POLTY SHORT NOTES

# Parliament.

## Rajya Sabha

Ministers may belong to either House of Parliament.

The Constitution does not make any distinction between the Houses in this regard. Every Minister has the right to speak and take part in the proceedings of either House but he is entitled to vote only in the House of which he is a member.

Similarly, with regard to powers, privileges and immunities of the Houses of Parliament, their members and committees thereof, the two Houses are placed absolutely on equal footing by the Constitution.

Elections:

The representatives of the States and of the Union Territories in the Rajya Sabha are elected by the method of indirect election

elected by the elected members of the Legislative Assembly of that State and by the members of the Electoral College for that Union Territory

Proportional representation by single transferrable vote

The Electoral College for the National Capital Territory of Delhi consists of the elected members of the Legislative Assembly of Delhi, and that for Puducherry consists of the elected members of the Puducherry Legislative Assembly.

Bye Elections:

Rajya Sabha is a permanent House and is not subject to dissolution.

However, one-third Members of Rajya Sabha retire after every second year.

A member who is elected for a full term serves for a period of six years.

The election held to fill a vacancy arising otherwise than by retirement of a member on the expiration of his term of office is called ‘Bye-election’

A member elected in a bye-election remains **member for the remainder of the term of the member who had resigned** or died or disqualified to be member of the House under the Tenth Schedule.

Chairman and deputy chairman

Chairman: vice president of India

Deputy Chairman:

Rajya Sabha also chooses from amongst its members, a Deputy Chairman

Panel of Vice-Chairmen in Rajya Sabha,

the members of which are nominated by the Chairman, Rajya Sabha. In the absence of the Chairman and Deputy Chairman, a member from the Panel of Vice-Chairmen presides over the proceedings of the House.

Secretary-General

The Secretary-General is appointed by the Chairman of Rajya Sabha and holds rank equivalent to the highest civil servant of the Union.

The Secretary-General works with anonymity and is readily available to the Presiding Officers for rendering advice on parliamentary matters.

Leader of the House:

PM is leader of the house or ny Minister who is a member of the House and is nominated by him to so function

Chairman is consulted by LOH for aby Private Members’ business on any day other than Friday

Leader of opposition

The office of Leader of the Opposition was given official recognition through the Salary and Allowances of Leaders of the Opposition in Parliament Act, 1977

Thus, the Leader of the Opposition should satisfy three conditions, namely,

1. he should be a member of the House
2. the Leader in Rajya Sabha of the party in opposition to the Government having the greatest numerical strength and
3. be recognized as such by the Chairman, Rajya Sabha

The role of the Leader of the Opposition, in fact, is more difficult as he has to criticize, find fault and present alternative proposals/policies with no power to implement them

**both Houses enjoy equal powers in**

election and impeachment of the President,

election of the Vice-President,

approving the Proclamation of Emergency,

the proclamation regarding failure of constitutional machinery in States and

financial emergency.

In respect of receiving reports and papers from various statutory authorities, etc., both Houses have equal powers

Financial Bill Category B and Ordinary Bills can be introduced in either House of Parliament.

Exception where LOK SABHA is powerful:

in the case of collective responsibility of the Council of Ministers and

certain financial matters, which fall in the domain of Lok Sabha only

**Council of Ministers**

**Under article 75(3) of the Constitution, the Council of Ministers is collectively responsible to Lok Sabha which means** Rajya Sabha cannot make or unmake the Government.

RS can, however, exercise control over the Government and this function becomes quite prominent, particularly when the Government does not enjoy majority in Rajya Sabha.

**Money Bill:**

Rajya Sabha has to return such a Bill to Lok Sabha within a period of fourteen days from its receipt.

If it is not returned to Lok Sabha within that time, the Bill is deemed to have been passed by both Houses at the expiration of the said period in the form in which it was passed by Lok Sabha.

