 - Lord Mountbatten signed the Instrument of Accession;
    - Jawaharlal Nehru announced the plebiscite;  The matter was taken to UNSC; UN resolution on 21/07/1948 etc.
    - Article 370 was added to the Indian Constitution;  In 1950, First Presidential Order; the 1951-Delhi Agreement etc.

**1954-Presidential Order:**

* + Article 35 A was added in Indian Constitution; under Article 370;
  + Article 35 A empowered J&K legislative assembly has given the powers to decide on permanent residents and other privileges to them.
  + This order extended most of the provisions of the Indian Constitution to the state of J&K.
  + 1954 - Presidential Order issued under Article 370(1) which has been amended from time to time. In 2019, 1954 Presidential order was superseded.

**Article 370:**

**Article 370(1):**

* + Article 238 (dealing with princely states) of the Indian Constitution shall not apply to J&K.
  + Article 1 and Article 370  shall apply to J&K.
  + Those matters mentioned in the Instrument of Accession, J&K consultation is required for Parliament to make laws and for other matters, J&K assembly concurrence is needed for Parliament to make laws.

**Article 370(3) :**Provisions of the Indian constitution can be extended with the concurrence of the Constituent Assembly of J&K. No Presidential Order was not issued under this article.

**Presidential Order, 2019:**

* + On 5th August 2019, A Presidential Order under Article 370(1) extended all the provisions of the Indian Constitution were extended.
  + This will supersede all other Presidential orders. J&K has become a normal state with this order.
  + This Order changed the term Constitutional Assembly of J&K in Article 370(3) to Legislative Assembly of J&K.
  + This order added 367(4) saying for the purpose of Article 370(3), the term Constitutional Assembly of J&K will mean the Legislative Assembly of J&K.
  + Two resolutions were added: To cease operation of Article 370 and Bifurcation of the state of J&K.

**Note:**

* + J&K was the only state in which there are provisions for both the Governor's rule (Article 92 of J&K Constitution) and the President's rule(Article 356 of Indian Constitution).
  + 20/06/2018: Governor's rule was imposed in the state of J&K; 19/12/2018:
  + Under Article 356, President's rule was imposed -in this order, it was written that all the powers of the legislative assembly are to be exercised by the Parliament during the President's rule.

**J&K Reorganisation Act, 2019**

* + The state of J&K has been divided into two Union Territories- Ladakh and J&K.
  + J&K will be a UT with legislative Assembly; Legislative Council of J&K has been abolished;
  + The legislative Assembly of J&K can make laws on all subjects except on Police and Public Order. Anti-Corruption Bureau will be under LG
  + They  will have 87 elected members, 24 seats were left vacant and 2 women members can be nominated by LG if they are not adequately represented;

* + Note: Puducherry and J&K are the only UTs who can have nominated members;
    - The CoM strength will be 10% of the total strength of the legislative Assembly.
    - There shall be 4 Rajya Sabha members from J&K and there shall be no Rajya Sabha member from Ladakh.

### SCHEDULES OF INDIAN CONSTITUTION

* + First schedule: List of states and UTs;
  + Second Schedule: Salaries, Privileges, etc.;
  + Third; Oaths and Affirmations;
  + Fourth schedule: Allocation of seats in Rajya Sabha;
  + Fifth schedule: Scheduled areas and Scheduled tribes;
  + Sixth schedule: Tribal areas in states of Assam, Meghalaya, Tripura, and Mizoram;
  + Seventh schedule: 3 legislative lists;
  + Eighth schedule: 22 Official languages;
  + Ninth schedule: Land reforms;
  + Tenth schedule: Disqualifications of legislators and MPs;
  + Eleventh schedule: Panchayats;
  + Twelfth schedule: Municipalities.

**Fifth Schedule Vs. Sixth Schedule:**

* + Fifth  Schedule: Talks about Scheduled Areas; There are a total of 10 fifth schedule states; They have Tribal Advisory Councils etc.
  + Sixth  Schedule: Talks about **Autonomic District Councils** of Assam, Meghalaya, Tripura, and Mizoram;  etc.

* + 5th schedule of the constitution deals with the administration and control of scheduled areas and scheduled tribes.
  + 5th schedule is with respect to all states having tribal populations except Assam, Meghalaya, Tripura, Mizoram.
  + 6th schedule is with respect to Assam, Meghalaya, Tripura, and Mizoram.
  + President is empowered to declare an area as a scheduled area.
  + The executive power of the state is also extended to the scheduled areas and the centre can also give direction for administration in these areas.
  + The governor submits its report to the president with respect to administration in these areas.
  + A state that doesn't have a scheduled area but does have a tribal population, can also have a tribal advisory council.
    - Tribal advisory council - Tribal advisory councils comprise Schedule tribe MLAs and nominated members.
    - TAC advises on welfare and advancement and STs.
  + Confined to Assam, Meghalaya, Tripura, Mizoram though these are autonomous districts or regions, they do not fall outside the preview of the executive authority of states.
    - The governor is empowered to direct that a particular act of parliament or state legislature does not apply to these areas or apply with modification.
    - The governor is empowered to decide over the matters related to a geographical boundary, the appointment of a commission, with respect to council areas, etc.

**Special powers of district/ regional councils**

* + Collecting land revenue.
  + Regulating money lending through regulation with the assent of the governor.
  + They can establish schools, markets, roads, canals, etc.
  + They can establish the village councils for trials of suits and cases.
  + These councils can make laws on subjects such as and, inheritance, marriage, divorce, and such laws require the assent of the governor.

**Article 350 A and 350 B**

* + Children in the linguistic minorities should be provided education in their mother tongue up to the primary level.
  + If not done officers for linguistic minorities can look into this.
  + Article 351 to promote the spread of the Hindi language.

**OFFICER FOR SPECIAL LINGUISTIC MINORITIES**

* + It is a constitutional office headquartered in New Delhi.
  + There are 3 regional offices - Kolkata, Chennai, and Belgaum (Karnataka).
  + The report is submitted to the president through the ministry of minority affairs.
  + Special Officer for Linguistic Minorities was incorporate through the **7th constitutional amendment in article 350B** of the constitution.
  + The report is submitted to the president through the ministry of minority affairs.
  + The Special Officer for Linguistic Minorities looks into the safeguards provided to linguistic minorities, investigates matters related to linguistic minorities and their implementation.
  + It also promotes and preserves linguistic minority groups.
  + Article 350A of the constitution is one of the directions to the states outside DPSP, it provides for an adequate facility for instruction in mother tongue up to the primary level to children of minority groups.

### Constitutional Bodies

**FINANCE COMMISSION**

* + The finance commission is the balancing wheel of fiscal federalism, as envisaged under article 280 of the constitution.
  + The constitution provides for a chairman and 4 members but qualification is determined by the parliament.
  + The major functions of the finance commission are;
    - Distribution of net proceeds of taxes to be shared between centres and states.
    - The principles that should govern grant-in-aid.
    - The measure to be taken to augment the consolidated fund of the state for better devolution of funds to PRIs and ULBs.
    - Any other matter that is referred by the president.
    - The FC must also define the principles on which it arrived at the conclusion.
    - The recommendation of the Finance Commission is advisory in nature but generally, they are not rejected.

**GST COUNCIL**

* + The GST Council was established through the 101st Constitutional Amendment.
  + The Union Revenue Secretary acts as the ex officio secretary to the council.
  + GST Council is the constitutional body under Article 279A of the constitution.
  + Article 279A was implemented through a presidential order that constituted the council.
  + The GST has revolutionized indirect taxation in the country.

