

INDIAN CONSTITUTION

Constitution is a collection of rules that finally determines the structure, nature and form of the State and Government. It is a document which enumerates the powers and functions of the government. As Gilchrist says: constitution is “*that body of rules and laws – written or unwritten, which determines the organization of government, the distribution of powers to the various organs of government and the general principles on which these powers are to be exercised*”. The constitutional government implies a limited government. Constitution limits the powers of the government and guarantees rights to the citizens. It means the government has to function within the framework of the constitution.

Indian constitution was framed by a Constituent Assembly. Elections to the July 1946 elections to Constituent Assembly took place in July 1946. The Constituent Assembly came in being in November 1946. Its members were elected by the Provincial Assembly by indirect election.

The important members of the Constituent Assembly were Jawaharlal Nehru, Rajendra Prasad, Sardar Patel, Maulana Azad, Gopalaswami Ayyangar, Govind Ballabh Pant, Abdul Gaffar Khan, T.T. Krishnamachar, Alladi Krishnaswami Ayyar, Acharya Kripalani, Dr. Ambedkar, Dr. Radhakrishnan, Dr. Sachidananda Sinha, Liaquat Ali Khan, Sir Feroze Khan Noon, etc. Dr. Rajendra Prasad was the President of the Assembly and Dr. Ambedkar was the Chairman of the Drafting Committee.

The draft constitution was published in January 1948. The people of India were given 8 months to discuss the draft and propose amendments. As many as 7635 amendments were proposed and 2,473 were actually discussed. The Constituent Assembly held 11 sessions. The Draft Constitution was considered for 114 days. In all, the Constituent Assembly sat for 2 years, 11 months and 18 days.

The new Constitution of India was adopted by the Constituent Assembly on 26th November 1949. It came into force on 26th January 1950.

SOURCES ON INDIAN CONSTITUTION

- i. Government of India Act, 1935:** Federal Scheme, Office of Governor, Judiciary, Public Service Commissions, Emergency provisions, Administrative details.
- ii. British Constitution:** Parliamentary government, Rule of Law, Legislative procedure, Single citizenship, Cabinet System, Prerogative Writs.
- iii. US Constitution:** Fundamental Rights, Independence of Judiciary, Judicial Review, Impeachment of the President, Removal of Supreme Court and High Court judges and post of Vice-President.
- iv. Irish Constitution:** 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.
- v. Canadian Constitution:** Federation with a strong centre, residuary powers with the centre, appointment of state governors by the centre and advisory jurisdiction of the Supreme Court.
- vi. Australian Constitution:** Concurrent List, Freedom of trade, commerce and intercourse joint sitting of the two Houses of Parliament.
- vii. Soviet Constitution:** Fundamental duties, the ideal of justice (social, economic and political) in the Preamble.
- viii. South African Constitution:** Procedure for amendment, the Constitution and election of the members of Rajya Sabha.

PREAMBLE

PURPOSE OF THE PREAMBLE

Preamble has been defined as introductory or part in a statute deed or other document, setting forth the grounds and intention of it. It is introduction of preliminary statement especially to a legal document setting forth its ground and intention. The preamble to an Act sets out the main objectives, which the legislation is intended to achieve. It contains in a nutshell the ideals and aspirations of the Act. The preamble to the Constitution indicates the type of Government, which the Constitution is intended to establish, and rights and freedoms which the Constitution is intended to provide the Citizens.

MEANING AND OBJECTIVES

1. WE THE PEOPLE: It indicates that the people of India are the source of authority of behind the constitution. It indicates that sovereignty is in the People of India and people of India constitute the sovereign political body who hold the ultimate power and who conduct the govt. of the country through the representatives.

2. SOVEREIGN: It means that India is free from external control. It can acquire foreign territory and, if necessary, cede a part of the territory in favour of a foreign State, subject to certain constitutional requirements. It means it has the power to legislate on any subject in conformity with the constitutional limitations.

3. SOCIALIST: 42nd amendment added socialist and secular and adding the phrase integrity of the nation. The principal aim socialism is to eliminate inequality of income and status and standard of life to the working people. It doesn't seek total nationalization of all property but envisages a 'mixed economy'. It aims at offering 'equal opportunity' to all, and the abolition of 'vested interest'.

4. SECULAR: It means State has no official religion. It gives full opportunity to all persons to profess, practise and propagate the religion of their choice. It also ensures freedom for one who has no religion, and it scrupulously restrains the State from making any discrimination on grounds of religion. A single citizenship is assured to all persons irrespective of their religion.

5. DEMOCRATIC: The Indian constitution envisages not only a democratic form of government but also a democratic society infused with the spirit of 'justice, liberty, equality, and fraternity'. It means that the government is carried on by the people of the state through their representatives. The constitution has adopted universal suffrage.

6. REPUBLIC : Republic means that the head of the state representative of the people. The supreme power rests with the people. There are no hereditary people. Government is elected by the people.

7. JUSTICE: Constitution strives to secure to all its citizens social, economic and political justice. Directive Principles of State policy are inserted for this purpose. Social Justice is secured by prohibiting discrimination abolishing untouchability Political justice is secured by providing universal adult franchise, free and fair participation of people in political life.

8. LIBERTY: All citizens are guaranteed liberty of thought and expression. .

9. FRATERNITY: Fraternity is to promote the dignity of the individual. Provisions made to feel that Indians belong to one family eg. Single citizenship, free movement throughout the country and settle any part of the country.

10. UNITY AND INTEGRITY: Promotes unity and integrity of the Nation. Word "integrity" added by 42nd amendment to the Constitution to put an end to separatist tendencies and make people feel that every part of India is their home.

SALIENT FEATURES OF THE INDIAN CONSTITUTION

1. Preamble: Preamble highlights the aims and objectives of the Constitution. The constitution strives to establish sovereign, socialist, secular democratic and republic state.

2. Written and Longest Constitution in the world : Original constitution consisted of 395 Articles and 8 schedules. After amendments now it has 444 Articles and 12 schedules. It is the longest constitution in the world

3. Parliamentary form of Government: Parliamentary government is that form of government where the executive is drawn from the legislature. Both at the center and the state there are parliamentary form of government. There are real and nominal executive in parliamentary form of government. All the powers are

vested in the name of the President. But he never exercises them. In his name the cabinet exercises those powers. The President is the nominal executive and the Cabinet is the real executive and it is responsible to the lower house of the parliament.

4. Federal Government: Federal government means there is a division of powers between the center and states. There are three lists which enumerate the division of powers between the central government and the state government. They are Union List – 97, State List – 66, Concurrent List – 47

5. Unique Blend of Rigidity and Flexibility: Indian constitution is not as rigid as the U.S Constitution and as flexible as the British Constitution. Certain provisions can be amended with simple majority in the Parliament, certain clauses require special majority and certain articles require the ratification of the state legislature. Therefore it is a mixture of rigidity and flexibility.

6. Fundamental Rights: It is inspired by the US Bill of Rights and they are justifiable rights. To achieve the ends of democracy and for full flowering of man's personality, such rights have been granted to the citizens. Part III of the constitution consists of fundamental rights from Art 14 to Art 32. They are 1) Right to Equality, 2) Right to freedom, 3) Right against Exploitation, 4) Right to Religion, 5) Cultural and Educational Rights, 6) Right to Constitutional Rights. Right to property is removed by the 44th amendment.

7. Directive Principles of State Policy: It is borrowed from the Irish Constitution. Part IV of the Constitution enumerates these principles. These principles are incorporated with an idea of welfare State. These are fundamental in the governance of the country and the State is under duty to apply these principles in making law, although they are not enforceable by court.

8. Fundamental duties: These duties are added to the Indian constitution by 42nd amendment. Part IV-A of the constitution consists of 10 FD. These duties to be performed by the citizens in the interest of Unity, Integrity and Progress of the country.

9. An Independent Judiciary: Without proper safeguards rights does not serve any purpose. Judiciary is the custodian of rights. Hence the judiciary must be impartial. It must be free from pressure and influence. Therefore judiciary is separated from the executive and the legislature. The President appoints the judges of the Supreme Court and High Courts. They can be removed by the Parliament through the process of impeachment.

10. Universal Adult Franchise: Preamble of the constitution envisages popular sovereignty "We the People" are brought into practice by giving voting rights. Without any qualifications all those who have attained the age of 18 are eligible to vote.

11. Single Citizenship: American state gives dual citizenship i.e., the citizenship of the country and the state he resides. Though there is dual polity Indian constitution provides for single citizenship i.e., citizenship of the country. Indian citizens are not given the citizenship of the state he resides.

12. Emergency Provisions: To meet any emergency constitution provides for three types of emergency provisions 1. National emergency, 2. State Emergency, 3. Financial emergency. When national emergency is declared fundamental rights can be suspended and Central Government becomes all powerful..

13. Provision for Independent Agencies: Indian constitution makes provisions for independent agencies like Election Commission, Controller and Auditor-General and Public Service Commission.

14. Special Provision for Backward Classes: To uplift social, economical and educational backwardness special constitutional provisions are provided. Reservations are given in public services and legislature. Initially recommended till 1960 is now extended till 2010.

15. Provision for One official Language: Hindi has been declared as the official language of the entire country because it is spoken language over the greater part of India. 8th schedule enumerates 15 regional languages are included. These are Assamese, Bengali, Gujarati, Hindi, Kannada, Kashmiri, Malayalam, Marathi, Oriya, Punjabi, Sanskrit, Sindhi, Tamil, Telugu and Urdu. Impracticality of implementing Hindi as official language Official Languages Act, 1963 has been amended and English will continue in addition to Hindi for all official purpose of the Union and also for the transaction of business in Parliament.