Rajya Sabha cannot amend a Money Bill; it can only recommend amendments and **Lok Sabha may either accept or reject all or any of the recommendations made by Rajya Sabha**

**Other Finance Matters:**

Apart from a Money Bill, certain other categories of Financial Bills **also cannot be introduced in Rajya Sabha**

Rajya Sabha **does not vote on Demands for Grants of various Ministries** - a matter exclusively reserved for Lok Sabha –

no money, however, can be withdrawn from the Consolidated Fund of India unless the Appropriation Bill has been passed by both the Houses

the Finance Bill is also brought before Rajya Sabha.

Financial Bill Category A can only be introduced in the Lok Sabha on the recommendation of the President. However once it has been passed by the Lok Sabha, it is like an ordinary Bill and there is no restriction on the powers of the Rajya Sabha on such Bills.

the Department-related Parliamentary Standing Committees that examine the annual Demands for Grants of the Ministries/Departments are joint committees having ten members from Rajya Sabha.

**Exception Power only to Rajya sabha**

**Legislation on State List:**

if Rajya Sabha passes a resolution

by a majority of not less than two-thirds of members present (***i.e special majority as per article 249 ;example if out of the 245 members in Rajya Sabha, if only 150 are present and voting, then the special majority required as per article 249 would be 101*)**

and voting saying that it is “necessary or expedient in the national interest” that Parliament should make a law on a matter enumerated in the **State List**,

Parliament becomes empowered to make a law on the subject specified in the resolution, for the whole or any part of the territory of India.

Such a resolution remains in force **for a maximum period of one year but this period can be extended by one year at a time by passing a similar resolution further.**

**Creation of All India services:**

If Rajya Sabha passes a resolution

by a majority of **not less than two-thirds of the members present and voting** declaring that

it is necessary or expedient in the national interest **to create one or more All India Services common to the Union and the States**,

Parliament becomes empowered to create by law such services

**EMERGENCY POWERS:**

President’s proclamation in the event of national emergency, in the event of failure of constitutional machinery in a State, or in the case of financial emergency,

Every such proclamation has to be approved by both Houses of Parliament within a stipulated period

If a Proclamation is issued at a time when Lok Sabha has been dissolved or the dissolution of Lok Sabha takes place within the period allowed for its approval, then the proclamation remains effective, if the resolution approving it is passed by Rajya Sabha within the period specified in the Constitution under articles 352, 356 and 360

**Joint Session:**

**can be ordered by President of India**

**case of following reasons:**

A bill is passed by one house and is rejected by the other.

The amendments suggested by one house is not accepted by the house in which bill originated.

If the bill remains un passed for more than six months

**Exceptions:**

If the Lok Sabha dissolves before the President calls for joint sitting then **bill gets lapse and no joint sitting is held**

if President calls for joint sitting before the Lok Sabha dissolves then joint sitting will be held even after the Lok Sabha dissolves.

**For ordinary legislation only: Not for money bill,no constitutional amendment.**

To resolve a deadlock between the two Houses, in case of an ordinary legislation, the Constitution provides for the joint sitting of both Houses.

In fact, there have been three occasions in the past when the Houses of Parliament had met in joint sitting to resolve differences between them

Issues in joint sitting are decided by a majority of the total number of members of both Houses present and voting. The bill can be passed by a **simple majority** in a Joint Session

The joint sitting is held in the Central Hall of Parliament House presided over by the Speaker, Lok Sabha

In case of tie of votes: decision of speaker is final.

Last bill was POTA bill Prevention of Terrorism Act, 2002

**Nominated Members:**

12 are nominated members

They vote on bills as regular members.

They are not entitled to vote in the election of the President of India.

But in the election of the Vice-President of India, they have a right to vote.

So far, **none from them has been inducted into the Council of Ministers**.

A nominated member is allowed six months, should he decide to join a political party after he has taken his seat in the House in terms of article 99 of the Constitution.

A nominated member has also been exempted from filing his assets and liabilities under Section 75A of the Representation of the Peoples Act, 1951 which requires the elected member to do so within 90 days of his making or subscribing oath/affirmation

# Types of Majorities:

There is no explicit classification of majorities in Indian Constitution.

But a careful reading of different articles in Indian Constitution would provide an idea about four types of majorities.