**Major benefits**

* + Economic integration.
  + Uniform tax structure.
  + Better allocation of resources.
  + Expanding the tax base

**Composition**

* + Chairman- Union Finance Minister.
  + Vice-Chairman-  elected to from the members of the states among themselves.
  + Union Minister of State in charge of revenue or finance.
  + The minister in charge of finance or taxation or any other minister nominated by the state.
  + All the decisions of the council are taken by the 3/4th majority.
  + The Union Government has 1/3rd vote while states combined have 2/3rd votes together.

**Functions**

* + Deciding over the merger of taxes levied, centre, state, or local bodies into GST.
  + Threshold limit of turnover which can be exempted from GST, etc.
  + Indirect taxes such as Aviation Turbine Fuel (ATF), Crude Oil and Products including CNG, liquor for human consumption, etc are not within the ambit of GST.
  + The states are reluctant to give these powers to the GST council as these taxes are a major source of revenue in the state's indirect tax net

**C&AG**

* + It is provided under article **148**.
  + Dr. BR Ambedkar termed the office of C&AG shall be the most important officer under the Government.
  + C&AG is the guardian of the Public Purse.
  + He is not eligible for further employment after retirement.
  + Removal in a manner similar to that of SC judge.
  + Tenure - 6 years or 65 Years of age whichever is earlier.
  + The certification of CAG is final w.r.t. to net proceeds ( Article 279).
  + The office of CAG is a unitary feature.
  + It is a powerful office. E.g.- Ex CAG revealed that Rs 1.76 lakh crore of “presumptive loss” to the exchequer in 2G allocation.
  + C&AG is not eligible to be employed further under the Government of India after the relinquishment of the post of C&AG but he can take constitutional posts.

**Major Functions**

* + Audits the expenditure from Consolidated Fund of India, Consolidate Fund of Each State and Union Territory with the legislature, Contingency Fund of India, Public Account Fund of India & of different States.
  + Article 150 of the Indian Constitution provides for C & AG advising the President in the form in which accounts of Union and States shall be kept.
  + C & AG facilitate the accountability of the executive towards the Parliament in Sphere of Financial Administration.

**NCSC/ NCST (Article 338/Article 338 A)**

* + To look into the safeguards provided by the constitution.
  + Created under articles 338 and 338 A respectively.

**Membership**

* + Chairperson, Vice-Chairperson, and 3 other members.
  + Appointed by the President by warrant under his hand and seal.
  + The Conditions of service and tenure are determined by the President.
  + They investigate and oversee the legal and constitutional safeguards for SC’s/ ST’s respectively.
  + NCST also has additional functions such as safeguarding the rights of Tribal Communities, their development, Livelihood measures, etc.
  + Central and State Governments also consult the commissions on matters related to SCs and ST’S respectively.
  + They also look into specific complaints.
  + Powers of a Civil Court.
  + The reports of the commission are submitted to the president who places them before both the Houses of Parliament along with the action taken on the recommendation and reasons of non-acceptance if any.
  + The reports of the commission are also forwarded to the governor who places before the respective legislature along with the action taken and reasons of non-acceptance if any.

* + **Article 341**- Presidential Order of Schedule caste (1950).
  + **Article 342**- Presidential Order of Schedule Tribe (1956).
  + **Article 342A**- Socially and Educationally Backward classes

**NCBC**

* + 102nd CAA established the NCBC thus giving constitutional status to the body.
  + The National OBC commission used to be a statutory body but the Act was repealed by Parliament.

**Composition**

* + Chairman.
  + Vice-Chairman +Three other members.
  + Appointed by the President by warrant under his hand and seal.
  + Conditions of service and tenure are determined by the President.
  + They investigate and oversee the legal and constitutional safeguards for Other Backward Classes.
  + They have been bestowed with powers of a Civil Court with respect to Summoning, receiving evidence on Affidavit, production of documents, etc.
  + The major function of the commission is to enquire into complaints with respect to the rights/safeguards of socially and educationally backward classes.
  + The reports of the commission are submitted to the president who places them before both the Houses of Parliament along with the action taken on the recommendation and reasons of non-acceptance if any.

**STATUTORY BODIES**

**Lokpal**

* + Statutory body.
  + Powers of a civil court.

**Structure**

* + 1 chairperson and not more than 8 members.
  + At least half of the members must have a judicial background and at least half should come from SC, ST minorities, women.
  + The act also fixes the term 5 Years Tenure or 70 years of age for the chairman or Members.

**Jurisdiction**

* + Prime Minister.
  + Ministers.
  + Members of Parliament.
  + Group A, B, C, D officers and officials of Central Government.
  + At least half would be Judicial Members.

**CVC**

**Composition**

* + Chairman + 2 Vigilance commissioners.
  + Tenure 4 years or till he attains the age of sixty-five years, whichever is earlier.
  + The committee to appoint CVC and VCs is very small when compared to Lokpal (PM, LoP in LS, and Union Home Minister).
  + The salaries and allowances are not charged upon CFI.
  + In cases of proved misbehaviour or incapacity, they can be removed after the inquiry by SC and it is not binding.
  + The CVC is a statutory body like that of Lokpal but Lokpal has a larger jurisdiction.

**NHRC**

* + A statutory body was established through the protection of the human rights act, 1993.

**Limitations**

* + The commission can only inquire into violations of human rights that have taken place in the past year.
  + The NHRC is a recommendatory and advisory body.
  + It can only seek a report from the central government.

**Amendments in 2019**

* + Chairman can be SC Judge as well. Earlier, it was only CJI.
  + Chairpersons of the National Commission of Backward Classes, the National Commission for Protection of Child Rights, and the Chief Commissioner for Persons with Disabilities has also been added as ex officio members.

**CIC**

* + The CIC was established under the provisions of the Right to Information act 2005.

**Composition**

* + CIC and not more than 10 Commissioners.
  + Collegium - PM, LOP (LS) ( If not then Leader of Single Largest Party in Opposition), Union Cabinet Minister (Nominated by the Prime Minister).
  + CIC is an appellate authority and also has Suo-moto powers on reasonable grounds.

**RTI Act amendment 2019**

* + Previously the CIC and IC used to hold office for 5 years which now will be decided by Central Government (RTI rules).
  + The salary, allowances, etc of CIC and ICs shall also be decided by the Central Government.

**CBI**

* + Non Statutory Body.
  + It mostly takes up cases on the request of state governments, the order of SC/HC, or the central government, or ordered by Supreme Court or High Courts.
  + Collegium- Prime Minister; Other members - Leader of Opposition/ Leader of the single largest opposition party, Chief Justice of India/ a Supreme Court Judge

**Challenges**

* + Excessive political interference.
  + Lack of autonomy with respect to human resources, finances, etc.
  + Delay in prosecution.
  + In recent times, there also have been differences within the CBI.

### Panchayati Raj Institutions

* + Panchayats
  + Municipalities- Nagar Panchayats, Municipal Corporation, Municipal Council, Notified Area Committee, Cantonment Board.

* + 6th Report of the ARC
    - PRIs mean grassroots administration, policy implementation
  + Article 40- The state shall endeavour to organize village panchayat. It is a directive.
  + Why PRIs didn’t come into existence before 1993?
    - The states were reluctant as the states already share power with the government.
    - Lack of resources with the states- finances, manpower, etc.
    - Lack of will on the part of states.
    - Earlier 64th CA Bill and 65th CA bill were introduced. But, they got lapsed due to the dissolution of the LS.
    - Ultimately on 24th April and 1st June 73rd and 74th CAA were passed in 1992 for panchayats and municipalities.

