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Meaning of the Constitution Law and Constitutionalism

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1.1 Introduction

- ▶ The concepts of constitution and constitutionalism refer to the legal framework of a country.
- ▶ While the constitution is often defined as the supreme law of country constitutionalism is a system of governance under which the power of the government is limited by the rule of law.
- ▶ Constitutionalism recognizes the need for limiting the concentration of power in order to protect the rights of groups and individuals.
- ▶ In such a system, the power of the Government can be limited by the constitution and by the provisions and regulations contained in it but by other measures and norms.
- ▶ In order to understand the five concepts as well as their similarities and differences, it is important to understand their history and evolution.
- ▶ The idea of the constitution has changed significantly compare, to the first examples seen in ancient Greece, while the concept of constitutionalism has growl around the principle that the authority of the government is derived from and limited by a set of rules and laws.

1.2 Meaning of Constitution

- ▶ The definition of the constitution is quite complex and he significantly evolved during the last two centuries.
- ▶ According to the Western conception, the constitution is the document that contains the basic and fundamental law of the nation, setting out the organization of the Government and the principles of the society.
- ▶ Yet, although many countries have a written constitution, we continue to see the phenomenon of 'living constitution' in many parts of the world. As society change, so do laws and regulations.
- ▶ Furthermore, in some cases, there is no single document that defines all aspects of the state, but rather several different documents and agreements that define the power of the government and provide a comprehensive although not unitary legal framework. Constitution has also been defined as:
 - Basic norm (or law) of the state
 - System of integration and organization of norms and laws; and
 - Organization of the government.
- ▶ The Constitution provides the foundation of the government, structuring the political organization and guaranteeing individual and collective rights and freedoms.

1.3 Meaning of Constitutionalism

- ▶ Constitutionalism is a system of governance in which the power of the government is limited by laws. checks and balances. in order to reconcile authority with individual and collective freedoms.
- ▶ The principle of constitutionalism must be understood in opposition to non-constitutionalism. a system in which the government uses its powers in an arbitrary fashion. without respecting the citizen's rights.

- ▶ The idea of constitutionalism (and of the constitution) is strictly linked with the progress and spread of democracies.
- ▶ In monarchic, totalitarian and dictatorial sr.sreins there is generally no constitution or, if it exists it is not respected. Individual and collective rights are often disregarded in dictatorial regimes, and the government cannot be held accountable as there is no legal document that defines its limits.
- ▶ The concept of constitutionalism has evolved during the last few centuries thanks to political changes and the progress of democratic ideals.

1.4 Difference Between Constitution and Constitutionalism

- ▶ The main difference between constitution and constitutionalism lies in the fact that the constitution is generally a written document, created by the government (often with the participation of the civil society), while constitutionalism is a principle and a system of governance that respects the rule of law and limits the power of the Government.
- ▶ Most modern constitutions were written years ago, but laws and norms had already been evolving and mutating for centuries, and continue to do so.
- ▶ The constitution (and laws in general) is a living entity that should adapt to the changing features of the modern world and of modern societies. Failing to adopt the constitution without losing its core principles and values - may lead to an obsolete and unadapted governance system.
- ▶ The concepts of constitution and constitutionalism are strictly linked, but the second is much more than just the respect and enforcement of the national constitution (as the term might suggest).
- ▶ The creation of a constitution is the result of years of progress and evolution, but, in some cases like in Japan, the constitution can be imposed by invading or opposing forces, and may not embody the key values and principles that characterize a society.
- ▶ Building on the differences outlined in the previous section, we can identify, a few other aspects that differentiate the constitution and constitutionalism.

1.5 References

M Laxminath "Indian Polity" 4th Edition 2013 Tata McGraw Hill Publication.

Durga Das Basu" Introduction to Constitution of India"

Tejpal Sheth" Indian Constitution"1st Edition 2018 Mahajan Publication.

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History of Indian Constitution

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2.1 Introduction

- ▶ The British company known as English East India Company came to India in 1600 AD as traders.
- ▶ The Company has exclusive rights to trade in India. In the year 1765, the East India Company obtained 'Diwani' (Rights over revenue and civil justice) of Bengal, Bihar, and Orissa.
- ▶ After the Sepoy mutiny in the year 1858, the British crown assumed direct responsibility for the governance of India. It continued up to August 15, 1947, after India is a free India. (India got independence).
- ▶ Before 1947, India was divided into two main entities.
 - British India which consisted of 11 provinces; and
 - The Princely states ruled by Indian princes under subsidiary alliance policy.
- ▶ The two entities merged together to form the Indian Union, but many of the legacy systems in British India is followed even now.
- ▶ The historical underpinnings and evolution of the Indian Constitution can be traced to many regulations and acts passed before Indian Independence.