16. Judicial Review: Supreme Court has the power of Judicial Review. Supreme court has the power to declare all those laws and orders of the legislature and executive as unconstitutional if it violates the constitution.

17. Constitutional Status for Panchayats and Urban Local Bodies: Panchayat and other local bodies are given constitutional status with an intention of bringing grass root democracy. 73rd and 74th amendment has brought constitutional status for local government.

FUNDAMENTAL RIGHTS

Part III of the constitution consists of certain rights. These rights are considered fundamental because it is necessary for the development of human personality. These rights enable a man to chalk out his own life in the manner he likes best. The Fundamental Rights are calculated to protect the dignity of individual and create conditions in which every human being can develop his personality to the fullest extent.

Against whom available

- Most of the FRs in Part III of the constitution of India are available against the State only but some of them are also available against the private individuals.
- The FRs guaranteed in Articles 15(2), 17, 23(1) and 24 are available against the private individuals.

Meaning of State

For the purpose of Part III (Art 12 – 35) the term ‘State’ includes the Executive and Legislature of the Union, Executive and Legislatures of the States, Local and other authorities within the territory of India and local and other authorities under the control of Government of India.

Classification of Fundamental Rights

The FRs as incorporated in the Indian Constitution can be classified under the following six groups:

1. Right to Equality (Articles 14 – 18)
2. Right to Freedom (Articles 19 – 22)
3. Right against Exploitation (Articles 23 – 24)
4. Right to Freedom of Religion (Articles 25 – 28)
5. Cultural and Educational Rights (Articles 29 – 30)
6. Right to Constitutional Remedies (Articles 32)

The 44th Amendment has abolished the Right to Property as a FR as guaranteed by Article 19(1)f and Article 31 of the Constitution.

1. RIGHT TO EQUALITY (ARTICLE 14 – 18)

i) ARTICLE 14 – Equality before law – The state shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

ii) ARTICLE 15 – Prohibition against discrimination - The State shall not discriminate against any citizen on grounds only of religion, race caste, sex, place of birth or any of them.

iii) ARTICLE 16 - Equality of Opportunity in matters of Public employment. There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State No citizen shall on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for or discriminated against in respect of any employment of office under the state.

iv) ARTICLE 17 – Abolition of Untouchability - "Untouchability" is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of "Untouchability" shall be an offence punishable in accordance with law.

v) ARTICLE 18 – Abolition of Titles - No title shall be conferred by the State except a military or academic distinction. It also prohibits citizen of India to accept any title from any foreign state.

2. RIGHT TO FREEDOM (ARTICLE 19 – 22)

A. ARTICLE 19 – of the Constitution guarantees to the citizens of India the following six fundamental freedoms:

- i) Freedom of Speech and Expression
- ii) To assemble peacefully without arms
- iii) Freedom to form Associations and unions
- iv) To move freely throughout the territory of India
- v) To reside and to settle in any part of India
- vi) Freedom to practice any profession or to carry any occupation, trade or business

B. ARTICLE 20 – Protection in respect of conviction for offences

i) Protection against Ex post facto law: No person shall be convicted of any offence except for violation of a law in force at that time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence

ii) Protection against Double Jeopardy : No person shall be prosecuted and punished for the same offence more than once

iii) Prohibition against self-incrimination: No person accused of any offence shall be compelled to be a witness against himself.

C. ARTICLE 21 – Protection of Life and Personal Liberty: No person shall be deprived of his life or personal liberty except according to procedure established by law.

ARTICLE 21 A. -The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine.

D. ARTICLE 22 – Protection against arrest and detention in certain conditions:

i) No person arrested shall be detained in custody without being informed as soon as may be, of the grounds for such arrest.

ii) He shall not be denied the right to consult and to be defended by a legal practitioner of his choice

iii) Every person who is arrested and detained in custody shall be produced before the nearest magistrate within 24 hours.

3. RIGHT AGAINST EXPLOITATION (ARTICLE 23 - 24)

i) Article 23: Prohibition of traffic in human beings and forced labour: Traffic in human beings and begar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.

ii) ARTICLE 24 - Prohibition of employment of children in factories etc: No child below the age of 14 years shall be employed to work in any factory or mine or engaged in any other hazardous employment

4. RIGHT TO FREEDOM OF RELIGION (ARTICLE 25 – 28)

i) Article 25: All persons are equally entitled to freedom of conscience and the right to freely to profess, practice and propagate religion.

ii) Article 26: Freedom to manage religious affairs: Every religious denomination or any section thereof shall have the right -

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

iii) Article 27 - Freedom as to payment of taxes for promotion of any particular religion : No person shall be compelled to pay any taxes, the proceeds of which are specifically appropriated in payment of expenses for the promotion or maintenance of any particular religion or religious denomination.

iv) Article 28 - No religious instruction shall be imparted in any educational institution wholly maintained out of State funds.

5. CULTURAL AND EDUCATIONAL RIGHTS – ARTICLES 29 – 30

A. Article 29 - Protection of interests of minorities:

- i) Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same.
- ii) No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.

B. Article 30 – Minorities’ right to establish and administer educational institutions

- i) All minorities whether based on religion or language, shall have the right to establish and administer educational institution of their choice.
- ii) The State shall not in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language.

6. ARTICLE 32 – RIGHT TO CONSTITUTIONAL REMEDIES

This right was called by Ambedkar as “the heart and soul” of the Constitution. It protects our rights. It includes the following.

- i) The right to move the Supreme Court and High Court by appropriate proceedings for the enforcement of the rights is guaranteed.
- ii) The Supreme Court and High Courts has the power to issue directions or orders or writs for the enforcement of any rights. The important writs are: **Habeas Corpus, Mandamus, Prohibition, Certiorari and Quo Warranto**

I. HABEAS CORPUS : Habeas Corpus (Latin term) means bring the body. The writ of Habeas Corpus is issued as an order calling upon the persons who has detained another person to produce the detenu before the court to examine the legality of his detention.

II. MANDAMUS: The word “mandamus” means “the order”. The writ of mandamus is thus an order by a superior court to the Government, inferior court, tribunal, public authority corporation or any other person having public duty to perform asking such Government, inferior court, tribunal, public authority corporation or person to perform the public duty or to refrain from doing illegal act.

For instance, a licensing officer is under a duty to issue a licence to an applicant who fulfils all the conditions laid down for the issue of such licence. But despite the fulfillment of such conditions if the officer or the authority concerned refuses or fails to issue the licence the aggrieved person has a right to seek the remedy through a writ of mandamus.

III. PROHIBITION: A writ of prohibition is issued primarily to prevent an lower court or tribunal from exceeding its jurisdiction or acting contrary to the rules of natural justice. It is issued by a Superior Court to lower courts for the purpose of preventing lower courts form usurping a jurisdiction with which it was not legally vested. In other words it is issued to compel lower courts to keep within the limits of their jurisdiction. Thus, the writ is issued in both cases where there is excess of jurisdiction and where there is absence of jurisdiction.

IV. CERTIORARI: A writ of Certiorari is issued by a Superior Court (Supreme Court or High Courts) to an lower court or body exercising judicial or quasi-judicial functions to remove a suit from such lower court or body and adjudicate upon the validity of the proceedings or body exercising judicial or quasi-judicial functions. It may be used before the trial to prevent an excess or abuse of jurisdiction and remove the case for trial to higher court.

V. QUO WARRANTO: The literal meaning of ‘Quo-Warranto’ is ‘by what authority’. By this writ, a holder of an office is called upon to show to the court under what authority he holds the office. The object of the writ of Quo-Warranto is to prevent a person to hold an office, which he is not legally entitled to hold.

FUNDAMENTAL DUTIES

The 42nd amendment has entered a chapter IV A on fundamental duties. The duties enumerated are

1. To abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem
2. To cherish and follow the noble ideals which inspired our national struggle for freedom
3. To uphold and protect the sovereignty, unity and integrity of India.
4. To defend the country and render national service when called upon to do so.
5. To promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of woman.
6. To value and preserve the rich heritage of our composite culture.
7. To protect and improve the natural environment including forests, lakes, rivers and the wild life and to have compassion for living creatures.
8. To develop the scientific temper, humanism and the spirit of inquiry and reform
9. To safeguard public property and to abjure violence
10. To strive towards excellence in all spheres of individual and collective activity, so that the nation constantly rises to higher levels of endeavor and achievement.

DIRECTIVE PRINCIPLES OF STATE POLICY

Chapter IV of the constitution of India deals with the Directive Principles of State Policy. This provision was influenced by the Irish constitution. These directive principles are the aims and objectives to be pursued by the central and state Governments in the governance of the country. It aims to bring welfare state and establish social and economic democracy. *But unlike the fundamental rights these directive principles are not justifiable. They are not enforceable. They are mere guidelines for the Government while formulating policies and passing laws. The Government cannot be compelled by the Courts to implement them.*

Article 36 to 51 lists the Directive Principles of State Policy. These principles have not been enumerated in any planned manner. It can be broadly divided into three principles (i) The Socialist Principles, (ii) The Liberal Principles, (iii) The Gandhian Principles.