* + Panchayati Raj Institutions were finely recognized as the third constitutional tier through the 73rd constitutional amendment Act.
    - The Act came into force on 24th April 1992 which is celebrated as PR Day.

**73rd Constitutional Amendment Act**

* + It added Article 243.
  + There are some compulsory and voluntary provisions.
  + Schedule XI was added;
    - which has 29 subjects.
  + Panchayat is a generic term to be used at all the 3 levels.
  + Article 243 (b) Gram Sabha shall be exercising such powers and functions as mandated by the law passed by the state legislature.
  + Members at all the 3 levels shall be directly elected.
  + The chairperson at the village level shall be directly or indirectly elected is to be determined by an act of state legislature.
  + Chairperson at intermediate/ district level shall be elected from the members among themselves.

* + **Reservation**
    - No less than 1/3rd seats at all levels shall be reserved for women.
    - The seats for SC/ST shall be reserved as per their population in the last preceding census.
    - The reservation for the OBCs will be determined by the state legislatures.
  + The tenure of Panchayat shall be 5 years from its first meeting.
    - In event of any dissolution/ vacancy, it is not mandatory to conduct elections if the remaining tenure is less than 6 months.
  + The constitution also provides for additional grounds for disqualification by an act of state legislature.
    - Many states like Haryana/ Assam have added additional grounds for disqualification which have also been validated by the Honourable Supreme Court.
    - The state legislature but cannot breach the constitutional mandate of a minimum of 21 years of age to contest elections. (25 years for LS, 30 for RS, 35 years for President and VP, 45 years for the chairperson for Lokpal).
  + Article 243G of the Constitution empowers the state legislature to enable them to function as units of self-government with respect to the preparation of economic plans/ taxation proposals/ implementation of schemes etc.
  + Article 243H empowers the legislature of the state to give panchayats power with respect to levy, collect, and appropriation of taxes.

**State Finance Commission**

* + Like Article 280 of the constitution, Article 243I mandates the establishment of the Finance Commission before the end of every 5th year.
  + The composition/ qualification of the SFC shall be determined by the state legislature.
  + **The principal mandate of the state finance commission is to:**
    - Decide over the distribution of taxes, duties, tolls, fees between the state and PRI
    - Principles governing grant in aid from the consolidated fund of the state
    - The measures needed to improve the financial position of the Panchayats.
  + Article 243K of the constitution establishes an SEC-headed state election commissioner (who is removed in a manner similar to the HC judge).
  + The SEC shall be responsible for the direction, superintendence, and control with respect to Panchayati Raj Institution elections.
  + It will also prepare electoral rolls.

* + All matters related to PRIs shall be dealt with by the state legislature through a piece of legislation.
  + Article 243L provides for the application of this part to UTs and the President by public notification direct that the provisions shall apply with such exceptions and modifications

**Municipalities | URBAN LOCAL BODIES**

There are 3 types of urban local bodies(ULBs) for the generic term 'Municipality'.

* + Municipal Corporation for a bigger city/town.
  + Municipal Council for a smaller city/town
  + Nagar Panchayat for a transitional area.

* + The above 3 units derive their functionality/power/taxation authority and classification through the act of state legislature.
  + Twelfth schedule of the constitution prescribes 18 subjects within the domain of ULBs, but in a real sense, they can only be exercised if the state legislature bestows them by an act.
  + ULBs also have officials for the execution of decisions taken by the elected representatives.
  + ULBs have major sources of revenue such as :
    - (a)Non-tax revenue: Fees, Fines;
    - (b)Tax revenues: Loans; Grants; Money received on the recommendation of State and Union Finance commissions.

**DISTRICT PLANNING COMMITTEE**

* + It is constituted under Article 243ZD;
    - The prime mandate is to synergize the plan prepared by ULBs/PRIs and coordinate the developmental aspects.
  + DPC forwards the developmental plan of the district as a whole to the government of the state.
  + The composition, manner of the election of the chairperson are all determined by the state legislature.
  + DPC shall always have 4/5 of its members who are elected representatives of PRIs and ULBs.

**NOTIFIED AREA COMMITTEE:**

* + NAC is created by notification in the state official gazette.
  + NAC functions within the mandate of the State Municipal Act, but only those provisions of the Municipal Act are applicable which are mentioned in the notification published in the Gazette.
  + The NAC has all the members nominated by the state government. It is not a statutory body per se.
  + Normally NACs are constituted for a fast developing town due to industrialization or other areas which do not yet fulfil the criteria of a municipality.

**TOWN AREA COMMITTEE:**

* + It is administered for a small town and created by a state legislature.
  + It can be wholly elected, wholly nominated, partially elected, and partially nominated.

**CANTONMENT BOARDS:**

* + Cantonment Boards are constituted under Cantonments Act, 2006 passed by the Parliament.
  + It is established for the civilian population's municipal administration inside a cantonment board.
  + The cantonment is overall responsible for the development/administration of cantonment areas with respect to the civilian population.
  + Cantonments Act, 2006 replaced the erstwhile Cantonment Act, 1924.
  + The commanding officer of the cantonment board/military station is the ex-officio chairman of the cantonment board. The CEO is from Indian Defence State Services.

**SECOND ARC on LOCAL BODIES (2005-2009)**

* + It is extremely important for the overhaul of administrative structure and a better citizen-centric approach.
  + The first ARC was headed by Morarji Desai and later on by K Hanumanthaiah.
  + The second ARC was initially headed by Mr. Veerappa Moiley and later by V. Ramachandran.
  + The 6th Report on local governance is important for both PRIs and ULBs. The report was titled-'Local Governance and an inspiring journey to the Future'.
  + The report on local governance is extremely meaningful for rural and urban change.

**Major recommendations:**

* + Amending the article 243G/W  to provide more powers to PRI/ULBs.
  + State Election Commissioner should be appointed on the recommendation of a collegium consisting of Chief Minister, Speaker of Legislative Assembly, and Leader of Opposition in Legislative Assembly.
  + Every State should prescribe the qualification of the chairman/members of state finance commission through an act by the state legislature.
  + Capacity-building programs should be undertaken for the professional and skills upgrading of individuals associated with bodies.
  + Panchayats should have powers to recruit the personnel and regulate their service condition subject to laws and standards.
  + Audit committees are to be constituted by the state government at the district level to exercise control over financial and other aspects.
  + A local ombudsman for the complaints related to corruption/maladministration issues.
  + Information and Communication Technology should be utilized and delivery of services should be through a single-window mechanism.

**PESA(Panchayats (Extension to Scheduled Areas) ACT, 1996**

* + The provisions of Part-IX were not automatically applied to 5th schedule areas.

**Major provisions of PESA  Act:**

* + It provides for Gram Sabha similar to that of Part IX.
  + Gram Sabha shall be responsible for the identification of beneficiaries and approve the plans and programs taken by the Panchayat at the village level.
  + The recommendations of Gram Sabha shall be **mandatory** for the grant of license of minor minerals in scheduled areas.
  + The Gram Sabha shall be consulted before the acquisition of land for development projects but actual planning shall be done at the state level.
  + The state legislature shall strive to follow the pattern of six schedules in fifth schedule areas.