2.2 Indian System of Administration

- ▶ Indian democracy is a Parliamentary form of democracy where the executive is responsible to the Parliament.

The Parliament has two houses:

- Loksabha; and
 - Rajya Sabha
- ▶ Also, the type of governance is federal, i.e., there is separate executive and legislature at Center and States.
- ▶ We also have self-governance at local government levels.
- ▶ All these systems owe their legacy to the British administration.
- ▶ Let us see the historical background of the Indian Constitution and its development over the years.

2.3 Regulating Act of 1773

- ▶ Regulating Act of 1773 was the first step taken by the British Parliament to control and regulate the affairs of the East India Company in India.
- ▶ It designated the Governor of Bengal (Fort William) as the Governor-General (of Bengal).
- ▶ Warren Hastings became the first Governor-General of Bengal.
- ▶ Executive Council of the Governor-General was established (four members).
- ▶ There was no separate legislative council.
- ▶ It subordinated the Governors of Bombay and Madras to the Governor-General of Bengal.

- ▶ The Supreme Court was established at Fort William (Calcutta) as the Apex Court in the year 1774.
- ▶ It prohibited servants of the company from engaging in any private trade or accepting bribes from the natives.
- ▶ Court of Directors (the governing body of the company) should report its revenue.

2.4 Pitt's India Act of 1784

- ▶ The commercial and political functions of the company separated.
- ▶ The Court of Directors managed the commercial activities while the Board of Control managed political affairs.
- ▶ It has reduced the strength of the Governor General's council to three members.
- ▶ It placed the Indian affairs under the direct control of the British Government.
- ▶ The company's territories in India were called 'the British possession in India'.
- ▶ Governor's councils were established in Madras and Bombay.

2.5 Charter Act of 1813

- ▶ The East India Company Act 1813, also known as the Charles Act 1813, was an Act of the Parliament of the United Kingdom which renewed the charter issued to the British East India Company and continued the Company's rule in India.
- ▶ The Company's monopoly over Indian trade terminated.

2.6 Charter Act of 1833

- ▶ Governor-General (of Bengal) became as the Governor-General of India,
- ▶ The first Governor-General of India was Lord William Bentick.
- ▶ This was the final step towards centralization in British India.
- ▶ The beginning of a Central legislature for India as the Act also took away legislative powers of Bombay and Madras provinces.
- ▶ The Act ended the activities of the East India Company as a commercial body and it became a purely administrative body.

2.7 Charter Act of 1853

- ▶ The legislative and executive functions of the Governor-General's Council were separated.
- ▶ The council of legislative purposes which had 6 members now was expanded to 12 members.
- ▶ Four out of six members were appointed by the provisional governments of Madras, Bombay, Bengal, and Agra.
- ▶ It introduced a system of open competition as the basis for the recruitment of civil servants of the Company (Indian Civil Service opened for all).

2.8 Government of India Act of 1858

- ▶ The rule of the Company was replaced by the rule of the Crown in India.
- ▶ The powers of the British Crown were to be exercised by the Secretary of State for India. He served assisted by the Council of India having 15 members.
- ▶ He was vested with complete authority and control over the Indian administration through the Viceroy as his agent.
- ▶ The Governor-General was made the Viceroy of India.
- ▶ Lord Canning was the first Viceroy of India.
- ▶ It abolished the Board of Control and Court of Directors.

2.9 Indian Councils Act of 1861

- ▶ It introduced for the first time Indian representation in the institutions like Viceroy's executive and legislative council (non-official). 3 Indians entered the Legislative Council.
- ▶ Legislative Councils were established in the Center and provinces.
- ▶ It provided that the Viceroy's Executive Council should have some Indians as the unofficial members while transacting the legislative businesses.
- ▶ It accorded statutory recognition to the portfolio system.
- ▶ Initiated the process of decentralization by restoring the legislative powers to the Bombay and the Madras Provinces.