I. THE SOCIALIST PRINCIPLES: The following principles aim at economic justice. They are

1. Securing a social order for the welfare of the people.
2. To provide adequate means of livelihood for all citizens.
3. To secure equal pay for work to both men and women.
4. To so regulate the economic system of the country that it does not lead to concentration of wealth and means of production.
5. The ownership and control of material resources of the community and their distribution for common good.
6. Create opportunities to children to develop in a healthy manner and in conditions of freedom and dignity and protection of childhood and youth against exploitation and moral and material abandonment.
7. The State shall ensure a decent standard of living and facilities of leisure for all workers.
8. Public assistance in the events of old age, unemployment, sickness and physical disablement.
9. The State shall make provisions for securing just and human condition of work and maternity relief.
10. The state shall take steps to secure the participation of workers in the management of industrial establishments.

II. THE LIBERAL PRINCIPLES

1. To secure for the citizens a uniform civil code throughout the territory of India.
2. To provide within a period of ten years from the commencement of the constitution, free and compulsory education for all the children up to the age of 14 years.
3. To protect monuments and places of historical and cultural interest.
4. To take steps for the separation of judiciary and executive.
5. Protection and improvement of environment and safeguarding forests and wild life.
6. To organise agriculture on scientific lines.
7. The Directive Principles also provide the guidelines for the formation of international policy. They are
 - a) The State shall try to promote International peace and security.
 - b) The State shall maintain friendly relations with other states.
 - c) The State shall solve its disputes by peaceful means like Arbitration.
 - d) The State shall create respect for International law and treaties.

III. GANDHIAN PRINCIPLES

1. To organise village Panchayat as units of self government.
2. To promote cottage industries on an individual and cooperative basis in rural areas.
3. To bring about the prohibition of intoxicating drinks.
4. To improve animal husbandry and prohibition of cow slaughter.
5. To organise agriculture on scientific lines.

Although the Directive Principles cannot be enforced by courts, yet they serve as ideals for the judges and influence their interpretation of laws. As M.C. Chagla says “if Directive Principles are given a proper practical shape, our country can become a heaven on earth”.

UNION LEGISLATURE

The Legislature of the Union is called the Parliament. The Indian Parliament is bicameral, that is the legislature has two Houses or chambers. The two of Houses of the Parliament are the House of the People (Lok Sabha) and the Council of States (Rajya Sabha). The House of the People is composed of directly elected representatives on the basis of adult franchise and territorial constituencies. The Council of States is composed mainly of representatives of the States elected by the State Assemblies.

THE LOK SABHA

The House of the People is commonly known as the “Lower House” of Parliament. Its members are elected directly by the people. The election to the House is conducted on the basis of adult franchise. All citizens who have attained the age of 18 years are eligible to vote.

QUALIFICATIONS

(i) He must be a citizen of India. (ii) He must be atleast 25 years of age. (iii) He must possess such other qualifications as may be prescribed by the Parliament. (iv) He must not hold any office of profit under the union or state governments. (v) He must not be a person with unsound mind or undischarged insolvent.

COMPOSITION

There are 545(+2) members in the Lok Sabha. Of these 525 members are chosen from territorial constituencies of the States. 20 members are elected from the Union Territories. Two Anglo – Indian representatives can be nominated by the President.

TERM

The normal life of the House is for 5 years from the date of its first meeting, but it may be dissolved earlier by the President on the recommendation of the Cabinet. The President is also empowered to extend the life of the House for one year at a time during a national emergency. But in any case, the life of the House cannot be extended beyond six months after the emergency has ceased to operate.

The House meets twice a year and the interval between two consecutive sessions shall be less than six months.

POWERS AND FUNCTIONS OF LOK SABHA

I. LEGISLATIVE POWERS

1. To make laws, amend laws and repeal laws.
2. Parliament has exclusive power to make laws enumerated in the union list.
3. Parliament and State Legislatures have power to make laws with respect to concurrent list. In case of conflict the laws passed by the Parliament shall prevail.
4. Parliament has the exclusive power to make laws on which are not enumerated in the three list. These are called residuary powers.

II. FINANCIAL POWERS

1. Lok Sabha has complete control and supervision over the national income.
2. No expenditure can be incurred or taxes levied without the approval of the Lok Sabha.
3. Money bill must originate in the Lok Sabha. After it has been passed it is sent to Rajya Sabha. It can withhold the bill for 14 days.

III. CONTROL OVER THE EXECUTIVE

1. In the parliamentary system of government council of ministers is the real executive. It is individually and collectively responsible to the Lok Sabha. It stays in the office as long as it enjoys the confidence of the Lok Sabha.
2. The Parliament reserves the right to criticize the policies of the government.
3. It can seek information on all matters falling under the jurisdiction of the Union Government.
4. Such control over the ministers is exercised through questions, supplementary questions, resolutions and adjournment motions.
5. In case the members of Lok Sabha are dissatisfied with the working of the Ministry it can pass a vote of no confidence.

IV. CONSTITUENT FUNCTIONS

1. Lok Sabha has power to amend the constitution.
2. Leaving apart certain provisions it can amend the constitution with simple or two third majority. But Rajya Sabha has equal power in amending the constitution.

V. ELECTORAL FUNCTIONS

1. All the elected members of the Lok Sabha are part of the electoral college in electing the President and Vice President of India.

VI. MISCELLANEOUS FUNCTIONS

1. Lok Sabha can initiate impeachment proceedings against President, Vice President, judges of the Supreme Court and High Courts etc.
2. Lok Sabha has the power to approve proclamation of emergency. It has to approve within 30 days of its declaration for its continuation.

RAJYA SABHA

COMPOSITION

The upper house of the Parliament is called the Rajya Sabha or the Council of States. It consist of 250 members out of which 12 members are nominated by the President from amongst persons who have achieved distinction in the fields of art, literature, science and social service. The remaining 238 members are representative of the States and Union Territories. They are indirectly elected by the members of the State Legislative Assemblies. The number of representatives varies from state to state as the number of seats are allotted on the basis of population.

QUALIFICATIONS

(i) He must be a citizen of India. (ii) He must be atleast 30 years of age. (iii) He must possess such other qualifications as may be prescribed by the Parliament. (iv) He must not hold any office of profit under the union or state governments. (v) He must not be a person with unsound mind or undischarged insolvent.

TERM

Rajya Sabha is permanent Chamber. It is never dissolved. Its term is six years. Its one third members retire after every two years.

POWERS AND FUNCTIONS OF RAJYA SABHA

I. LEGISLATIVE POWERS

1. Except money bills all other money bills can originate in Rajya Sabha.
2. It has almost equal powers as compared to the powers of the Lok Sabha in non money matters.
3. In the event of disagreement between the two Houses with regard to non money matters the President is empowered to call the joint session of the two Houses in order to resolve the deadlock.

II. FINANCIAL POWERS

1. Rajya Sabha is powerless in money matters.
2. A money bill can originate only in Lok Sabha and Rajya Sabha has to adopt it within in 14 days.

III. CONTROL OVER THE EXECUTIVE

1. In the parliamentary system of government council of ministers is individually and collectively responsible to the Lok Sabha. Moreover it cannot pass a Vote of Censure.
2. But its members can exercise control over the government by asking questions, tabling adjournment motions, introducing resolutions and call attention motions and demanding half-hour discussions.
3. It can criticize government policies and seek information from the government.

IV. CONSTITUENT FUNCTIONS

1. Rajya Sabha has co equal powers in amending the constitution
2. Amendment bill can originate even in Rajya Sabha. Constitution is silent if there is any disagreement regarding the amendment bill between the two Houses.

V. ELECTORAL FUNCTIONS

1. All the elected members of the Rajya Sabha participate in the election of the President and Vice President of India.

VI. MISCELLANEOUS FUNCTIONS

1. Members of the Rajya Sabha enjoy equal authority with the Lok Sabha in removal of President, Vice President and judges of the Supreme Court and High Courts.
2. Approving the emergency declared by the President.

SPECIAL POWERS

Rajya Sabha has special powers which are not enjoyed by the Lok Sabha.

1. By passing a resolution with 2/3 majority Rajya Sabha can empower the Parliament to make law on an item in the State List.
2. By passing a resolution with 2/3 majority Rajya Sabha can create one or more All India Services.
3. Approving proclamation of emergency when Lok Sabha stands dissolved
4. Initiating a move for the removal the Vice President of India. .

THE UNION EXECUTIVE

The Union Executive consists of President, Vice President, and Council of Ministers with Prime Minister at the head to aid and advice the President

THE PRESIDENT

The President of India is elected by the members of an electoral college consisting of elected members of both Houses of Parliament and Legislative Assemblies of the States in accordance with the system of proportional representation by means of single transferable vote.

QUALIFICATION

(i) He must be a citizen of India. (ii) He must be above 35 years. (iii) He must possess all qualifications prescribed for election as a member of the Lok Sabha. (iv) He must not hold any office of profit.

TERM

The President holds office for a term of five years from the date on which he enters upon his office.

POWERS AND FUNCTIONS

I. EXECUTIVE FUNCTIONS

1. The entire administration of the Union Government is conducted in his name and he makes rules for the conduct of government business and allocation of work among ministers.
2. The President has information of all important decision of the cabinet and referring any matter for the consideration for the Cabinet.
3. All important appointments are made by the President and they include Prime Minister, Governor, Judges of Supreme Court and High Courts, Attorney General etc.
4. The President is the administrator of all Union Territories and Tribal Areas.
5. By virtue of being Head of the State, he maintains foreign relations. He appoints envoys to foreign countries. Diplomatic business, international agreements and treaties are negotiated and concluded in his name.