* + The principle of Subsidiarity - any activity which can be performed at the local level should be decentralized.
    - Greater democratic participation
    - Improved administrative and economic efficiency
    - Clear delineation of responsibilities
    - Better decision and policy making

## 

## 

## PARLIAMENT

* + We have bicameralism at the Centre (Lok Sabha and Rajya Sabha)
  + Lok Sabha (House of People), the USA have Congress
  + Rajya Sabha (Upper House), the USA have Senate.
  + RPA 1950 has state wise seats in Lok Sabha.
  + The Fourth Schedule of the Constitution contains information about Rajya Sabha seats.
    - In Rajya Sabha, we have the Union Territorial representation from Delhi, Puducherry, Jammu and Kashmir.
    - Rajya Sabha has STVPR : Single Transferable Vote, Proportional Representation.
      * Total number of valid votes /(1)+(1) +1= is needed to win.
  + Lok Sabha: First Past the Post System:
    - It is very simple (easy voting style)
    - Counting is also simple.
    - Energy and resources are saved.
    - Demerits:
      * Even if fewer number participate in voting, the person will be a winner.
      * In Single Transferable Vote:
        + 51% votes are needed.
        + E.g. Rajya Sabha election.
        + In the Rajya Sabha elections, only MLAs vote.
  + Article 330, reserves SC/ST for 10 years.
  + Article 332 reserves seats for Anglo-Indians for 10 years.

**Functions/Roles of Parliament**

* + Enactment of law.
  + Contributing to members of COM.
  + Exercising political and financial control over the executive.
  + Providing opportunities for people's representatives to raise the concerns of citizens of the country besides being a source of authentic information.

**Members of Parliament**

* + A Member of Parliament in Lok Sabha is the representative of the Indian people in the Lok Sabha, the lower house of the Parliament of India.
  + Members of parliament of Lok Sabha are chosen by direct elections on the basis of adult suffrage.
  + MPs of Rajya Sabha are elected indirectly by members of the state legislative assembly.
  + Each state has a stipulated number of MPs depending on the population.

**Qualification to become Member of Parliament:**

* + One must be a citizen of India.
  + 30 years for Rajya Sabha, 25 years for Lok Sabha.
  + For both Lok Sabha and Rajya Sabha, one has to be a registered voter in any of the constituencies in the country

**Rajya Sabha**

* + Rajya Sabha is a representative body of the states at the federal level.
  + It has got two categories of members - elected and nominated.
    - Elected or nominated for 6 years in such a way that 1/3rd of them retire every two years after completing their tenure.
    - Constitution has prescribed for a maximum of 238 elected and 12 nominated MPs in the Rajya Sabha.
      * But, parliament has fixed the strength of Rajya Sabha to 233 elected and 12 nominated MPs.
  + Members of the Rajya Sabha are elected by the elected members of state legislative assemblies by a system of proportional representation through a single transferable vote system.
    - No reservation for anyone.
    - Elections of Rajya Sabha members are handled under an open ballot system.

**Qualification to be Rajya Sabha Member**

* + Citizen of India.
  + Age not less than 30 years.
  + He must be a registered voter in any of the Lok Sabha constituencies and must not be holding any office of profit under the state.
  + Elections of RS members are handled under an open ballot system.

**How Rajya Sabha strengthen federalism**

* + The very basis of the formation of the Rajya Sabha was to act as a representative body of the states at the federal level.
  + All the bills except money bills have to be passed by Rajya sabha also in order to be considered passed.
  + Rajya Sabha plays an equally important role in the elections and impeachment of the president.
  + All the 3 forms of emergencies have to be approved by the council of states also which indicated that in India states have been given due importance making India appear federal.

**Non-federal features of Rajya Sabha**

* + The states are not represented in Rajya sabha on the basis of the principle of equality of the states but are represented on basis of population.
  + Representation has also been given to non-state entities also like Delhi and Pondicherry which do not enjoy the constitutional relationship of federalism with the centre.
  + The membership has also been given to the nominated members in Rajya sabha who are not representing any state.

**Officers at Rajya Sabha**

**Chairman of Rajya Sabha**

* + Vice-President of India is the ex-officio chairman of Rajya Sabha who presides over the proceedings of Rajya Sabha.
  + He does not cast his vote in the house in the very first instance to maintain his political neutrality.
  + However, in the case of a tie, he has a right to give the casting vote.

**Deputy Chairman**

* + Deputy chairman Rajya Sabha is elected by the members of the house from amongst the member of Rajya Sabha who presides over the proceedings of the house in case the chairman is unavailable i.e., absent, or the office is vacant.
  + If the chairman and deputy chairman, both are absent then the house chooses a member to act as a presiding officer.
  + If the post of chairman and deputy chairman both are vacant then the president appoints a member of Rajya Sabah to act as presiding officer.
  + The Deputy chairman gives his resignation to the chairman.

**Removal**

* + Chairman or deputy chairman Rajya sabha cannot preside the session of the house during their respective removal.
  + However, the deputy chairman can vote on a motion to remove him.
  + However, the chairman cannot vote during the motion to remove him.
  + The deputy chairman if votes, must vote in the first instance and not after a tie.
  + The motion to remove these officers can be worked upon in Rajya Sabha only after the expiry of 14 days' notice served upon the officer.
  + The motion in Rajya Sabha to remove these officers is to be passed by the majority of all the then members of the house (effective majority).

**Powers of RS**

* + Parliament shall create a new all-India service only when Rajya sabha passed a resolution by a majority if not less than 2/3rd of the members present and voting.
  + The removal of the vice president can be started only in Rajya sabha.
  + U/A 249 - RS may pass a resolution that it is in the national interest for parliament to legislate on any specified subject of the state list then parliament will get the jurisdiction for such an action.

**Delimitation Commission:**

* + Delimitation Commission is established by an act of Parliament, the order or implementation of Delimitation Commission cannot be challenged in any court of law, or validity of any law related to Delimitation Commission cannot be challenged.
  + Article 82 of the Constitution provides for the readjustment of territorial constituencies after every census.
  + Through the 42nd Constitutional Amendment, it was frozen till the year 2000.
    - Then by 84th Constitutional Amendment 2001, the same numbers are frozen till 2026.
    - Although Delimitation Act 2002 was passed, and Delimitation Commission was established to redraw the boundaries of territorial constituencies without changing the overall representation from the State.
    - The numbers have been frozen to maintain the population parity.
  + For example, Ladakh will have more area as compared to Chandni Chauk, because constituencies are determined as per the population, not geography.
  + The present delimitation of parliamentary constituencies has been done on the basis of 2001 census figures under the provisions of the Delimitation Act, 2002.
  + SC/ST reservations : For example, redrawing of the boundaries are done, new constituencies are to be reserved in states.
    - One seat was lifted from Bihar and shifted to Karnataka.
  + Recent delimitation exercise in J&K is done under the provisions of Delimitation Act, 2002 and based on census data of 2011.

**Financial Bill:**

* + Any bill which deals with finance.
  + Under Financial Bill, we have:
    - Money Bill: It can be introduced in Lok Sabha only (bills are tagged as money bills).
      * Money Bill is decided by the Speaker.
    - Financial Bill 1
    - Financial Bill 2
  + The Constitution says no tax can be levied without the authority of Parliament.
  + Parliament has tools to ensure the same.
  + The tool is the Finance act.
    - No money can be withdrawn except by law (Appropriation Act).
    - Both Appropriation Act and Finance Acts are tagged as Money Bill.

**No confidence Motion:**

* + Article 74: The council of ministers shall be collectively responsible to Lok Sabha.
  + This is regulated with the tool of No Confidence Motion.
  + National Emergency: Armed Rebellion, External Aggression, War.
    - Lok Sabha has a special power: To discontinue the National Emergency.
    - Even if by simple majority, the can end the emergency.
  + In a joint session, Lok Sabha with greater numbers dominates over Rajya Sabha.