2.10 India Councils Act of 1892

- ▶ Introduced indirect elections (nomination).
- ▶ Enlarged the size of the Legislative Councils.
- ▶ Enlarged the functions of the Legislative Councils and gave them the power of discussing the Budget and addressing questions to the Executive.

2.11 Indian Council Act of 1909

- ▶ This Act is also known as the Morley- Minto Reforms.
- ▶ Elections, mainly indirect, were affirmed for all levels of society. The elected Indians were also enabled to debate budgetary and complementary matters and table resolutions.
- ▶ It changed the name of the Central Legislative Council to the Imperial Legislative Council.
- ▶ The member of the Central Legislative Council was increased to 60 from 16.
- ▶ Introduced a system of communal representation for Muslims by accepting the concept of 'separate electorate'.
- ▶ The first time, Indians were given place in Viceroy's Executive Council. (Satyendra Prasad Sinha, as the law member)

2.12 Government of India Act of 1919

- ▶ This Act is also known as the Montague-Chelmsford Reforms.
- ▶ The Central subjects were demarcated and separated from those of the Provincial subjects.
- ▶ The scheme of dual governance, 'Dyarchy', was introduced in the Provincial subjects (i.e., there were two classes of administrators Executive councilors and ministers).
- ▶ Under the dyarchy system, the provincial subjects were divided into two parts - transferred and reserved. On reserved subjects, Governor was not responsible for the Legislative council.
- ▶ The Governor was the executive head of the province. The Governor was in charge of the reserved list along with his executive councilors. The subjects under this list were law and order, irrigation, finance, land revenue, etc.
- ▶ The Ministers were in charge of subjects under the transferred list. The subjects included were education, local government, health, excise, industry public works, religious endowments, etc.
- ▶ The Ministers were responsible for the people who elected them through the legislature.
- ▶ These Ministers were nominated from among the elected members of the Legislative Council.
- ▶ The executive councilors were not responsible to the legislature, unlike the Ministers.
- ▶ The secretary of state and the Governor-General could interfere in matters under the reserved list but this interference was restricted for the transferred list.
- ▶ The Act introduced, for the first time, bicameralism at the center.
- ▶ Legislative Assembly with 140 members and Legislative council with 60 members.
- ▶ A system of direct elections was introduced.
- ▶ The Act also required that three of the six members of the viceroy's Executive council (other than commander-in chief) were to be Indians.
- ▶ Provided for the establishment of a public service commission.

2.13 Government of India Act of 1935

- ▶ The Act provided for the establishment of an All-India Federation consisting of the Provinces and the princely States as units, though the envisaged federation never came into being.
- ▶ Three Lists: The Act divided the powers between the center and the units into items of three lists, namely the Federal List, the Provincial List, and the Concurrent List.
- ▶ The Federal List for the center consisted of 59 items, the provincial List for the provinces consisted of 54 items and the concurrent List for both consisted of 36 items.
- ▶ The residuary powers were vested in the Governor-General.
- ▶ The Act abolished the Dyarchy in the provinces and introduced Provincial Autonomy.
- ▶ It provided for the adoption of Dyarchy at the Centre.
- ▶ It introduced bicameralism in 6 out of the 11 provinces.
- ▶ At the State level, the equivalent of the Lok Sabha is the Vidhan Sabha (Legislative Assembly), and that of the Rajya Sabha is the Vidhan Parishad (Legislative Council).

- ▶ These six Provinces were Assam, Bengal, Bombay, Bihar, Madras and the United Province.
- ▶ A Federal Court was established at Delhi for the resolution of disputes between provinces and also between the center and the provinces. It has Chief Justice and not more than 6 judges.
- ▶ The Indian Council was abolished.
- ▶ The Secretary of State for India would instead have a team of advisors.
- ▶ This Act introduced direct elections in India for the first time. About 10% of the whole population acquired voting rights.
- ▶ Sindh was carved out of Bombay Presidency.
- ▶ Burma was severed off from India.
- ▶ Aden was also separated from India and made into a Crown colony.
- ▶ The British Parliament retained its supremacy over the Indian legislatures both provincial and federal.
- ▶ A Federal Railway Authority was set up to control Indian railways.
- ▶ The Reserve Bank of India was established as per this Act.
- ▶ The Act was a milestone in the development of a responsible constitutional government in India.
- ▶ The Government of India Act 1935 was replaced by the Constitution of India after independence.