6. The President is the Supreme Commander of the Defence Forces. He appoints the Chiefs of the Army, Navy and Air Force.
7. The President has the power of making rules and regulations governing matters like the joint session of the Parliament, working of Supreme Court and other independent agencies.
8. The President can issue directions to the State Governments whereby the administration of the State should be carried on.

II LEGISLATIVE FUNCTIONS

1. The President has the power to summon and prorogue the session of the Parliament. He can dissolve the Lok Sabha. While summoning the Parliamentary session, the intervening gap between two sessions should not be more than six months.
2. In case of a deadlock between the two Houses on a non-money bill, the President may call a joint session of the Parliament and frame rules for the transaction of business.
3. The President nominates 12 members to the Rajya Sabha from among persons having special knowledge or practical experience of literature, science and social service. He can nominate 2 persons from Anglo-Indian community to Lok Sabha if they are not adequately represented to the popular chamber.
4. The President has the power to address and send messages to the Parliament. The first session of the Parliament after a general election and its first session of a new year must open with the inaugural address of the President.
5. The President can exercise veto power over non bills passed by the Parliament. That is he can return a non money bill to the Parliament once for reconsideration. If it is re-passed by the Parliament he cannot withhold his assent.
6. The President gives prior permission for introducing certain kind of bills in the Parliament like money bills and bill seeking to make alteration in the boundary lines of a State.
7. When the Parliament is not in session the President may promulgate ordinance that shall have a force of law. But it has to be passed within six weeks of the beginning of the Parliamentary session.
8. The President presents to the Parliament the reports and recommendations of several important bodies like UPSC, Finance Commission, Comptroller and Auditor General of India etc.
9. The President appoints acting Chairman to the Rajya Sabha and acting Speaker to the Lok Sabha whenever it falls vacant and none of the 6 members of the panel is available.
10. The president has absolute veto power over bills passed by the State legislatures.

III FINANCIAL POWERS

1. Without the recommendation of the President no money bill can be presented to the Lok Sabha.
2. The Contingency Fund of India is controlled by the President. He can release funds from it to meet unforeseen expenditure pending its authorization by the Parliament.
3. The President takes steps to lay the budget and supplementary budget before the Parliament.
4. The President appoints from time to time a Finance Commission to make recommendations regarding the distribution of the proceeds of certain taxes between the Union and the States.

IV JUDICIAL FUNCTIONS

The President has the power to pardon offenders or suspend or commute their sentences in three cases

1. Where the punishment is given by a court martial
2. Where it is for an offence against a law relating to a matter of the Union List
3. Where it is a sentence of death.

The President can exercise his power of pardon only after the conviction of the offender.

V EMERGENCY POWERS

Besides the powers enumerated above, the President exercises vast emergency powers. President of India can declare three kinds of emergencies: 1. National Emergency (Art. 352) 2. State Emergency (Art. 356) 3. Financial Emergency (Art. 360)

1. NATIONAL EMERGENCY: Article 352 empowers the President to declare national emergency whenever he is satisfied that there is a situation threatening the security of the country by war, external aggression or armed rebellion. Such a proclamation can be made by the President on the written advice of the Council of ministers and it has to be approved by the Parliament with 2/3 majority within one month.

2. STATE EMERGENCY: Article 356 empowers the President to take over the administration of any state in the event of breakdown of constitutional machinery on the report of the Governor of the State. Such a proclamation has to be approved by the Parliament within 2 months and it can be extended every six months for a maximum period of 3 years.

3. FINANCIAL EMERGENCY: Under Article 360 if the President is satisfied that a situation has arisen whereby financial stability or the credit of India or any part thereof has fallen in danger, he can declare financial emergency

POSITION OF THE PRESIDENT

The constitutional position of the President is more or less like that of the British Monarch. He is only the nominal head of the executive. The real head of the Government is the Prime Minister. The president has to act in accordance with the advice of the Council of Ministers.

PRIME MINISTER OF INDIA: POWER AND POSITION

The office of the Prime Minister is the most powerful office in India. If Cabinet is the strongest institution, the Prime Minister is the strongest person in the cabinet under the Constitution of India, the real centre of power is the office of the Prime Minister. He is the Head of the Government of India. He is the real custodian of all executive authority.

1. Appointment of the Prime Minister: The Constitution simply lays down that the Prime Minister is to be appointed by the President. In doing so the President follows the rules of the parliamentary system. He appoints the leader of the majority in the Lok Sabha as the Prime Minister..

(a) Prime Minister need not be always from Lok Sabha: Prime Ministers always belonged to the Lok Sabha. But it was a convention and not a law. The Prime Minister can be from either House of the Parliament. The only essential condition is that he must be the adopted or elected leader of majority in the Lok Sabha.

(b) Prime Minister need not be a sitting member of the Parliament: Further, that any person who is not a member of either House of the Parliament can also become a minister or the Prime Minister and he can remain so for six months, within this period he has to essentially get the membership of either House. In case he fails to do so, he loses his office of Minister/Prime Minister.

Powers and Functions of the Prime Minister:

1. Formation of the Council of Ministers: The task of formation of the ministry begins with the appointment of the Prime Minister by the President. After the appointment of Prime Minister, the President appoints all other ministers on the advice of the Prime Minister. The PM determines the strength of his ministry and selects his team of ministers. However this number cannot be more than 15% of the total membership of the Lok Sabha.

2. Allocation of Portfolios: It is an undisputed privilege of the Prime Minister to allocate portfolios to his ministers. Which particular department is to be given to which minister is determined by him. Any minister objecting to such an allotment invites the wrath of the Prime Minister and can get completely ignored from the ministry.

3. Change of Portfolios: The Prime Minister has the power to change the departments (portfolios) of the ministers at any time. It is his privilege to shuffle and re-shuffle his ministry any time and as many times as he may like.

4. Chairman of the Cabinet: The Prime Minister is the leader of the Cabinet. He presides over its meetings. He decides the agenda of its meetings. In fact all matters in the Cabinet are decided with the approval and consent of the Prime Minister. It is up to him to accept or reject proposals for discussions in the Cabinet. All ministers conform to his views and policies. There is scope for deliberations and discussions but not for opposition.

5. Removal of Ministers: The Prime Minister can demand resignation from any minister at any time, and the latter has to accept the wishes of the former. However, if any minister may fail to resign, the Prime Minister can get him dismissed from the President.

6. Chief Link between the President and the Cabinet: The Prime Minister is the main channel of communication between the President and the Cabinet. He communicates to the President all decisions of the Cabinet, and puts before the Cabinet the views of the President.

7. Chief Coordinator: The Prime Minister acts as the general manager of the state and the chief coordinator. It is his responsibility to co-ordinate the activities of all the departments and to secure co-operation amongst all government departments. He resolves all differences, among the ministers.

8. Leader of the Parliament: As the leader of the majority in the Lok Sabha, the Prime Minister is also the leader of the Parliament. In this capacity, it is the PM who, in consultation with the Speaker of this Lok Sabha, decides the agenda of the House. The summoning and the proroguing of Parliament is in fact decided by him and the President only acts upon his advice.

9. Power to get the Parliament Dissolved: The Prime Minister has the power to advise the President in favour of a dissolution of the Lok Sabha. This power of dissolution really means that the members hold their seats in the House at the mercy of the Prime Minister

10. Director of Foreign Affairs: As the powerful and real head of the government, the Prime Minister always plays a key role in determining Indian foreign policy and relations with other countries. He may or may not hold the portfolio of foreign affairs but he always influences all foreign policy decisions.

11. Role as the Leader of the Nation: Besides being the leader of his party and the Lok Sabha, Prime Minister is also the leader of the nation. General elections are fought in his name. The personality of the Prime Minister and the respect and love, that he commands act as a source of strength for his party as well as the nation. He leads the nation both in times of peace and war.

Position of the Prime Minister:

A study of the powers and functions of the Prime Minister clearly brings out the fact that he holds the most powerful office in the Indian. He exercises real and formidable powers in all spheres of governmental activity—executive, legislative and financial. The Prime Minister is the captain of the ship of state, the key stone of cabinet arch, the steering wheel of government, and the moon amongst lesser stars.

The whole organisation and working of the Council of Ministers depend upon the Prime Minister. The President always acts in accordance with the advice of the Prime Minister. The ministry-making is the sole right of the Prime Minister. The resignation or removal of the Prime Minister always means the resignation of the Council of Ministers. Hence, Prime Minister is the centre of gravity and the foundation stone of the Council of Ministers.

STATE GOVERNMENT

GOVERNOR OF A STATE: FUNCTIONS AND POSITION

The Governor is the head of a state. He is the Chief Executive in the state. He enjoys the same position in the state as the President enjoys in the Centre. However, in a way his position is slightly better. Whereas the President as the nominal executive of the Union can rarely use any discretion in the exercise of his powers, the Constitution grants some discretionary powers to the Governor.

1. Method of Appointment:

Constitution of India lays down for the office the Governor of each State.” However, one person can also function as a Governor of two or more states. The President of India appoints the Governor of each state and while doing so he acts upon the advice of the Prime Minister.

2. Qualifications for the Office of the Governor:

- (1) He is to be a citizen of India.
- (2) He has to be above the age of 35 years.
- (3) He is not to be a member of either House of Parliament or of the Legislature of any state.
- (4) He is not to be holding any office of profit in the Government.
- (5) He is not to be a declared bankrupt by any court of law.

Mostly persons of repute and eminence in public life or senior politicians or retired civil and military officers are appointed as Governors.

3. Tenure:

The Governor is appointed for a period of five years. However, he holds office during the pleasure of the President. The President can remove or transfer him at any time.