### Speaker of Lok Sabha:

* + The date for the election of the Speaker is decided by the president,
  + There is no specific oath for Speaker in the Constitution.
  + Normally the post of Speaker as a convention, goes to the ruling party, while the opposition takes the post of Deputy Speaker.
  + Speaker as the symbol of the continuation of democracy continues to remain in office, till the new Lok Sabha meets.

**Removal of Speaker:**

* + Only Lok Sabha. No ground for removal.
  + Effective Majority in Lok Sabha.
  + Resolution can be moved after 14 days' notice.
  + When removing proceedings are going on, Speaker cannot preside.
  + During his/her removal, Speaker can vote at the first instance, not at the second instance. (In his removal he cannot vote in case of a tie).
  + In normal bills, etc. Speaker will cast the vote only in case of a tie.

* + **Vice President/ Chairman of Rajya Sabha:**
    - Both houses are involved (As he/she is elected by both the houses).
    - Grounds: No grounds. It is the effective majority in Rajya Sabha and a simple majority in Lok Sabha.
    - Vice President cannot vote during his removal procedure.

**Powers and Functions of the Speaker:**

* + Speaker is the final interpreter of the Constitution within the House.
  + Power is derived from Rules, conventions, etc. by the Speaker.
  + Speaker decides disqualification under 10th Schedule. (**Kihoto Hollohan Case**)
  + Speaker decides on Money Bill: In Rojer Mathew v South Indian Bank Ltd Case: Speaker decides whether a bill is a money bill or not, this is subject to Judicial Review.
  + Speaker will preside on Joint Session of the Parliament.
    - If the speaker is not there, Deputy Speaker, then Deputy Chairman, and even if they are not there, members elect a presiding officer.
  + Speaker is the chairman of general-purpose committee, Rules committee, and Business advisory committee.

**Independence and impartiality in the office of Speaker**

* + In India, it is not necessary for the Speaker, to resign from the membership of the party, but she or he can resign and join the party later, and will not be disqualified. Till he/she holds the post of Speaker.
  + That part which deals with the salary of Speaker shall not be voted upon. Hence, Lok Sabha cannot vote on the salary of the speaker.

**Deputy Speaker**

* + It is a Constitutional position
  + The date of the election of the Deputy Speaker has to be fixed by the Speaker.
  + Currently, there is a constitutional void regarding the election of Deputy Speaker.
  + They both tender resignation to each other mutually.
  + The Deputy Speaker performs the role of Speaker in his/her absence.

**Panel of Chairperson:**

* + As per the rules of Lok Sabha, not more than 10 persons are nominated as chairpersons.
  + They preside over the house in the absence of Speaker of Deputy Speaker.
  + They do not preside when the office of Speaker or Deputy Speaker is vacant.
  + In such a case the President appoints someone to act as Speaker, till the elections are held.
  + In Rajya Sabha we have a Panel of Vice-Chairperson.

**Leader of Opposition:**

* + The post does not have Constitutional **but statutory recognition.**
  + Leader of the Opposition post has a cabinet rank.
  + The party must have not less than 10% of total strength of that house.
  + The leader of Opposition in Lok Sabha is also a part of certain collegiums, to recommend names for Lokpal, CBI director, etc.
  + Speaker appoints.
  + Leader of Opposition is seen as the prominent face of the Opposition and positively criticizes the governmental functioning.
  + From the single largest opposition party.
  + At least 10% of seats in Rajya Sabha/Lok Sabha (not necessary)

**Leader of House:**

* + Under the rules of Lok Sabha, the Prime Minister is the Leader of the House.
  + And if he/she is not a member of Lok Sabha, then he appoints a member of Lok Sabha as the Leader of Houses.
  + Rules of Lok Sabha says, if Prime Minister is from Lok Sabha, he/she is the Leader of the House, otherwise, he will appoint the Leader of the House.
  + In Rajya Sabha too: He is appointed by the Prime Minister.
  + They are by convention.

**Whip:**

* + The whip is like a class monitor.
  + It is not mentioned in the Constitution, any rule or statute/law.
  + Whip has the responsibility to ensure attendance, and monitor the members of the Party.
  + Whip is also an act when the party issues direction, to vote for or against, any bill motion in Parliament.

**Session of Parliament:**

* + Normally there are three sessions of parliament in a year: Winter, Monsoon, and Budget Session, but they are not mentioned in the Constitution.
  + Article 85 only provides for, that six months shall not intervene between the last sitting of one session and the date appointed for the first sitting of the next session.
  + Summoning is an act of calling a new session by the President on the call of the Prime Minister.
  + Adjournment: Small breaks within the sitting of the session, with the stipulated time.
  + Adjourned Sine Die: The session is indefinitely adjourned. Break without stipulating the time of reassembly.
  + Prorogue: End of Session by the **President**.
  + Recess: Gap/time between prorogation and first sitting of the next session.
    - In UK, Bills, as well as notices, lapse, while in India, Bills do not lapse, notices other than those for the introduction of bills lapse.

**Parliamentary Devices**

* + **Question Hour:**
    - It is mentioned in the rules of procedure.
    - Normally the first hour of the day is dedicated to Question Hour.
    - Normally 1 hour is allotted for question hour.

**Starred questions**:

* + The response which has the opinion of the minister, not very voluminous in nature, is asked via starred, it is responded by Oral Replies.
  + Supplementary questions are allowed in Starred questions.

**Unstarred questions**:

* + In this written reply is given, and supplementary questions do not follow.
  + Mostly the questions which are factual, data-rich, replied via written reply.
  + Supplementary questions cannot be asked.

**Short Notice question**:

* + In this normally the notice is given if less than 10 days and questions are answered orally.

* + **Zero Hour:** 
    - It starts at 12 Noon.
    - It is not mentioned in the Rules of Procedure.
    - It is an Indian innovation.
    - Any recent issue of public importance can be raised.
      * It provides the opportunity to members of Parliament to raise issues normally of contemporary public importance.
    - The time allotted is between the Question Hour and the business of the day..

* + **Motion**
    - No discussion on a matter of general public importance can take place except through the permission of the presiding officer by a motion.
    - The motions normally reflect the opinion of the house, and they can be accepted or rejected.
  + **Resolutions:**
    - Those motions which have substantive elements i.e. of bigger importance and are also voted upon are termed as resolutions.
    - Thus all resolutions are motions but not vice versa.

**Substantive Motions:**

* + Substantive Motions are those motions that deal with important issues like the impeachment of the President, removal of the Chief Election Commissioner, etc.

**Substitute Motions:**

* + It is a kind of motion that supersedes the original motion if adopted by the house.
  + In substitute motion, there is an alternative presented to the original motion.

**Subsidiary Motions:**

* + It is a kind of motion that is in the context of an original motion, which can make changes to the original motion, or anything related.

**Closure Motions:**

* + Closure by compartment: The bill is divided into parts, the parts are discussed as a whole and put to vote.
  + Kangaroo Closure: Only important parts of the bill are discussed and the entire bill is taken as passed, after voting. Enough discussion, now put the bill to vote.
  + Guillotine Closure: Due to the paucity of time the undiscussed part of the bill is clubbed with the discussed part, and put to vote.

**Confidence Motion:**

* + It is brought by the prime minister/chief minister to prove their majority if there is a doubt. Or asked by the President/Governor respectively.
  + It is brought only in Lok Sabha.
  + It is to test the strength of the government on the floor of the house.