2.14 Indian Independence Act of 1947

- ▶ Lord Mountbatten became the first Governor-General of independent India.
- ▶ Jawaharlal Nehru was sworn in as the first Prime Minister of India.
- ▶ Muhammad Ali Jinnah became the first Governor-General of Pakistan.
- ▶ The Act ended the British rule and declared India as an independent and sovereign state from August 15, 1947.
- ▶ It provided for the partition of the country into India and Pakistan.
- ▶ The office of Viceroy was abolished and provided for the Governor-General for each dominion (India and Pakistan) appointed by the king.
- ▶ The Act empowered the constituent assemblies to frame and adopt any constitution.
- ▶ The Indian Independence Act granted freedom to the princely states either to join India or Pakistan or to remain independent.
- ▶ An idea for a Constituent Assembly of India was proposed in 1934 by M. N. Roy, a pioneer of the Communist movement in India and an advocate of radical democracy.
- ▶ It became an official demand of the Indian National Congress in 1935.
- ▶ The constituent assembly constituted in November 1946 under the scheme formulated by the Cabinet Mission plan.
- ▶ The Constituent Assembly met for the first time in New Delhi on 9 December 1946 in the Constitution Hall which is now known as the Central Hall of Parliament House.

- Constituent Assembly declares its firm and solemn resolve to proclaim India as the Independent Sovereign Republic and to draw up for her future governance of India.

2.15 References

M Laxminath "Indian Polity" 4th Edition 2013 Tata McGraw Hill Publication.

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3

Salient Features and Characteristics of the Constitution of India

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3.1 Introduction

- ▶ The constitution of India is a unique constitution It is the largest written liberal democratic constitution of the world.
- ▶ It provides for a mixture of federalism and unitarianism, and flexibility with rigidity. Since its inauguration on 26th January 1950, the Constitution of India has been successfully guiding the path and progress of India. The salient features of the Constitution of India can be discussed as follows:

3.2 Constitution

- ▶ The Constitution is a wholly written document that incorporates the constitutional law of India.
- ▶ It was fully debated and duly enacted by the Constitution Assembly of India.
- ▶ It took the Assembly 2 years, 11 months and 18 days to write and enact the Constitution. Indian Constitution is a very detailed constitution.
- ▶ It consists of 448 Articles divided into 25 Parts with 12 Schedules. It is a constitution of both the Centre and states of the Indian Union.
- ▶ It is indeed much bigger than the US Constitution which has only 7 Articles and the French Constitution with its 89 Articles.

3.3 Self-made and Enacted Constitution

- ▶ Indian Constitution is a constitution made by the people of India acting through their duly elected, and representative body-the Constituent Assembly that was organized in December 1946.
- ▶ Its first session was held on 9th December 1946.
- ▶ It passed the Objectives Resolution on 22nd January 1947.
- ▶ Thereafter, it initiated the process of constitution-making in the right earnest and was in a position to finally pass and adopt the constitution on 26th November 1949.
- ▶ The constitution became fully operational with effect from 26th January 1950.
- ▶ We celebrate this day as our Republic Day The constitution of India is thus a self-made and duly enacted constitution.

3.4 The Preamble of the Constitution

- ▶ The Preamble to the Constitution of India is a well-drafted document which states the philosophy of the Constitution.
- ▶ It declares India to be a Sovereign Socialist Secular Democratic Republic and a Welfare State committed to secure justice, liberty and equality for the people and for promoting fraternity, dignity the individual, and unity and integrity of the nation.
- ▶ The Preamble is the key to the Constitution It states in nutshell the nature of the Indian state and the objectives it is committed to secure for the people.

3.5 India is a Democratic Socialist State

- ▶ Although right from the beginning the Indian constitution fully reflected the spirit of democratic socialism, it was only in 1976 that the Preamble was amended to include the term 'Socialism'.
- ▶ It is now regarded as a prime feature of the Indian state.
- ▶ India is committed to secure social, economic and political justice for its entire people by ending all forms of exploitation and by securing equitable distribution of income, resources and wealth.
- ▶ This is to be secured by peaceful, constitutional and democratic means.

3.6 India is a Secular State

- ▶ India gives special status to no religion.
- ▶ This makes it different from theocratic states like the Islamic Republic of Pakistan or other Islamic countries.
- ▶ Further, Indian secularism guarantees equal freedom to all religions.
- ▶ The Constitution grants the Right to Religious Freedom to all the citizens.