They are Absolute Majority, Effective Majority, Simple Majority and Special Majority.

## Absolute majority

It refers to a majority of more than 50% of the total membership of the house.

For example, as the total membership of Lok Sabha is 545, an absolute majority in Lok Sabha means – 50% of 545 plus 1, ie. 273.

Cases, where the absolute majority is used:

In the normal business of the Parliament or State Legislature absolute majority, is not generally used.

But this majority is used during the general election, for the formation of government at Center and States.

## Effective Majority

Effective Majority of the house means more than 50% of the effective strength of the house. This implies that out of the total strength, we deduct the vacant seats.

When Indian Constitution mentions “all the then members”, that refers to the effective majority.

For example, in Rajya Sabha, out of the total strength of 245 members if there are 45 vacancies, then the effective strength of the house is 200. Then the effective majority is 50% of 200 plus 1, ie 101.

Cases where the effective majority is used:

Removal of Vice-president in RS – Article 67(b).

Removal of Speaker and Deputy Speaker of Lok Sabha and State Legislative Assembly.

## Simple Majority

This refers to the majority of more than 50% of the members present and voting.   
This is also known as **functional majority or working majority**.

The simple majority is the most frequently used form of majority in Parliamentary business. When the constitution or the laws do not specify the type of majority needed, the simple majority is considered for voting.

To understand simple majority, let us consider a situation in Lok Sabha.

On a particular day, out of the total strength of 545, 45 were absent and 100 abstained from voting on an issue. So only 400 members were present and voting.

Then the simple majority is 50% of 400 plus 1, ie. 201.

Ordinary bills need to be passed with a simple majority in both Houses of the Parliament before it is sent to Indian President for his assent.

Cases where the simple majority is used:

To pass Ordinary/Money/Financial bills.

To pass Non-Confidence Motion/Adjournment Motion/Censure Motion/Confidence Motion.

For the removal of Vice President majority required in Lok Sabha is simple majority – A67(b).

To declare a financial emergency.

To declare state emergency (President’s rule).

Election of Speaker/Deputy Speaker of Lok Sabha and State legislatures.

Constitution Amendment Bill under Article 368 which needs to be ratified by states, require only simple majority at State Legislatures.

## Special Majority

All types of majorities other than the absolute, effective or simple majority is known as the special majority. A special majority are of 4 types, with different clauses.

Type 1 – Special Majority as Per Article 249.

Type 2 – Special Majority as per Article 368.

Type 3 – Special Majority as per Article 368 + 50 percent state ratification by simple majority.

Type 4 – Special Majority as per A61.

### Special Majority as Per Article 249

Special majority as per article 249 requires a majority of 2/3rd members present and voting.

For example, if out of the 245 members in Rajya Sabha,

if only 150 are present and voting, then the special majority required as per article 249 would be 101.

Cases where special majority as per article 249 is used:

To pass the Rajya Sabha resolution to empower the parliament to make laws in the state list. (valid up to 1 year, but can be extended any number of times).

### Special Majority as Per Article 368

Special majority as per article 368 requires a majority of 2/3rd members present and voting supported by more than 50% of the total strength of the house.

This type of majority is used for most of the Constitutional amendment bills.

To pass a constitution amendment bill in Rajya Sabha, in addition to getting the support of 123 members,

the bill should be favoured by more than 2/3rd of the members present and voting.

Cases where special majority as per article 368 is used:

To pass a constitutional amendment bill which does not affect federalism.

Removal of judges of SC/HC.

Removal of CEC/CAG.

Approval of national emergency requires special majority as per Article 368 in both houses.

Resolution by the state legislature for the creation/abolition of Legislative Council (Article 169).

### Special Majority as Per Article 368 plus State ratification

This type of special majority is required when a constitutional amendment bill try to change the federal structure.

Special majority as per article 368 plus state ratification requires a majority of 2/3rd members present and voting supported by more than 50% of the state legislatures by a simple majority.

A good example would be the bill which introduced the National Judicial Appointments Commission (NJAC). It required the support of at least 15 state legislatures out of the 29 states.