**No-confidence Motion:**

* + It is a relatively new practice in event of a hung parliament, doubt over a majority, etc.
  + It is brought by the opposition with a minimum of 50 signatures required for the motion to be admitted.
  + Article 75 (3) is the fundamental aspect of parliamentary democracy, i.e. council of ministers shall be collectively responsible to Lok Sabha is ensured through the tool of a no-confidence motion.
  + The term NCM is mentioned in the Rules of Procedure of Lok Sabha and not in the Constitution.
  + It is brought by the opposition for want of majority by the government.
  + There is no reason to be stated or given necessarily for NCM to be admitted.

**Adjournment Motion**

* + It is not mentioned in the Constitution.
  + Is to draw the attention of the House on an issue of urgent public importance and definite in nature.
  + It involves censure of government and can only be introduced in Lok Sabha with minimum 50 members supporting it to be admitted.
  + Minimum 2 and a half hours take place, and it will not lead to the resignation of the council of ministers.

**The motion of Thanks:**

* + In the first session of every year or the first session of the newly constituted Lok Sabha, there is a joint address of both the houses by the president.
  + The presidential speech highlights the policies and programmes of the government and is approved by the government.
  + After the presidential address, the speech is put to vote through a motion of thanks in both the houses of parliament.
  + Any defeat in Lok Sabha will amount to defeat of the government.

**Legislative Procedure in Parliament:**

* + **Constitutional Amendment powers:**
    - Parliament is only empowered to amend the Constitution through a special majority, and this can be done without altering the Basic Structure.
    - The power of Parliament to amend the constitution is different from the constituent power of the Constituent Assembly to make any constitution they like.
    - Any constitution amendment which alters the federal structure, like amending Seventh Schedule has to be ratified by half of the State Legislative Assemblies.

**Process of enacting any legislation**

**First Stage:**

* + In the first stage (first reading), a bill is introduced and no discussion takes place.
  + The member sends the bill to the custody of the House, and it is published in the Gazette of India.
  + It is just an introductory stage.

**Second Stage:**

* + This is the most important stage where the House takes up the bill.
  + In this stage, a general discussion takes place.
  + The house can send the bill to the Select Committee/Joint Committee, invite public opinion, etc.
  + The committee then gives their opinion; detailed scrutiny of the bill happens.
  + Members can move amendments at this stage, and the bill then gets its concrete form and shape.

**Third Stage:**

* + The house can either reject the bill or accept the bill, no amendments are allowed.
  + After the bill is transmitted to the Second House:
  + The Second House has the following options:
    - A: It can accept the bill and send it to the president.
    - B: It can reject the bill.
    - C: It can suggest certain amendments.
      * If the amendments are accepted by the first house, then the bill is transmitted to the president. If not, deadlock happens.
    - D: Second House doing nothing, sitting on the bill. (Keeping the bill pending). Under Article 108 of the Constitution, a joint session can be called by the President if the disagreement continues for six months.
      * In counting those six months, any period for which house was prorogued or adjourned, for more than four days, it will not be counted in those six months.
    - Even if the Lok Sabha is dissolved after the convening of the Joint Session, then also the Joint Session shall go ahead as scheduled.
    - The president may call a Joint Session, and it is not necessary to call a joint session for every deadlock.

**PARLIAMENTARY PRIVILEGES**

* + Privilege means certain rights and immunities enjoyed by the house collectively, and members individually for effectively discharging their duties, and maintaining the sanctity of legislature.
  + Article 105 of the constitution is the fundamental basis for the privileges granted.

**PRIVILEGE MOTION**

* + A privilege motion can be moved against either the minister or any other members of the parliament.
  + Rule number 222 of Lok Sabha Rulebook (Chapter 20), and Rule 187 of Rajya Sabha Rulebook (Chapter 16), deals with privileges.
  + In case of misrepresentation of facts/ giving wrong facts/distorted facts, a breach of privilege motion can be moved.
  + The first level of scrutiny is by the Chairman/ Speaker respectively, who can then refer the matter to Privilege Committees of Lok Sabha/ Rajya Sabha as the case may be.
  + The privilege committee of Lok Sabha has 15 members, and the privileges committee of Rajya Sabha has 10 members.
  + These committees examine the accusations and recommend appropriate action.

**CHALLENGES AND WAY FORWARD**

* + There is an imperative to codify what constitutes privilege.
  + The freedom of speech and expression under Article 19 (1)(a), vis-à-vis the immunity granted in article 105.
  + Any form of absolute immunity from a court of law, for example - violence in the house, etc. is against the spirit of rule of law.

**BUDGET**

* + Introduction: The term budget is nowhere mentioned in the constitution, which uses the term “Annual Financial Statement”, (Article 112).
  + The budget is mainly a prospective document with retrospective data also.
  + Economic Survey comes just before the budget and primarily focuses on retrospective analysis and future suggestions, or insights.

**CHRONOLOGY OF BUDGET**

* + Presentation of the budget by Finance Minister.
  + General discussion.
  + Scrutiny of the demands by Department Related Standing Committees.
  + Voting of demands in Lok Sabha, and they become grants.
  + Passing of Appropriation Bill.
  + Passing of Finance Bill.

**Lok Sabha has more financial powers because**

* + In a parliamentary democracy, the executive is accountable to the Lok Sabha, and may not have a majority in Rajya Sabha.
  + Therefore, the financial powers have largely been bestowed upon only the Lok Sabha.
  + The two principal legislations in any budget are: Appropriation Act- withdrawal of money, and Finance Act- Taxation proposals.
  + If any of them get delayed in Lok Sabha beyond the start of the financial year, the government cannot withdraw or deliver any money in the Consolidated Fund Of India.
    - Normally, both finance and appropriation acts are certified as money bills.

**Money Bill (Article 110):**

* + It can only be introduced in Lok Sabha and not in Rajya Sabha.
  + It can only be introduced on the prior recommendation of the President.
  + As per Article 109, The Rajya Sabha cannot amend or reject the bill, but can only suggest changes, which may or may not be acceptable to Lok Sabha.
  + Rajya Sabha can delay the bill for a maximum of 14 days.
  + The President can either accept or reject the bill, but cannot ask the house to reconsider the bill.

**Financial Bill 1:**

* + As per Article 117. it is a bill that contains not only any or all the provisions of article 110 but also other general legislations.
  + It can be introduced only in Lok Sabha, and on the prior recommendation of the President.
  + Rajya Sabha can reject this, or amend this.
  + A joint session can be called for the bill.

**Financial Bill 2:**

* + As per Article 117, the bill deals with expenditure from the Consolidated Fund of India (CFI), which is not related to matters mentioned in article 110.
  + It can be introduced in either house of parliament, and the recommendation of the president is required at the consideration stage, or after the introduction of the bill at the second reading.
  + Joint Sitting can be called for the bill.

**VOTE ON ACCOUNT**

* + The budget is a very important document that establishes the executive’s financial accountability towards the parliament.
  + The budget used to be presented on the last working day of February but from 2017, it has been preponed to the first day of February.
  + This is to ensure that both appropriation and finance bills are passed before the start of the new financial year.
  + Vote on Account is the provision through which approximately two months expenditure (one-sixth of the budget) is approved till the time the budget process is completed.
  + This led to smooth withdrawal in the new financial year.

**INTERIM BUDGET**

* + Any caretaker/outgoing government/government facing general elections present an interim budget in the election year.
  + It has both taxation and withdrawal proposals, but major policy decisions are not taken and are left to the newly elected government to decide.
  + While the vote on account only has withdrawal proposals, the interim budget has both withdrawal and taxation proposals.