3.7 India is a Democratic State

- ▶ The Constitution of India provides for a democratic system. The authority of the government rests upon the sovereignty of the people.
- ▶ People enjoy equal political rights.
- ▶ On the basis of these rights, the people freely participate in the process of politics. They elect their government.
- ▶ Free fair and regular elections are held for electing governments.
- ▶ For all its activities, the government of India is responsible before the people.
- ▶ The people can change their government through elections.
- ▶ No government can remain in power which does not enjoy the confidence of the people. India is the world's largest working democracy.

3.8 India is a Republic

- ▶ The Preamble declares India to be a Republic.
- ▶ India is not ruled by a monarch or a nominated head of State.
- ▶ India has an elected head of State (President of India) who wields power for a fixed term of 5 years.
- ▶ After every 5 years, the people of India indirectly elect their President.

3.9 India is a Union of States

- ▶ Article I of the Constitution declares, that 'India that is Bharat is a Union of States.'

- ▶ The term 'Union of State' shows two important facts:
 - That Indian Union is not the result of voluntary agreement among sovereign states; and
 - That states of India do not enjoy the right to secede from the Union. Indian Union has now 28 States and 7 Union Territories.

3.10A mixture of Federalism and Unitarianism

- ▶ While describing India as a Union of States, the Constitution provides for a federal structure with a unitary spirit.
- ▶ Scholars describe India as a 'Quasi-Federation' or as 'a federation with a unitary bias, or even as 'a Unitarian federation.

Like a federation, the Constitution of India provides for :

- I wrote, rigid and supreme constitution,
- Independent judiciary with the power to decide center-state disputes and
- Dual administration i.e. central and state administrations. However, by providing a very strong center, a common constitution, single citizenship, emergency provisions, common election commission, common all India services, etc. the Constitution clearly reflects its unitary spirit.
- ▶ India is a federation with some Unitarian features.
- ▶ This mixture of federalism-Unitarianism has been done keeping in view both the pluralistic nature of society and the presence of regional diversities, as well as due to the need for securing unity and integrity of the nation.

3.11A Mixture of Rigidity and Flexibility

- ▶ The Constitution of India is rigid in parts.
- ▶ Some of its provisions can be amended in a difficult way while others can be amended very easily.
- ▶ In some cases, the Union Parliament can amend some parts of the Constitution by passing a simple law.
- ▶ Article 368, of the Constitution, provides for two special methods of amendment:
 - Most of the provisions of the Constitution can be amended by the Union Parliament by passing an Amendment Bill by a majority of total membership and 2/3rd majority of members present and voting in each of its two Houses.
 - For the amendment of some specified parts, a very rigid method has been provided. Under it, first, the Union Parliament passes the Amendment Bill by a majority of total membership and 2/3rd majority of members present and voting in each house. and then it goes to the State Legislatures for ratification. The Amendment gets passed only when it is approved by not less than one-half of the several states of the Union.
- ▶ Thus, the Constitution of India is partly rigid and partly flexible.

3.12 Fundamental Rights

- ▶ Under its Part III (Articles 12 to 35), the Constitution of India grants and guarantees Fundamental Rights to its citizens.
- ▶ It is called the Indian Bill of Rights.
- ▶ Initially, 7 Fundamental Rights were granted but after the deletion of the Right to Property from the list of Fundamental Rights (44th Amendment Act 1979) their number came down to six.

The Six Fundamental Rights are:

Right to Equality - Articles 14-18

- ▶ It provides for Equality before Law, End of Discrimination, Equality of Opportunity, Abolition of untouchability and Abolition of Titles.

Right to Freedom - Articles 19-22

- ▶ It incorporates six fundamental freedoms
 - freedoms of speech and expression,
 - freedom to move freely in India,
 - freedom of residence in any part, and
 - freedom of adopting any profession or trade or occupation.
 - freedom to form associations,
 - freedom to assemble peaceably without arms,
- ▶ It ensures personal freedom and protection in respect of conviction for certain offenses.
- ▶ The Constitution lays down that the freedom of life and liberty
- ▶ cannot be limited or denied except in accordance with the procedure
- ▶ established by law.
- ▶ Now, under article 21A Right to Education for the children between the ages of 6-14 years has been granted.
- ▶ Article 22 guarantees protection against arbitrary arrest and detention.