Cases where special majority as per article 368 plus state ratification is used:

To pass a constitutional amendment bill which affects federalism like the position of High Court Judges.

### Special Majority as Per Article 61

Special majority as per article 61 requires a majority of 2/3rd members of the total strength of the house.

In Lok Sabha, the special majority as per article 61 is 364 while in Rajya Sabha, the special majority as per article 61 is 164.

Cases where special majority as per article 61 is used:

For the impeachment of the Indian President.

# Constitutional bodies

## Election Commission of India

The Constitution of India has vested in the Election Commission of India the superintendence, direction and control of the entire process for conduct of elections to Parliament and Legislature of every State and to the offices of President and Vice-President of India.

The Election Commission was established in accordance with the Constitution on 25th January 1950

### Appointment & Tenure of Commissioners

The President appoints Chief Election Commissioner and Election Commissioners.

Tenure: They have tenure of six years, or up to the age of 65 years, whichever is earlier.

Salary: They enjoy the same status and receive salary and perks as available to Judges of the Supreme Court of India.

Removal: The Chief Election Commissioner can be removed from office only through impeachment by Parliament.

Originally the commission had only a Chief Election Commissioner. It currently consists of Chief Election Commissioner and two Election Commissioners.

### Working

At center Two or three Deputy Election Commissioners and Director Generals who are the senior most officers in the Secretariat assist the Commission.

They are generally appointed from the national civil service of the country and are selected and appointed by the Commission with tenure.

At State, the election work is supervised, subject to overall superintendence, direction and control of the Commission, by the **Chief Electoral Officer of the State,**

who is appointed by the Commission from amongst senior civil servants proposed by the concerned state government.

At the district and constituency levels, **the District Election Officers, Electoral Registration Officers and Returning Officers**, who are assisted by a large number of junior functionaries, perform election work.

### Political Parties & the Commission

Political parties are registered with the Election Commission under the law.

The Commission ensures inner party democracy in their functioning by insisting upon them to hold their organizational elections at periodic intervals.

Political Parties so registered with it are granted recognition at the State and National levels by the Election Commission on the basis of their poll performance at general elections according to criteria prescribed by it.

The Commission, as a part of its **quasi-judicial jurisdiction, also settles disputes between the splinter groups of such recognised parties.**

### Advisory Jurisdiction & Quasi-Judicial Functions

Under the Constitution, the Commission also has advisory jurisdiction in the matter of **post election disqualification of sitting members of Parliament and State Legislatures.**

Further, the cases of persons found guilty of corrupt practices at elections which come before the Supreme Court and High Courts are also referred to the Commission for its opinion on the question as to whether such person shall be disqualified and, if so, for what period.

The opinion of the Commission in all such matters **is binding on the President or, as the case may be, the Governor to whom such opinion is tendered.**

The Commission has the **power to disqualify a candidate who has failed to lodge an account of his election expenses within the time and in the manner prescribed by law.**

The Commission has also the power for removing or reducing the period of such disqualification as also other disqualification under the law.

### Judicial Review

The decisions of the Commission can be challenged in the High Court and the Supreme Court of the India by appropriate petitions.

Commission cannot review any result on its own.

This can only be reviewed through the process of **an election petition**, which can be filed before the High Court, in respect of elections to the Parliament and State Legislatures.

In respect of elections for the offices of the President and Vice President, such petitions can only be filed before the Supreme Court.

# Delimitation commission

Delimitation means the act or process of fixing limits or boundaries of territorial constituencies in a country or a province having a legislative body.