**ARTICLE 112 ANNUAL FINANCIAL STATEMENT**

* + The term budget is not used in the constitution, but the term Annual Financial Statement is used.
  + It shall be the duty of the President in respect of every financial year, lay before the houses of the parliament an Annual Financial Statement.

**CUT MOTIONS**

* + Economy cut: This is with respect to a lump sum reduction demanded to be reduced from the proposed expenditure.
  + Token cut: It is a symbolic gesture of disapproval where the demand is reduced by rupees hundred.
  + Policy cut: Demand is reduced to rupees one, and an alternate policy can be suggested.
    - These motions do not get passed in Lok Sabha because the government has a majority in Lok Sabha.
    - Otherwise, their passage would lead to “want of confidence by the Council of Ministers again.

**Parliamentary Committees**

* + A parliamentary committee is one that is either appointed or elected by the house or nominated by the speaker or chairman.
  + It works under the overall direction of the speaker/chairman.
  + It presents its report to the house or speaker/chairman.
  + The secretarial assistance is provided by Lok Sabha or Rajya Sabha secretariat.

* + **Why Parliamentary Committee?**
    - The prime task of the legislature is to make laws and due to paucity/lack of time detailed scrutiny of the bill does not happen.
    - These parliamentary committees provide avenues for detailed scrutiny and analysis of the proposed legislation.
    - These parliamentary Committees provide for calm and considerate debate away from the public gaze.
    - Any proposed legislation becomes rich by expert opinion who can be invited to these parliamentary committees.
    - The executive’s fiscal accountability towards parliament is better ensured through detailed scrutiny of demands in DRSCs (Department-related standing committees), financial committees.

* + **Types of Parliamentary Committees**
    - **Adhoc Committees**
      * Select Committee (Members from only one house)
      * Joint Committee (Members from both houses)
    - **Standing Committees**
      * Departmentally related standing committees -
        + The DRSCs started in 1993 and in 2004 their numbers were increased from 17 to 24.
        + The DRSCs  are 24 in number of which 16 come under Lok sabha and 8 come under RS.

Composition - there are 31 members - 21 from LS & 10 from RS.

Seats are allocated as practicable in the proportion of the strength of the parties and also to independents.

The committees under Rajya Sabha get the chairperson (of the committee) appointed by the chairman of RS and those under LS by the speaker of LS.

A minister cannot be a member of these committees.

**Functions -**

Consider the Demands for the grant (cannot suggest any cut motion)

To examine bills related to concerned ministries/departments as referred by the speaker or chairman.

Consider annual reports of ministries.

To consider basic long-term policy if referred by the speaker or chairman.

* + **Finance Committees** 
    - **Public Accounts Committee (PAC)**
      * It is one of the most important committees with 15 members from LS and 7 members from RS.
      * The PAC members are **elected** by the principle of STVPR (single transferable vote proportional representation).
      * As a convention, an opposition member is appointed as the chairperson of the PAC.
      * The committee examines the audit reports of CAG on appropriation and finance accounts.
      * It also looks at whether the expenditure was in harmony with the appropriation act.
      * It also looks into whether appropriation was as per rules.
      * PAC examines the excess expenditure done by the government and presents a report.

* + Critical analysis -
    - CAG is the friend, philosopher, and guide of PAC, and the reports of CAG are further studied by PAC.
    - Though PAC conducts post mortem and has an advisory role of persuasive value and also cannot interfere in day-to-day administration. Still, PAC is the bedrock of financial accountability of the executive with the most vital reports of CAG.
  + **Estimates Committee**
    - All 30 members of Lok Sabha
    - It comprises 30 members from Lok Sabha and members are **elected** by the principle of STVPR (single transferable vote proportional representation).
    - The committee cannot have a minister as a member.
    - As a convention, a ruling party member is appointed as the chairperson.
    - This is also known as the Continuous Economy committee.

* + Major functions -
    - To suggest the form in which estimates are to be presented to parliament.
    - This is also a committee that constantly advises with respect to economic issues, efficiency, administrative reform and can suggest alternate policies.

* + Critical analysis -
    - The estimates committee is important from the perspective of continuous evaluation of the economic framework, prudence and also suggests alternative policies.
    - The recommendations are advisory in nature and the committee mainly has persuasive value rather than binding value.
  + **Committee on Public Undertaking** 
    - The role of government post-independence in the economy was too wide through the presence of these PSUs.
    - The Committee on Public Undertaking was created on the recommendation of the **Krishna Menon Committee.**
    - The committee has 22 members - 15 from LS & 7 from RS - elected by the principle of STVPR (single transferable vote proportional representation).
    - The chairperson is from Lok Sabha and is appointed by the speaker.
    - The committee examines the report of CAG on public undertakings and also reports with respect to sound business practices.

* + Critical analysis -
    - It cannot examine and interfere with day-to-day administration and is also having an advisory role.

* + **Privilege Committee** 
    - The committee in LS has 15 members and the committee in RS has 10 members.
    - It performs work quasi-judicial in nature and recommends appropriate action.
  + **Ethics Committee** 
    - It examines and recommends appropriate action in cases of misconduct and also enforces the code of conduct.
    - In RS - max 10 members and in LS max members can be 15.
  + **Committee on Women Empowerment**
    - 30 members - 20 from LS and 10 from RS.
    - Examines the report of the National Commission for Women and overall functioning of government with respect to the collective security, the welfare of women.

### Famous cases in India

* + **Behram Khursheed Pesi Kaka case -**
    - Fundamental rights (FRs) are based on such principles embodied in the preamble. FRs are part of public policies and cannot be waived off. The doctrine of waiver has no application on part of constitutional policy.
  + **Bashesharnath Case:-**
    - FRs cannot be waived off. Justice Bhagwati stated - “Ours is a nascent democracy and we are socially, educationally, economically and politically evolving and it is the duty of the supreme court to safeguard FR's. These rights cannot be waived off.
  + **Olga Tellis case** - No citizen can barter away FR's.

### State Legislature

* + There are 28 states in India out of which at present (2021) 22 states have unicameral legislature having state legislature only. While **6 states have bicameral legislatures**. (Bihar, UP, Maharashtra, Karnataka, Andhra Pradesh, and Telangana).
  + The minimum number of seats in Councils is between 60 to 500. The precise number is given in the Representation of People Act 1950.
  + Some states have been permitted to have a smaller size as per special provision in Art 371 e.g. 371-I - for Goa minimum number is 30.
  + Through 104th constitutional amendment act, the provision for nomination of Anglo-Indians in Lok Sabha and state legislative assembly has not been extended for another 10 years. Hence, it cease to be in effect after 2020.

* + **State Legislative Council** 
    - At present 6 states have bicameral legislature and rest have unicameral legislature.
    - The maximum strength of state legislative council can be 1/3rd of the assembly. The minimum strength should be 40.
    - State L council can be created or abolished by an act of parliament through an ordinary piece of legislation passed by simple majority.
    - The parliament can undertake such task if the state legislative assembly passes a resolution by special majority i.e. majority of the total membership of the legislative assembly and 2/3rd members present and voting supporting the resolution.