Right against Exploitation - Articles 23 & 24

- ▶ This Fundamental Right prohibits the sale and purchase of human beings, forced labor (beggar) and the employment of children in hazardous jobs and factories.

Right to Freedom of Religion - Articles 23-28

- ▶ The grant of this right involves the freedom of conscience, religion, and worship.
- ▶ Any person can follow any religion. It gives all religions the freedom to establish and maintain their religious institutions.
- ▶ No person can be compelled to pay any tax for the propagation of any religion.
- ▶ The State cannot levy a tax for any religion and the constitution prohibits the imparting of religious instructions in schools and colleges.

Cultural and Educational Rights - Articles 29-30

- ▶ Under this category, the Constitution guarantees the rights of the minorities to maintain and develop their languages and cultures.
- ▶ It also confers upon them the right to establish, maintain and administer their educational institutions.

Right to Constitutional Remedies Article 32

- ▶ This fundamental right is the soul's entire Bill rights.
- ▶ It provides for the enforcement and protection of Fundamental Rights by the Courts.
- ▶ It empowers the Supreme court and High courts to issue writs for the enforcement of these rights.

Fundamental Duties

According to Article 51 A, it shall be the duty of every citizen of India:

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 that inspired the 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 and to renounce practices derogatory to the dignity of women;
6. to value and preserve the rich heritage of the country's composite culture;
7. to protect and improve the natural environment including forests, lakes, rivers, and wildlife 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; and
11. to provide opportunities for education to his child or ward between the age of six and fourteen years. This duty was added by the 86th Constitutional Amendment Act, 2002.

Emergency Provision

- ▶ Article 352 Announcement of a national emergency
- ▶ Article 356 Provisions for the occasion of the failure of the constitutional system of states
- ▶ Article 360 Provisions regarding the financial crisis
- ▶ Emergency provisions are provided under Articles 352 to 360 of Part VII of the Indian Constitution. The provision of this crisis is considered a distinctive feature of the Indian Constitution. Because it can protect the country. The central government has unique powers in times of crisis.

3.13A Sources of the Constitution at a Glance

Table 3.1 - Constitution Source

US Constitution	Fundamental rights, independence of the judiciary, judicial review, impeachment of the president, removal of Supreme Court and high court judges and post of vice-president.
Irish Constitution	Directive Principles of State Policy, the nomination of members to Rajya Sabha and method of election of the president.
Australian Constitution	Concurrent List, freedom of trade, commerce and intercourse, and a joint sitting of the two Houses of Parliament.
Weimar Constitution of Germany	Suspension of Fundamental Rights during Emergency.
Soviet Constitution (USSR, now Russia)	Fundamental duties and the ideal of justice (social, economic and political) in the Preamble.
French Constitution	The French Constitution Republic and the ideals of liberty, equality, and fraternity in the Preamble.
South African Constitution	Procedure for amendment of the Constitution and election of members of Rajya Sabha.
Japanese constitution	Japanese Constitution Procedure established by Law.

3.14References

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Fundamental Rights

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4.1 Fundamental Rights

- ▶ The Fundamental Rights are defined as the basic human rights of all citizens.
- ▶ These rights, defined in part III of the Constitution, applied irrespective of race, place of birth, religion, caste, creed, or gender.
- ▶ They are enforceable by the courts, subject to specific restrictions as necessary for the protection of public interest.
- ▶ Originally the constitution provided for seven Fundamental Rights viz.
 - Right to equality (Article 14-18)
 - Right to freedom (Article 19-22)
 - Right against exploitation (Article 23-24)
 - Right to freedom of religion (Articles 25-30)
 - Cultural & educational rights (Articles 29-30)
 - Right to Property (Article 31) Removed from the constitution
 - Right to constitutional remedies (Article 32)
- ▶ But, Right to property was removed from the list of the Fundamental Rights by the 44th constitution Amendment Act, 1978 and after amendment, it was made a legal right.
- ▶ At present, there are only six Fundamental Rights. They are described below in brief.