Powers and Functions of the Governor:

1. Executive Powers:

- a)** Governor is the head of the State. The Constitution gives executive powers of the state to the Governor. He appoints the Chief Minister and other ministers on the advice of the Chief Minister. Ministers hold office during the pleasure of the Governor.
- b)** The Governor can remove the Chief Minister of the province in case he feels that his government does not enjoy the confidence of the majority in the State Legislative Assembly or is not working according to the provisions of the Constitution.
- c)** All major appointments (Advocate General, Chairman and Members of Public Service Commission, Vice-Chancellors) in the state are made by the Governor. But in doing so, the Governor depends upon the advice of the State Chief Minister and the State Council of Ministers.
- d)** The Chief Minister of the State has to keep the Governor informed about the state administration and the decisions taken by his ministry. Governor can seek from the Chief Minister any information about the state administration. The Governor acts as the Chancellor of the state universities.

Normally, the Governor exercises all his executive powers in accordance with the advice of the State Council of Ministers and the Chief Minister..

2. Legislative Powers:

- a)** The Governor is not a member of the state legislature and yet he is a part of it. All bills passed by the state legislature become laws only after the signatures of the Governor. He can withhold his assent or can return a bill (other than a money bill) to the legislature for reconsideration. But if the bill is passed a second time, he cannot withhold his assent from that bill. Several legislative measures can be reserved by him for Presidential assent.
- b)** The Governor summons and prorogues the sessions of the state legislature. He can dissolve the state legislative assembly. He nominates 1/6 members of the Legislative Council from amongst persons having distinguished careers in the field of science, art, literature or social service, normally all these functions are performed by the Governor under the advice of the State Chief Minister.
- c)** When the state legislature is not in session, the Governor can issue ordinances. Any ordinance so issued by the Governor has the same force as the law of the legislature..

3. Financial Powers:

A money bill can be introduced in the state legislature only with the prior permission of the Governor. He orders that the annual budget be placed before the state legislature. The contingency fund of the state is at his disposal and he can order expenditure out of it to meet any unforeseen expenditure.

4. Judicial Powers:

The Governor of the state has some judicial powers. He has the power to grant pardon, reprieve or remission of punishment or to suspend, remit or commute the sentences of any person, convicted of any offence against any law.

Position of the Governor:

A review of the powers of the Governor brings out the view that he has got wide powers and is not a constitutional ruler. However, being the head of a state which has a parliamentary system, the Governor normally acts as a constitutional or nominal executive head the state. He carries out all his functions on the advice of the Chief Minister and his Council of Ministers.

The Areas in which the Governor can act in his Discretion:

Despite being a nominal head, the Governor has some discretionary powers. These are exercised by him without the advice of the State Council of Ministers.

These are:

- (i)** When no political party is having a clear majority in the State Legislative Assembly, the Governor can play an active and decisive role in the appointment of the Chief Minister.
- (ii)** The Governor can use his discretion in dismissing a ministry when the party in power loses majority or is likely to lose majority in the state Legislative Assembly.
- (iii)** The Governor can act in his discretion in ordering or recommending to the President for dissolution of the state assembly. The Governor can refuse to accept the advice of a Chief Minister for dissolving the state legislative assembly in case he feels that an alternative state government can be formed.

CHIEF MINISTER: Method of Appointment, Functions and Position

Like the office of the Prime Minister at the Centre, the office of the Chief Minister is a very powerful office in each state. The Chief Minister is the most powerful functionary of the state government. He is the head of the State Council of Ministers, which is the real executive. The Chief Minister is the real executive head of state government. He exercises vast powers and plays a leading role in the state.

(A) Method of Appointment of the Chief Minister:

As per the Constitution, the Chief Minister is appointed by the Governor. But this does not mean that the Governor is free in the appointment of the Chief Minister. In practice, the Governor has no real choice open to him because after general election to the State Legislative Assembly, the party or coalition group which secures majority in this House, elects its leader and communicates his name to the Governor. The Governor then formally appoints him as the Chief Minister and asks him to form his Council of Ministers.

When no party gets a clear majority in the State Legislative Assembly, the Governor normally asks the leader of the single largest party to form the government. In most of the cases, however, if a single party is not enjoying majority in the State Legislative Assembly, two or three parties form a united front or a coalition. This group then elects its leader and communicates his name to the Governor, who then invites him to form the government.

Powers and Functions of the Chief Minister:

1. Formation of the Council of Ministers:

The Chief Minister has the power of forming a ministry of his choice. The Constitution gives him the freedom to select his ministers. He is quite free in the choice of his ministers; particularly in the case his party is having a clear majority in the Legislative Assembly. He can appoint any member or even a non-member as a minister and allocate him any portfolio. The strength of the State Council of Ministers cannot be more than 15% of the total membership of the State Legislative Assembly.

2. Distribution and Change of Portfolios (Departments) among the Ministers:

After the appointment of ministers, the next important function of the Chief Minister is the distribution of portfolios among them. He decides who will be a Cabinet Minister or a Minister of State. He allocates the departments to ministers. The Chief Minister also has the power to change the department of any minister. He can call upon any minister to quit then has to submit his resignation.

3. Chairman of the Council of Ministers:

The Chief Minister presides over the meetings of the Cabinet. He prepares the agenda of its meetings, communicates it to the ministers and then presides over these. He can summon such meetings at any time. As chairman of the Cabinet he plays a key role in the deliberations held and the decisions taken.

4. Main Link between the Governor and the Council of Ministers:

The Chief Minister is the main link between the Governor and the Ministers. It is his duty to communicate to the Governor all the decisions of the Cabinet. He is also required to furnish such information about administration and legislative proposals, as the Governor may call for.

5. Role as the Chief Coordinator:

The Chief Minister has the prime responsibility of coordinating the work of all departments of the government. He has to see that all the ministers may work as a team and help each other. He resolves the conflict or deadlocks between any two or more departments. His decisions supersede the decisions of his ministers.

6. Role as Leader of the State Legislative Assembly:

The Chief Minister is the leader not only of his party but also of the Legislative Assembly. His status as a leader of the majority party bestows upon him this role. In this capacity, he has to lead the House in the right direction. He acts as the spokesman of the government and makes all important announcements of his government. He is the chief defender of the policies of the government.

7. Appointment-making Powers:

All the major appointments and promotions are made by the Governor on the advice of the Chief Minister. Other ministers have to depend upon the Chief Minister for the acceptance of their recommendations.

8. Power of getting the State Legislature Dissolved:

The Chief Minister has the right to advise the Governor to dissolve the State Legislative Assembly, in case he finds that the government cannot be carried on in accordance with the provisions of the Constitution or in case he is likely to lose the majority. Normally such advice is given by the Chief Minister on the basis of political considerations. The advice is binding upon the Governor when the Chief Minister still has a majority support. In case of a split in his party, the Governor can, however, try for making an alternative government.

Position of the Chief Minister:

The Chief Minister of a state occupies a powerful position in the state. He is the maker of the State Council of Ministers which always works under his leadership. The ministry-making begins with the appointment of the Chief Minister. The Governor always accepts his advice in the formation of the Council of Ministers.

He is the chief advisor to the Governor, the leader of the majority party in the state legislature, and the most important leader of his party. He represents the whole of the state. He enjoys vast powers of appointment and promotion, normally; the Governor always depends upon his advice.

The Chief Minister is the chief architect of the policies of the state government. The state administration works under his stewardship. His position in the state is similar to the one enjoyed by the Prime Minister in the centre. His office is the most powerful office in the state.

The real role of the Chief Minister in the state depends upon several factors:

- (i) The personality of the person who occupies the office.
- (ii) His hold over his political party.
- (iii) His leadership qualities.
- (iv) The extent of majority that his party enjoys in the State Legislative Assembly.
- (v) The nature of relationship between the State and the Centre.
- (vi) The personality and role of the Governor of the State.
- (vii) The level of public support behind the policies of his government.

STATE LEGISLATURE: Organisation and Powers

The Constitution of India provides for a legislature in each State and entrusts it with the responsibility to make laws for the state. However, the composition of a state Legislature can be different in different states. It can be either bicameral or unicameral.

In case of a bicameral state legislature, the upper house is known as State Legislative Council (Vidhan Parishad) and the lower house as the State Legislative Assembly (Vidhan Sabha). Where there is only one House of the State Legislature, it is known as the State Legislative Assembly.

Method of Abolition or Creation of a State Legislative Council: The power to establish or abolish the Legislative Council in a state belongs to the Union Parliament. It can do it by enacting a law. The Parliament, however, acts when the Legislative Assembly of the concerned state passes a desired resolution by a majority of its total membership and by a majority of not less than two-thirds of the members of the State Legislative Assembly present and voting.

Organisation of a State Legislature:

(A) Composition of the State Legislative Assembly (Vidhan Sabha): The State Legislative Assembly, popularly known as Vidhan Sabha, is the lower, directly elected, popular and powerful house of the state legislature. Its membership is in proportion to the population of the state and hence it differs from state to state. The members are directly elected by the people of the state through a secret ballot, simple majority vote victory and single member territorial constituency system. Karnataka Legislative Assembly has 224 members.

A citizen of India, who is not less than 25 years of age and who fulfills every other qualification as laid down by a law can become its member by winning an election from any constituency in the state. However, no person can simultaneously be a member of two Houses of the Parliament or of any other State Legislature.

The normal term of Legislative is 5 years. However, it can be dissolved by the Governor at any time. It can be suspended or dissolved when an emergency under Art. 356 is proclaimed in the state.