* + **Nomenclature of the state legislative council** 
    - 1/3rd members are elected by the members of state legislative assembly
    - 1/3rd members are elected by the members of municipalities, district boards etc.
    - 1/12th members are elected by graduates of 3 year standing and residing in the state
    - 1/12th members are elected by the teachers, teaching in not less than secondary schools with at least 3 years standing
    - The remaining 1/6th members are nominated by the governor “who have special knowledge or practical experience of literature, science, art, etc.”
  + **Relevance of SLC**
    - SLC provides wider representation in law making and wider choice in council of ministers.
    - It avoids hasty legislation
    - The nominated members who otherwise could not get elected due to intricacies of politics are also part of the law-making process due to their nomination.
    - The unique representation of elected representatives of PRIs and ULBs /teachers gives wide representation to different sections of society.

* + **Constitutional amendment with respect to state legislature**
    - The constitution of India does not allow the introduction of constitutional amendment bills (CABs) in state legislatures.
    - Those constitutional amendment bills that alter the federal structure of the constitution like 101st CAA (GST) are to be ratified by at least half of the state legislative assemblies.
    - The SC in **Kihoto Hollohan case**ruled that the majority required for ratification in the states shall be simple.
    - Those states having bicameral legislature, the views of legislative assembly shall be necessary over the view of legislative council.
  + **Law making process of SLA and SLC**
    - A bill that is originated and passed in SLA is transmitted to the SLC.
    - If the bill is approved by the SLC, it is transmitted to the governor.
    - If the SLC rejects the bill, then the SLA shall pass the bill again and transmit to the SLC. And if the SLC rejects the bill a second time, the bill is deemed to be passed by both the houses, in the form in which it was transmitted for the second time.
    - If the SLC suggests some amendments, not acceptable to SLA, then also bill is deemed to be passed by both houses.
    - If the council does not take any action for **3 months** (when bill transmitted for the first time), then the SLA shall pass the bill for second time. If SLC does not take any action for **1 month** in the **second time**, the bill will be deemed to be passed by both the houses.
    - Therefore , the SLC does not enjoy power like Rajya Sabha i.e. deadlock or joint sitting.
    - On the other hand a bill originating from state legislative council and transmitted to SLA and is rejected by SLA, the bill dies then and there.

* + **SLC Vs Rajya Sabha**
    - **SLC**-
      * The purpose is to provide wider representation to different section of society
      * There is no provision of joint sitting in case of disagreement in both houses.
      * It is truly heterogenous with wider participation
      * No such special powers as Rajya Sabha
      * CABs can not be introduced in state legislatures. And SLC has no power in ratification.
    - **Rajya Sabha**
      * Other than wider representation, it reflects the federal character of Indian Union
      * There is a provision of joint sitting under Art 108.
      * Other than nominated members, there is homogeneity in its composition
      * Special powers to pass a resolution to empower parliament to create a new all india services.
      * It has absolutely equal powers when it comes to constitution amendment bill, there can be no joint sitting for CABs.

### Centre State Relations

**Federalism**

* + In the absence of an agreed definition of federalism, the constitution is judged on its federal character through the provisions of the constitution and the constitutions of the USA and Australia are said to be the benchmark of federalism.
  + Federalism in simple terms means having a government at the union, central or federal level, and one at the state level. (states are called by different names like cantons in Switzerland, republics in Russia while states in the US)
  + The governments at both levels derive their powers and existence from the constitution.
  + Indian constitution has been differently interpreted by different scholars. It is tough to label or certify it as purely federal or purely unitary.
  + Many scholars see it as quasi-federal, federal with unitary bias, cooperative federalism, sui-generis (unique).
  + The Supreme court in SR Bommai Vs Union of India, 1994, held federalism to be one of the basic structures.

* + **Unitary features**
    - All India Services - IAS, IPS, IFoS
    - Appointment of Governor
    - Indestructible union of destructible states
    - Emergency provisions
  + **Federal features**
    - 7th schedule - Devolution of power through proper division of subjects in the 7th schedule through union list, state list, and concurrent list with respect to legislative competency.
    - A Written constitution that clearly demarcates the domain of centre and states.
    - An Independent judiciary (Art 131) to adjudicate upon a federal dispute.

* + **Legislative relation**
    - **Territorial extent of laws**
      * The parliament can make laws for the entire country or part of the territory and for Indians and their properties abroad.
      * The state legislature can make laws for the entire state and part of the state or outside the state if there is sufficient nexus (RMDC case)
      * Only the parliament has the right to enact extra-territorial legislation.
    - **Subjects of legislation**
      * The Union parliament legislates on the union list while the state legislature legislates on the state list.
      * Both parliament and state legislature can legislate on subjects in the concurrent list.
      * In 5 exceptional circumstances, parliament can legislate on the state list -
        + In order to implement an international treaty or agreement
        + When Rajya Sabha passes a resolution empowering the parliament to legislate on state list in the national interest. The validity of that resolution shall be one year and the validity of that law shall be 6 months after the resolution ceases to be in force. The resolution can be renewed any number of times.
        + When two or more states make a request to the parliament to legislate for themselves on a matter in the state list. These laws are applicable only to those states.
        + During national emergency
        + During president rule.
      * The purpose of a concurrent list is to have uniformity of laws in the country. At the same time, it provides a channel for state-specific solutions.
      * Most of the concurrent list laws are enacted by parliament but implemented by states unless explicitly mentioned in the constitution or law.
      * The concurrent list subjects are also put from the perspective of balancing national and state aspirations.
      * In event of a clash between parliamentary law and state legislature’s law on the concurrent list, the parliamentary law shall prevail.
      * But if the state legislature’s law receives the assent of the president, it will override the parliamentary law for that state only.

* + **Executive Relation** 
    - The laws on the Union list are normally implemented by the Union and laws on the state list are implemented by the state.
    - In the mutual delegation of executive functions both the centre and state through president and governor respectively request each other to perform each other’s executive functions at consent.
    - But the parliament can even compulsorily ask the state to execute one of the Union’s duties.

* + **Financial Relations**
    - The parliament has exclusive power to levy taxes on subjects enumerated in the Union list while the state legislature can levy taxes on subjects in the state list.
    - There are no taxes in the concurrent list other than GST.
    - The residuary power of taxation is with parliament e.g. gift tax, wealth tax, etc.
    - Examples of direct tax - Union (Personal income tax, corporate tax), State (Agriculture, Profession)
    - All major indirect taxes have been subsumed in GST other than Aviation turbine fuel, liquor for human consumption, motor spirit (petrol), Natural gas, and diesel.
      * These taxes can be brought under the ambit of GST through GST Council.

* + **Art 268** - Levied by the center but collected and appropriated by the state -
    - This includes stamp duties on promissory notes, cheques, insurance policies, etc.
  + **Art 269** - Taxes on inter-state trade and commerce, (sale/purchase) and consignment - these are levied and collected by center but assigned to the states.
  + The states get discretionary grants from the centre under **Art 282** or the constitution.
  + Selected states get statutory grants under **Art 275** through parliament on the recommendation of the finance commission and these sums are charged upon the consolidated fund of India.
  + The tax collected by the centre is further distributed between the centre and states on the recommendations of the finance commission under **Art 280**. The net proceeds certificate is given by CAG.

**Pressure Groups**

* + PGs are organised set of people sharing common interests with a mandate to influence the public policy and achieve and promote their shared interest.
  + They usually don not directly participate in electoral process.
  + **Relevance**
    - They keep the citizens informed on vital issues.
    - They enrich democracy through multiple ways and promote democratic awareness.
    - They increase the accountability of government by raising issues.
    - They increase the quality of governance by critical by providing research and data inputs
    - They improve the quality of legislations by providing expert advice.
    - They provide an avenue to vent grievances
    - They act as bridge between citizens and govt.