4.2 Right to Equality

- ▶ Right to Equality is the first fundamental right, which brought the end of untouchability.
- ▶ This right stands for the principle of equality before the law as well as social equality and supports the non-discrimination of people on any basis.
- ▶ This right also states that every Indian citizen is equal in front of the law and prohibits discrimination on the grounds only of religion, race, caste, sex, place of birth, or any other grounds.
- ▶ Article 14 is available to any person including legal persons viz. statutory corporation, companies, etc.
- ▶ Article 14 is taken from the concept of equal protection of laws from the Constitution of the USA.
- ▶ Under Article 15 (3) & (4), the Government can make special provisions for women and children and for a group of citizens who are economically and socially backward.
- ▶ Article 16 says that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.
- ▶ Article 18 says that no title, not being a military or academic distinction, shall be conferred by the State. No citizen of India shall accept any title from any Foreign State.
- ▶ The awards, Bharat Ratna, Padma Vibhushan, Padma Bhushan and Padma Shri, called as the National Awards would not amount to the title within the meaning of Article 18.

4.3 Right to Freedom

- ▶ The right to freedom includes Articles on freedom of speech, expression, and assembly and is one of the most important of the Fundamental Rights.
- ▶ There are six frames under which freedom is made available to Indian citizens under Article 19. It says that all citizens shall have the right:
 - to freedom of speech and expression.
 - to assemble peacefully and without arms.
 - to form associations or unions.
 - to move freely throughout the territory of India.
 - to practice any profession or to carry on any occupation trade or business.
- ▶ In addition to the three main rights of speech, expression, and assembly, this fundamental right also provides freedom of association, profession, movement throughout the territory of our country and freedom to reside and settle in any part of India.
- ▶ Article 21A provides that that State shall provide free and compulsory education to all children of the age of 6-14 years.
- ▶ Article 22 deals with protection against Arrest and detention in certain cases.

4.4 Right against Exploitation

- ▶ Article 23 deals with the prohibition of traffic in human beings and forced labor.
- ▶ Article 24 deals with the prohibition of employment of children in factories, etc.
- ▶ These rights help to prevent exploitation of the weaker section of different sectors by the state, organizations as well as individuals.
- ▶ Forced labor, working without labor, human trafficking, child labor, and other illegal and ethically unjust acts are prohibited by this Fundamental Right.
- ▶ The Bonded Labour System (Abolition) Act, 1976 was enacted by the Indian parliament in support of this basic right.

4.5 Right to Freedom of Religion

- ▶ India is a secular country and the right to freedom of religion to all its citizens ensures that all states treat all the religions neutrally.
- ▶ Every Indian citizen has religious freedom and can follow any religion of their choice.
- ▶ Right to freedom of religion also promotes a right to preach, practice and propagate any religion of their choice and guarantees freedom of conscience to all Indian citizens.

4.6 Cultural and Educational Rights

- ▶ The cultural and educational rights include the right to education and helps to conserve various heritages of minorities and protect them from discrimination.

- ▶ This fundamental right safeguards the minorities and prohibits discrimination against any citizen for admission into any educational institutions based on religion, race caste or language, subject to reservations in the State.
- ▶ This Fundamental Right also allows minorities to set up and administer educational institutions to preserve their heritage.

4.7 Article-32 Right to Constitutional Remedies

- ▶ Right to Constitutional Remedies allows Indian citizens to approach the Supreme Court or High Court to protect their fundamental rights.
- ▶ A person has the right to move to the Supreme Court or high court if his fundamental right is violated. For this purpose, application in writing known as the writ is made.
- ▶ Writ means a legal document in writing.
- ▶ Following are types of the writ:

Writ of Habeas Corpus

- ▶ Habeas corpus means 'to have a body'.
- ▶ Writ of habeas corpus is made when a person is detained or arrested without proper justification.

Writ of Mandamus

- ▶ "Mandamus means "command or order".
- ▶ It is command issued by the Supreme Court or High Court to any person, corporation, inferior court, public authority or Government who has to perform statutory duty but who fails to do so.

Writ of Prohibition

- ▶ Here prohibition command is issued by Supreme Court or High Court to an inferior court or Tribunal to refrain from doing something which it is about to do.
- ▶ It is based on the principle that prevention is better than cure.

Writ of Certiorari

- ▶ Certiorari means "to be certified" or "to be more fully informed of".
- ▶ It can be issued by the Supreme Court or High Court to the inferior court or any authority, whenever any authority of the court.

Writ of Quo Warranto

- ▶ Quo-warranto means "what is your authority"?
- ▶ This writ prevents a person from continuing in public office who has wrongfully usurped the office.
- ▶ The Supreme Court has rights to protect the fundamental rights of citizens even against private bodies, and can also award compensation to the affected individuals.