(B) Composition of State Legislative Council:

At present only 6 States — Andhra Pradesh, UP, Maharashtra, Karnataka, J&K and Bihar—have Legislative Councils. The popular name of the State Legislative Council is Vidhan Parishad. The total membership of a Legislative council cannot be normally less than 40 and more than 1/3rd of the total membership of the State Legislative Assembly.

The following formula is used:

- (i) 1/3rd members are elected by the members of State Legislative Assembly.
- (ii) 1/3rd members are elected by local bodies of the state.
- (iii) 1/12th members are elected by teachers of at least three years standing, serving educational institutions of the state.
- (iv) 1/12 members are elected by state university graduates of not less than three years-standing.
- (v) 1/6th members are nominated by the Governor of the state.

Any citizen of India who is not less than 30 years of age, who possesses all the qualifications as laid down by the Parliament, who is not a member of any other legislature or Union Parliament can become a member of the State Legislative Council either by winning an election or by securing Governor's nomination. Legislative council is a semi-permanent House. It is never dissolved as a whole. 1/3rd of its members retire after every 2 years. Each member has a term of 6 years.

Powers and Functions of a State Legislature:

1. Legislative Powers: The State Legislature can make laws on the subjects of the State List and the Concurrent List. It can enact any bill on any subject of State List, which becomes an Act with the signatures of the Governor.

Further, in case a law made by the State Legislature on a concurrent subject comes into conflict with a Union Law on the same subject, the latter gets precedence over the former.

A bill passed by the Legislative Assembly and rejected by the Legislative Council or not decided upon by the latter within 3 months, when re-passed by the Legislative Assembly becomes an Act after the expiry of one month from the date on which it was sent to the Legislative Council a second time.

A bill first passed by the Legislative Council becomes an Act only when it gets the approval of the Legislative Assembly. Thus, Legislative Council can only delay the passing of an ordinary bill by a maximum of 4 months. In case the State Legislature is a unicameral body, all the law-making powers are exercised by the Legislative Assembly.

2. Financial Powers: The State Legislature has the power to levy taxes in respect of all subjects of the State List. It is the custodian of the finances of the state. No revenue can be collected or tax can be levied or collected by the state government without the consent of the State Legislature. The budget and all other financial policies and programmes of the state government become operational only after getting an approval from the State Legislature.

A money bill can be introduced only in the Legislative Assembly and after passage it goes to the Legislative Council. The latter can delay its passage for only 14 days. In case, it rejects or amends the bill, the decision of the Legislative Assembly prevails.

3. Power to control the Executive: Control over the State Council of Ministers is exercised by the State Legislative Assembly. Little role has been assigned to the State Legislative Council. The State Chief Minister is the leader of majority in the State Legislative Assembly. The State Council of Ministers is collectively responsible before the Legislative Assembly.

The latter can cause the fall of the ministry by passing a vote of no-confidence or by rejecting a bill or policy or budget sponsored by the Council of Ministers. The State Legislative Council can exercise only a limited control over the ministry by putting questions and supplementary questions to the ministers.

4. Other Powers:

The State Legislature, particularly its Legislative Assembly, exercises several other powers.

- a) The elected members of the Legislative Assembly (MLAs) participate in the election of the President of India.
- b) They also elect representatives of the state in the Rajya Sabha.
- c) Certain constitutional amendments can be made by the Union Parliament only with the ratification by at least half of the State Legislatures.

The state legislature considers the reports of the State Public Service Commission, State Auditor General, and others. It also acts as a forum for ventilation of the grievances of the people. The State Legislative Assembly has the right of adopting a resolution for the creation or abolition of the State Legislative Council.

Position of a State Legislature:

The State Legislature occupies the same position in a state as is the position of the Parliament in the Union. There is, however, a difference of degree in their relative powers. Indian Unitarian Federalism makes the Union Parliament more powerful than each state legislature. Further, there are several specific limitations on the powers of a state legislature.

JUDICIARY IN INDIA

The Constitution of India provides for a single integrated judicial system with the Supreme Court at the apex, High Courts at the middle (state) level and District Courts at the local level. It also provides for an independent and powerful judicial system. Judiciary in India acts as the guardian protector of the Constitution and the fundamental rights of the people.

Salient Features of Indian Judiciary:

1. Single and Integrated Judicial System:

The Constitution establishes a single integrated judicial system for the whole of India. The Supreme Court of India is the highest court of the country and below it are the High Courts at the state level. Other courts (Subordinate Courts) work under the High Courts. The Supreme Court controls and runs the judicial administration of India. All courts in India form links of a single judicial system.

2. Independence of Judiciary:

The Constitution of India makes judiciary truly independent.

It provides for:

- (i) Appointment of judges by the President,
- (ii) High qualifications for appointment as judges,
- (iii) Removal of judges by a difficult method of impeachment,
- (iv) High salaries, pension and other service benefits for judges,
- (v) Independent establishment for the Judiciary, and
- (vi) Adequate powers and functional autonomy for the Judiciary.

All these features together make the Indian Judiciary an independent judiciary.

3. Judiciary as the Interpreter of the Constitution:

The Constitution of India is a written and enacted constitution. The right to interpret and clarify the Constitution has been given to the Supreme Court. It is the final interpreter of the provisions of the Constitution of India.

4. Judicial Review:

The Constitution of India is the supreme law of the land. The Supreme Court acts as the interpreter and protector of the Constitution. It is the guardian of the fundamental rights and freedoms of the people. For performing this role, it exercises the power of judicial review. The Supreme Court has the power to determine the constitutional validity of all laws. It can reject any such law which is held to be unconstitutional. High Courts also exercise this power.

5. High Court for each states as well a Provision for Joint High Courts:

The Constitution lays down that there is to be a High Court for each state. However, two or more states can, by mutual consent, have a Joint High Court.

6. Guardian of Fundamental Rights:

Indian judiciary acts as the guardian of fundamental rights and freedoms of the people. The people have the Right to Constitutional Remedies under which they can seek the protection of the courts for preventing a violation or for meeting any threat to their rights. The Supreme Court and the High Courts have the power to issue writs for this purpose.

7. Separation of Judiciary from the Executive:

The Constitution of India provides for a separation between the judiciary and the other two organs of the government. The judiciary is neither a branch of the executive nor in any way subordinate to it. The judicial administration in India is organised and run in accordance with the rules and orders of the Supreme Court.

8. Judicial Activism:

Indian Judicial System has been becoming more and more active. The Supreme Court has been coming out with judicial decisions and directives aimed at active protection of public interest and human rights. Judiciary has been giving directives to public officials for ensuring a better security

for the rights of the public. The Public Interest Litigation system has been picking up. The system of Lok Adalats has also taken a proper shape and health.

11. Public Interest Litigation System:

Under this system the courts of law in India can initiate and enforce action for securing any significant public or general interest which is being adversely affected by the action of any agency, public or private. Under it any citizen or a group can bring to notice any case demanding action for protecting and satisfying a public interest.

SUPREME COURT OF INDIA: Structure & Jurisdiction

The Supreme Court is the apex level court and the court of final appeal in India. The Constitution (Article 124) provides: "There shall be, a Supreme Court of India." It enjoys supreme judicial authority in the country. The whole of judicial administration is organised and run in accordance with the orders and rules of the Supreme Court. Its decisions bind all courts, all people and all institutions. No appeal lies against its decisions.

(A) Organisation:

1. Composition of the Supreme Court:

At the time of the inauguration of the Constitution, the Supreme Court consisted of one Chief Justice and seven other Judges. Presently, the Supreme Court consists of a Chief Justice and thirty other Judges.

2. Method of Appointment of Judges:

The judges of the Supreme Court are appointed by the President after consultation with some sitting Judges of the Supreme Court and the High Courts in the states. In the appointment of other judges, the President consults the Chief Justice of the Supreme Court and while appointing the Chief Justice, he consults other judges or some of them.

3. Qualifications for the Judges:

- (i) He is a Citizen of India;
- (ii) He has been, for at least 5 years, a judge of a High Court or
- (iii) He has been an advocate of a High Court for at least ten years; or
- (iv) He is, in the opinion of the President, a distinguished jurist.

4. Term of Office:

A Judge of the Supreme Court holds office until he attains the age of sixty five years.

5. Method of Removal of Judges:

The Constitution provides for a difficult method of removal of judges. They can be removed only on the ground of proven misbehavior or incapacity. Judges can be removed by impeachment.

6. Salary and Allowances:

The Chief Justice of India and every other judge draws a monthly salary of Rs2.80 lakh and Rs. Rs2.50 lakh respectively. These salaries are charged on the Consolidated Fund of India and hence are not subject to Parliament's vote. Besides the salary, every judge draws several other allowances, and upon retirement is entitled to a pension.

(B) Jurisdiction of the Supreme Court of India:

(1) Original Jurisdiction:

The Supreme Court can directly hear several cases which cannot be heard by any other court. It constitutes its original jurisdiction.

In involves following cases:

- (i) Disputes between the Government of India and one or more States.
- (ii) Disputes between the Government of India and any State or States on the one side and one or more States on the other.
- (iii) Disputes between two or more States which involves any question on which the existence of a legal right depends.

In other words, all legal disputes between the centre and states and among the states can be heard and settled by the Supreme Court.

2. Appellate Jurisdiction:

The Supreme Court is the highest court of appeal in all civil and criminal cases. It can hear appeals against the decisions of the State High Courts, and this constitutes its Appellate Jurisdiction. The appeal can come before the Supreme Court in case the High Court issues a certificate to this effect.