The job of delimitation is assigned to a high power body. Such a body is known as Delimitation Commission or a Boundary Commission.

under Article 82 of the Constitution which has provision that the **Parliament by law enacts a Delimitation Act after every census.**

**Delimitation Commission is a statutory body and not a constitutional body established by Central government.**

The Constitution (Eighty-fourth Amendment) Act, 2001 and the Constitution (Eighty-seventh Amendment) Act, 2003 have, inter alia, amended Articles 81, 82, 170, 330 and 332 of the Constitution of India. The cumulative effect of these amendments to the Constitution is that –

1. the total number of existing seats as allocated to various states in the House of the People on the basis of 1971 census shall remain unaltered till the first census to be taken after the year 2026;
2. the total number of existing seats in the Legislative Assemblies of all states as fixed on the basis of 1971 census shall also remain unaltered till the first census to be taken after the year 2026;
3. the number of seats to be reserved for the Scheduled Castes (SCs) and Scheduled Tribes (STs) in the House of the People and State Legislative Assemblies shall be re-worked out on the basis of 2001 census;
4. each state shall be re-delimited into territorial parliamentary and assembly constituencies on the basis of 2001 census and the extent of such constituencies as delimited now shall remain frozen till the first census to be taken after the year 2026; and
5. the constituencies shall be so re-delimited that population (on the basis of 2001 census) of each parliamentary and assembly constituency in a state shall, so far as practicable, be the same throughout the state.

Some facts :

Delimitation in J&K is done under state Constitution.

Under 31st Amendment Act, delimitation exercise doesn’t apply to states and Union Territories having population less than 6 million.

Delimitation under 2002 Act, has increased Scheduled Caste (78 to 84) and Scheduled Tribe Constituencies(38 to 42)

# Finance Commission

Finance Commission is provided for in Article 280 of the Constitution

## Central Finance Commission

1. The President shall, within two years from the commencement of this Constitution and thereafter at the expiration of **every fifth year** or at such earlier time as the President considers necessary, by order constitute a Finance Commission which shall consist of a Chairman and four other members to be appointed by the President.
2. Parliament **may by law determine the qualifications which shall be requisite for appointment as members of the Commission** and the manner in which they shall be selected.
3. It shall be the duty of the Commission to make recommendations to the President as to-
   1. the distribution between the Union and the States of the net proceeds of taxes which are to be, or may be, divided between them under this Chapter and the allocation between the States of the respective shares of such proceeds;
   2. the principles which should govern the grants-in-aid of the revenues of the States out of the Consolidated Fund of India;
      1. [the measures needed to augment the Consolidated Fund of a State to supplement the resources of the Panchayats in the State on the basis of the recommendations made by the Finance Commission of the State;]
      2. [ the measures needed to augment the Consolidated Fund of a State to supplement the resources of the Municipalities in the State on the basis of the recommendations made by the Finance Commission of the State;]
      3. [ any other matter referred to the Commission by the President in the interests of sound finance.
4. The Commission shall determine their procedure and shall have such powers in the performance of their functions as Parliament may by law confer on them.

### The latest constitutional provisions of finance commission India

1. The President of India shall, within maximum of two years from the commencement of the draft and thereafter completion of every fifth year or at earlier time (as he deems necessary), by order should constitute a Finance Commission
2. The Finance Commission shall consist of a chairman and four other members, appointed by the President himself
3. The elected parliament may by formulating appropriate law determine the qualifications of such members of the Finance Commission and it may also determine the manner in which the members shall be selected
4. The duty of the Finance Commission shall entail recommendations to the President of India on -
5. Distribution of the income of the government (including central and provisions governments) as per proportion or according to the contribution made towards such collection of revenues by each such provisions governments or central government
6. Define the grounds on which the government should allocate the grants-in-aid of the revenues of the Indian provisionss out of the consolidated fund of India. The quantum of allocation of such funds need to compliment the requirements of the panchayat and resource of the Consolidated Fund of a provisions
7. The quantum of allocation of such funds need to compliment the requirements of the Municipalities in the provisions and the resources of the Finance Commission of the provisions
8. Any other matter referred to the Commission by the President in the interests of sound finance.
9. The Finance Commission of India shall also determine the operational process and is vested with such powers in the operation as per the provisions enacted by the parliament of India

## State Finance Commission

Article 243I of the Indian Constitution prescribes that the Governor of a State shall, as soon as may be within one year from the commencement of the Constitution (Seventy-third Amendment) Act, 1992, and thereafter at the expiration of every fifth year, **constitute a Finance Commission to review the financial position of the Panchayats and to make recommendations to the Governor** as to

The principles which should govern:

1. The distribution between the State and the Panchayats of the net proceeds of the taxes, duties, tolls and fees leviable by the State, which may be divided between them under this Part and the allocation between the Panchayats at all levels of their respective shares of such proceeds;
2. The determination of the taxes, duties, tolls and fees which may be assigned as, or appropriated by, the Panchayats;
3. The grants-in-aid to the Panchayats from the Consolidated Fund of the State;
4. The measures needed to improve the financial position of the Panchayats;
5. Any other matter referred to the Finance Commission by the Governor in the interests of sound finance of the Panchayats.
6. Article 243Y of the Constitution further provides that the Finance Commission constituted under Article 243 I shall make similar recommendation vis-a-vis municipalities.

The Governor is required to cause every recommendation made by the State Finance Commission together with an explanatory memorandum as to the action taken thereon to be laid before the Legislature of the State.

# Various Procedures

## Disqualification of Member of Parliament/MLA:

Article 102 deals with disqualification of member of parliament if he holds office of profit

Article 103 lays down that in case of dispute about disqualification about member of parliament It shall be referred to the President and he will take decision on the advice of Election commission of India(advice is binding) and his decision will be final.

And in case of disqualification in case of defection matter will be decided by **the speaker or chairman of the Rajya sabha.**

Article 191 1(a) deals with same matter in state legislative assembly. It also states that dispute regarding disqualification of MLA will be settled by Governor and his decision shall be Final. In this case opinion of State election commission shall be sought (Advice is binding on governor).

The representation of people act, 1951 also lays down certain conditions for disqualification of MPs and MLAs.

They are as follows

1. He must not have been convicted by a court of any offence and sentenced to imprisonment for a period of more than two years.

2. He must not have been found guilty by a court or on election tribunal of certain election or corrupt practices in the elections.

3. He must not have been dismissed for corruption or disloyalty from government services.

4. He must not have failed to lodge on his election expenses within time and in a manner prescribed by law.

5. He must not have any interest in government contracts, execution of government work or services.

He must not be a director or managing agent nor hold an office of profit under any corporation in which the government has any financial interest.

## Impeachment of Judge:

Impeachment procedure of Judge

Justice V. Ramaswami has the dubious distinction of being the first judge against whom impeachment proceedings were initiated. but it failed to secure the required two-thirds majority.

Till date no judje of supereme court has been impeached.

In Article .124(4) of the indian constitution , the guidelines surrounding the Impeachment of Judges are provided on grounds of proved misbehaviour or incapacity

The Constitution, armed with **the Judges (Inquiry) Act, 1968 and the Judges (Inquiry) Rules, 1969** provides for the entire process of Impeachment

1. The impeachment is initiated with the presentation of a motion for impeachment in either of the houses of the Parliament which is then looked into by the Speaker/Chairman.

a. Under the said act, the process is initiated with presentation of a motion of impeachment by at least 50 members of the Rajya Sabha or 100 from the Lok Sabha

2. After that, a three member committee is formed by them to look into the charges framed against the Judge in question. At the end of the fact-finding by the committee, a report with the recommendations is submitted to them.

a. acting as a body with powers of a civil court

b. The Committee should consist of the Chief Justice or a judge of the Supreme Court, a chief justice of a high court and a distinguished jurist

3. In the event that the committee recommends that the judge be impeached,both the house of the Parliament will vote on the same and if a two third majority of at least half the strength concurs,

a. special majority of each House of Parliament (that is, a majority of the total membership of that House and a majority of not less than two thirds of the members of that house present and voting), has been presented to the President in the same session of Parliament for such a removal

b. Failed in case of justice ramaswami

4. then the motion of impeachment shall be placed before the President for his assent.

5. The process thus, involves the Judge being present before both houses of Parliament

## By election

Representation of the People Act that allows a candidate to contest elections from two constituencies.

When the candidate wins from both the constituencies, he/she has to vacate one of the seats. This triggers by-election as one of the seats that is rendered vacant.

It can also be due to a politician leaving a vacant position on various grounds

It can be for Both Rajya sabha ; L Sabha; Legislative assembly