In civil cases there can be an appeal against the judgment of the High Court when the latter certifies that:

- (i) The case involves a substantial question of law of general importance; or
- (ii) In the opinion of the High Court the said question needs to be decided by the Supreme Court.

In criminal cases an appeal lies from any judgement given by the High Court if:

- (i) The High Court has reversed an order of acquittal of an accused and sentenced him to death; or
- (ii) The High Court has withdrawn for trial a case from any subordinate court and awarded death sentence to the accused ; or
- (iii) The High Court certifies that the case is fit for appeal to the Supreme Court.

3. Advisory Jurisdiction:

The President of India can seek the advice of the Supreme Court in respect of any legal matter of high public importance. In such a case the Supreme Court has to give its advisory opinion to the President. However, such an advice is not binding upon the President.

4. Jurisdiction in respect of Fundamental Rights:

The Supreme Court has the power to issue writs for the enforcement of the Fundamental Rights of the people. It acts as the guardian protector of the fundamental rights of the people.

5. Power to Interpret and Protect the Constitution:

The Constitution of India is the supreme law of the land. The Supreme Court acts as the final interpreter and guardian of the Constitution. It has the power to reject any law which it finds to be unconstitutional. It can determine the constitutional validity of all laws which are challenged before it. This is known as the Court's power of Judicial Review.

6. Supreme Court as the Court of Record:

The Supreme Court is a Court of Record. Its decisions bind all courts in India. High Courts and Subordinate Courts use its decisions/judgments as laws and decide the cases before them. Records of the Supreme Court are admitted as Final evidences and cannot be questioned when these are produced and referred to in any court of India.

7. Power to Review its own Judgements:

The Supreme Court has the power to review its own decisions. At any time it can change or revise its earlier Judgements.

The High Courts of India: Structure & Jurisdiction

Article 214 says that every State has a High Court operating within its territorial jurisdiction. But the Parliament has the power to establish a common High Court for two or more States (Article 231). For Instance, Punjab and Haryana have a common High Court. Similarly there is one High Court for Assam, Nagaland, Meghalaya, Manipur and Tripura.

Composition of High Courts:

- (i) Every High Court shall consists of a Chief Justice and such other judges as the President of India may from time to time appoint.

Appointment and Conditions of Office of a Judge of a High Court:

Every Judge of a High Court shall be appointed by the President. In making the appointment, the President shall consult the Chief Justice of India,

Tenure:

A Judge of the High Court shall hold office until the age of 62 years.

Salary and Allowances of the Judges:

It is provided that the judges of the High Court shall draw such salaries and allowances, as the Parliament may by law fix from time to time. According to the revision in 1998 the salaries are: the Chief Justice Rs. 30,000 p.m.; any other judge Rs. 26,000 p.m. In addition they will also be entitled

Jurisdiction of High Courts:

The constitution does not attempt detailed definitions or classification of the different types of jurisdiction of the High Courts. It was presumed that the High Court's which were functioning with well-defined jurisdiction at the time of the framing of the Constitution would continue with it and maintain their position as the highest courts in the States.

Besides, the original and appellate jurisdiction, the Constitution vested in the High Court's four additional powers:

- (1) The power to issue writs or orders for the enforcement of Fundamental Rights
- (2) the power of superintendence over subordinate courts;
- (3) The power to transfer cases to themselves pending in the subordinate courts involving interpretation of the Constitution; and
- (4) The power to appoint officers.

(a) Original and Appellate Jurisdiction:

The High Courts are primarily courts of appeal. Only in matters of admiralty, probate, matrimonial, contempt of Court, enforcement of Fundamental Rights and cases ordered to be transferred from a lower court involving the interpretation of the Constitution to their own file, they have original jurisdiction.

(b) Power of Superintendence and Transfer:

Every High Court has a power of superintendence over all courts and tribunals throughout the territory in relation to which it exercises jurisdiction, excepting military tribunals [Art. 227]. This power of superintendence is a very wide power in as much as it extends to all courts as well as tribunals within the State, whether such court or tribunal is subject to the appellate jurisdiction of the High Court or not.

(c) Writ Jurisdiction:

Article 226 of the Constitution empowers every High Court, throughout the territories in relation to which it exercises jurisdiction to issue to any person or authority, including in appropriate cases, any Government, within those territories, directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warrantor and certiorari, or any of them, for the enforcement of any of the Fundamental Rights and for any other purpose.

(d) Court of Record:

The High Court is a court of record and has all the powers of such a court including the power to punish for contempt of itself. The two characteristics of a court of record are that the records of such a Court are admitted to be of evidentiary value and that they cannot be questioned when produced before any court and that it has the power to punish for contempt of itself. Neither the Supreme Court nor the Legislature can deprive a High Court of its power of punishing contempt of itself.

FEDERALISM IN INDIA - FEATURES

1. Written Constitution: The Indian Constitution is a written document containing 444 Articles and 12 schedules, and therefore, fulfils this basic requirement of a federal government. In fact, the Indian Constitution is the most elaborate Constitution of the world.

2. Supremacy of the Constitution: India's Constitution is also supreme and not the hand-made of either the Centre or of the States. If for any reason any organ of the State dares to violate any provision of the Constitution, the courts of laws are there to ensure that dignity of the Constitution is upheld at all costs.

3. Rigid Constitution: The Indian Constitution is largely a rigid Constitution. All the provisions of the Constitution concerning Union-State relations can be amended only by the joint actions of the State Legislatures and the Union Parliament. Such provisions can be amended only if the amendment is passed by a two-thirds majority of the members present and voting in the Parliament (which must also constitute the absolute majority of the total membership) and ratified by at least one-half of the States.

4. Division of Powers: In a federation, there should be clear division of powers so that the units and the centre are required to enact and legislate within their sphere of activity and none violates its limits and tries to encroach upon the functions of others. This requisite is evident in the Indian Constitution.

The Seventh Schedule contains three Legislative Lists which enumerate subjects of administration, viz., Union, State and Concurrent Legislative Lists. The Union List consisted of 97 subjects, the more important of which are defence, foreign affairs, railways, posts and telegraphs, currency, etc.

The State List consisted of 66 subjects, including, inter-alia public order, police, administration of justice, public health, education, agriculture etc. The Concurrent List embraced 47 subjects including criminal law, marriage, divorce, bankruptcy, trade unions, electricity, economic and social planning, etc.

The Union Government enjoys exclusive power to legislate on the subjects mentioned in the Union List. The State Governments have full authority to legislate on the subjects of the State List under normal circumstances. And both the Centre and the State can't legislate on the subjects mentioned in the Concurrent List, The residuary powers have been vested in the Central Government.

5. Independent Judiciary: In India, the Constitution has provided for a Supreme Court and every effort has been made to see that the judiciary in India is independent and supreme. The Supreme Court of India can declare a law as unconstitutional or ultra Vires, if it contravenes any provisions of the Constitution. In order to ensure the impartiality of the judiciary, our judges are not removable by the Executive and their salaries cannot be curtailed by Parliament.

6. Bicameral Legislature: A bicameral system is considered essential in a federation because it is in the Upper House alone that the units can be given equal representation. The Constitution of India also provides for a bicameral Legislature at the Centre consisting of Lok Sabha and Rajya Sabha. While the Lok Sabha consists of the elected representatives of people, the Rajya Sabha mainly consists of representatives elected by the State Legislative Assemblies. However, all the States have not been given equal representation in the Rajya Sabha.

7. Dual Government Polity: In a federal State, there are two governments—the national or federal government and the government of each component unit. But in a unitary State there is only one government, namely the national government. So, India, as a federal system, has a Central and State Government.

LOCAL GOVERNMENT -Panchayats –Powers and functions

To participate in decision making processes concerning one's immediate environment with a bearing on one's own day-to-day life makes democratic commonsense.

A Panchayat essentially means a body of five (Panch) members who were elected or chosen by people in the villages and were accepted as leaders who would guide all socioeconomic activities of the village and would also be the arbitrators to a judicial tribunal in matters of any dispute among the members of the community.

The Panchayats serve as the backbone of our democratic institutions around which the entire fabric of social and economic activity of the village rested. Thus for all practical purposes, the Panchayat was a body that regulated the life of the community living in a village.

Panchayati Raj has been accepted as goal and incorporated in the Article 40 of the Constitution of India. The Article states that the state shall take steps to organise village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government.

The main object of introducing Panchayat system is to extend democracy up to the grass-roots level and to ensure involvement of people in all governmental process and development activities. It is now accepted by all rational people that no country can make progress in nation-building work unless people at large come forward with due enthusiasm to actively participate in developmental activities.

The state of Rajasthan was the first to launch the Panchayati Raj on 2nd October, 1959, Andhra Pradesh followed in November 1959.

Article 40 of the Indian constitution directs the government to establish panchayats to serve as institutions of local self-government. Most states implemented this directive principle along the lines of the recommendations of the Balwantarai Mehta Commission Report.

The commission recommended a 'three-tier' system of Panchayati Raj institutions (PRIs), viz. the popularly elected village council (gram panchayat) as the village level basic unit. Block (block is the larger sub unit of a district) council (or panchayat saphithi) at the Block level, and the district council (or the Zilla Parishad) at the district level. Introduction of PRIs was hailed as one of the most important political initiatives in India.

73rd and 74th Constitution Amendments:

Given its far-reaching consequences, the 73rd Amendment (together with the 74th) is rightly called 'a silent revolution' for various reasons. First of all, the Panchayat Raj Institutions no longer operate at the whim of state governments and their laws. They are now a part of the Constitution and enjoy the status of institutions of self-government, as parliament at the federal level and legislative assemblies at the state level.

The amendment prescribes regular elections every five years and election within six months of the dissolution of any Panchayat Raj Institution. To ensure free, fair, and timely elections there is a provision for the setting up of state election commission. The most revolutionary provision is the reservation of one-third of the seats for women in local bodies, along with reservation of seats for scheduled castes and scheduled tribes in proportion to their regional populations.

The amendment lays down 29 functions to be entrusted to the Panchayat Raj Institutions. To maintain a democratic ethos, popular accountability, and transparency, the amendment emphasises the need for periodic meetings of the gram sabha, composed of all adults in each village. These meetings will approve ongoing programmes and financial allocations. In brief, the amendment visualises the allocation of funds, functions, and functionaries to these bodies to ensure genuine and effective democratic decentralisation.

The Constitutional Amendment Bill came into effect from April 24, 1994. Principally, it gave:

- i. The panchayats constitutional status (previously panchayat matters were considered as state subjects);
- ii. An institutionalised three tier system at village, block and district levels;
- iii. The amendment stipulated that all panchayat members be elected for five year term in the elections supervised by the state election commission.

Further, the state legislature may:

- i. Authorise a panchayat to levy, collect and appropriate such taxes, duties, tolls and fees in accordance with laid down procedures and limits;
- ii. Assign to a panchayat such taxes, duties, tolls and fees levied and selected by the state government to be used for specific purposes subject to specified conditions and limits; and
- iii. Provide grants-in-aid to the panchayats from the consolidated fund of the state.

Functions of Panchayats in India

There are certain functions, which are performed by the Village Panchayats of India. Some of these functions are mentioned below:

1. Agriculture, including agricultural extension
2. Supply of safe and clean drinking water
3. Women and child development
4. Adult and non-formal education
5. Poverty alleviation programs
6. Rural electrification, including distribution of electricity
7. Animal husbandry, dairy and poultry
8. Village and cottage industries
9. Health and sanitation inclusive of primary health centers, dispensaries and hospitals
10. Social and farm forestry
11. Land improvement and reforms
12. Water management and minor irrigation
13. Public distribution system
14. Rural housing
15. Roads and other means of communication

Election Commission – Organisation and functions

The Election Commission of India (ECI) is a self-governing constitutional body which oversees the election process in India as per the Constitution of India. The ECI was set up on January 25 1950, with the aim of defining and controlling the multi-tiered election process in our country. The Election Commission of India administers the election process from the President of India to the State Legislative Assembly.

As per Article 324 of the Indian Constitution, ECI has the supervisory and directional control of the complete process election to Parliament and Legislature of every State and to the office of the President and the Vice-President of India.

Structure

The ECI consists of a Chief Election Commissioner and 2 other Election Commissioners. The multi-member ECI works on the power of majority vote.

Appointment & Tenure of Commissioners

- The Chief Election Commissioner and the Election Commissioner are appointed by the President of India.
- Each of them holds their offices for a period of 6 years or up to the age of 65 years, whichever comes first.
- They receive the same perks and pay as Supreme Court Judges.
- The only way a Chief Election Commissioner can be removed from office is upon an order of the President supported by the Parliament.
- The Election Commissioner or Regional Commissioner can only be removed from office by the Chief Election Commissioner.

Role of Election Commission of India

ECI plays a crucial role in organising elections. The most significant role of the Election Commission of India is to ensure free and fair elections as per the norms and the Model Code of Conduct. It is in charge of monitoring the actions and activities of the political parties and candidates.

Functions of the Election Commission of India

- i. ECI is responsible for a free and reasonable election
- ii. It ensures that political parties and candidates adhere to the Model Code of Conduct
- iii. Regulates parties and registers them as per eligibility to contest in elections
- iv. Proposes the limit of campaign expenditure per candidate to all parties and monitors the same.
- v. It is mandatory for all political parties to submit annual reports to the ECI in order to be able to claim the tax benefit on the contributions.
- vii. Guarantees that all political parties regularly submit audited financial reports.
- viii. Supervise, control and conduct all elections to Parliament and State Legislatures
- ix. Set general rules for election.
- x. Prepare electoral rolls
- xi. Determine territorial distribution of constituencies
- xii. Allot election symbols to political parties or candidates
- xiii. Appoint tribunals for the decision of doubts and disputes arising out of an election to Parliament and State Legislatures.

Model Code of Conduct

EC first issued a Model Code of Conduct for political parties at the time of the fifth general elections, held in 1971. Since then, the Code has been revised from time to time and lays down guidelines as to how political parties and candidates should conduct themselves during elections.

A provision was made under the Code that from the time the elections are announced by the Commission, Ministers and other authorities cannot announce any financial grant, make promises of construction of roads, carry out any appointments in government and public undertakings which may have the effect of influencing the voters in favor of the ruling party.

The Right to Information Act, 2005 of India

The Right to Information Act came into force all over India on October 12, 2005 (120th day of its enactment on 15th June, 2005). With the passing of the Right of Information Act on the aforesaid date, a faceless citizen is now blessed with a tool with the help of which he can now demand from the high and mighty in the government to know the details of every action they take, professedly on behalf of the people. The Act gives the citizens a right to information at par with the Members of Parliament and the Members of State Legislatures. According to the Act, the information, which cannot be denied to the Parliament or a State Legislature, shall not be denied to any person.

The basic object of the Right to Information Act is to empower the citizens, promote transparency and accountability in the working of the Government, contain corruption, and make our democracy work for the people in real sense. This Act allows the public to seek information from any governmental department, thereby increasing accountability and transparency of the establishment, and allowing it to share power with the humblest and poorest of the society.

Now India has joined the sixty odd countries around the world which have this provision in their respective constitutions. There are around 40 other countries waiting to join this group of enlightened democracies.

Transparency is an important feature of good governance. The Right to information is the backbone of a democracy. This right has been derived from the fundamental right to freedom of speech, subject to reasonable restrictions imposed by the Constitution of India.

Red tapism, bureaucracy and babudom often used the Official Secrets Act to keep information away from the public and the press. The right to information thus seeks to set limitations to the iron curtain of governmental secrecy.

Provisions:

Information in this regard means any material in any form relating to the administration, operations or decisions of a public authority. This would encompass any authority or body established or constituted by or under the Constitution, by any law made by the Government, and includes any other body owned, controlled or substantially funded directly or indirectly by the Government.

The right to Information includes the right to:

- (a) Inspect works, documents, records,
- (b) Take notes, extracts or certified copies of documents or records,
- (c) Take certified samples of material.
- (d) Obtain information in form of printouts, diskettes, floppies, tapes, video cassettes or in any other electronic mode but does not include "file notings".

PUBLIC INTEREST LITIGATION

Public Interest Litigation (PIL), means a legal action initiated in a court of law for the enforcement of public interest or general interest in which the public or class of the community have pecuniary interest or some interest by which their legal rights or liabilities are affected."

Public Interest Litigation's explicit purpose is to alienate the suffering off all those who have borne the brunt of insensitive treatment at the hands of fellow human being. Transparency in public life & fair judicial action are the right answer to check increasing menace of violation of legal rights. Traditional rule was that the right to move the Supreme Court is only available to those whose fundamental rights are infringed.

A Public Interest Litigation (PIL) can be filed in any High Court or directly in the Supreme Court. PIL is a right given to the socially conscious member or a public spirited NGO to espouse a public cause by seeking judicial for redressal of public injury. Such injury may arise from breach of public duty or due to a violation of some provision of the Constitution. Public interest litigation is the device by which public participation in judicial review of administrative action is assured. It has the effect of making judicial process little more democratic.

Public Interest litigation, itself says that this is a litigation for any public interest. In the words of some learned people we can say that public interest litigation in a litigation which can be filed in any court of law by any public spirited person for the protection of "public interest."

Public interest litigation is not defined in any statute or any act. It has been interpreted by judge to consider the intent of public at large. This is just like a writ petition which is filed in high court or Supreme Court under article 226 for high court and article 32 for Supreme Court. When public interest is affecting at large then this can be filed but affection on only one person is not a ground for filing this petition. The essential point for that person who can file any public interest litigation are

- He is a member of the public acting bona fide and having sufficient interest in instituting an action for redressal of public wrong or public injury.
- He is not a mere busy body or a meddlesome interloper.
- His action is not motivated by personal gain or any other oblique consideration.

Public interest litigation can be filed only in that case where any “public interest” is affecting at large. There are some various area where a public interest litigation can be filed.

- Violation of basic human rights of the poor.
- Content or conduct of government policy.
- Compel municipal authorities to perform a public duty.
- Violation of religious rights or other basic fundamental rights.

These are the main area where any public interest litigation can be filed against State/Central Govt., Municipal Authorities, and not any private party. However private party can be included in this as a respondent along with the state authorities. This petition is filed in high court or Supreme Court just a same manner as other writ petition filed. There is some fee for this purpose and its hearing proceeds are also just like other cases. In early 90’s a judge had treated a complaining through post card as public interest litigation which may be treated as writ of public interest litigation.

QUESTION PAPER PATTERN

Indian Constitution/Human Rights/ Gender Equity/Environmental Studies

Time: 2 hours Maximum

Marks: 40

Section A

Answer any **10** questions from the following in 2 or 3 sentences

(10 x 2 = 20)

TOAL NO. OF QUESTIONS: 15

Section B

Answer any **4** questions from the following in about 300 words

(4 x 5 = 20)

TOAL NO. OF QUESTIONS: 8