4.8 Features of Fundamental Rights

- ▶ The Fundamental Rights are named so because they are guaranteed and protected by the Constitution, which is the fundamental law of the land.

- ▶ They are 'fundamental' also in the sense that they are most essential for the all-round development (material, moral, intellectual and spiritual) of the individuals.
- ▶ The Fundamental Rights are enshrined in Part III of the constitution from Article 12 to 35.
- ▶ The Fundamental Rights are meant for promoting the idea of political democracy.
- ▶ Some Fundamental Rights are available only to citizens.
- ▶ Others are available to all including foreigners or legal persons like corporations or companies, etc.
- ▶ They are not absolute but qualified. The State can impose reasonable restrictions on them (balance between individual liberty and social control). Courts can decide whether such restrictions are reasonable or not.
- ▶ Most of them are available against the arbitrary action of the State, with a few exceptions like those against the State's action and against the action of private individuals.
- ▶ When the rights that are available against the State's action only are violated by the private individuals, there are no constitutional remedies but only ordinary legal remedies.
- ▶ Some of Fundamental Rights are negative in character as they place limitations on the authority of the State, while others are positive as they confer certain privileges on the persons.
- ▶ They are justiciable, allowing persons to move the Courts for their enforcement on the violation.
- ▶ They are defended and guaranteed by the Supreme Court.
- ▶ They are not permanent and so the Parliament can curtail or repeal them but only by a constitutional amendment act without affecting the 'basic structure' of the Constitution.
- ▶ They can be suspended during the operation of a National Emergency except the rights guaranteed by Articles 20 and 21.
- ▶ The six rights guaranteed by Article 19 can be suspended only when the emergency is declared on the grounds of war or external aggression (i.e. external emergency) and not on the ground of armed rebellion (i.e. internal emergency).
- ▶ Their scope of operation is limited by Article 31A (saving of laws providing for the acquisition of estates, etc.), Article 318 (validation of certain acts and regulations included in the 9th schedule) and Article 31C (saving of laws giving effect to certain directive principles).
- ▶ Their application to the members of armed forces, para-military forces, police forces, intelligence agencies, and analogous services can be restricted or abrogated by the Parliament -Article 33.
- ▶ Their application can be restricted while martial law is in force in any area - Article 34.
- ▶ Most of them are directly enforceable (self-executory) while a few of them can be enforced on the basis of a law made for giving effect to them.
- ▶ Such a law can be made only by the Parliament and not by State legislatures so that uniformity throughout the country is maintained.

4.9 References

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5

Right to Equality Under Article -14

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5.1 Introduction

- ▶ The right to equality is embodied in a series of articles from Article 14 to 18 of the Constitution of India.
- ▶ Article 14 contains the principle of rule of law and Articles 15, 16, 17 and 18 contain the application of this principle.
- ▶ The Preamble to the Constitution of India provides for equality of status and opportunity.
- ▶ Equality forms part of the basic structure of the Constitution of India.

5.2 Article 14 - Equality Before The Law

- ▶ Article 14 of the Constitution guarantees that all people shall be equally protected by the laws of the country.
- ▶ It means that the State will treat people in the same circumstances alike.
- ▶ This Article also means that individuals, whether citizens of India or otherwise shall be treated differently if the circumstances are different.
- ▶ There are two expressions used in Article 14
 - equality before the law. and
 - equal protection of the laws.
- ▶ Both these expressions sound similar but have different connotations.
- ▶ The expression 'equality before the law' has its origin in the English Common Law.
- ▶ It means that amongst equals law shall be equal and shall be equally administered.
- ▶ The expression equal protection of laws has its source in the U.S. Constitution.
- ▶ Equality before the law is a negative concept and equal protection of the laws is a positive concept.
- ▶ The doctrine of equality before the law is equally operative against the legislature itself.
- ▶ If the legislature dares to enact an enactment inconsistent with any provisions of Fundamental Rights, the courts are competent enough to pronounce it unconstitutional.
- ▶ Equal protection of the laws means the right to equal treatment in similar circumstances, both in privileges conferred and liabilities imposed.
- ▶ Both the rule of procedure and the substantive law come under the purview of Article 14.
- ▶ Equal protection requires affirmative action by the State towards unequal by providing them facilities and opportunities.
- ▶ Article 14 applies to any person including any company, association, citizen, non-citizens, natural persons as well as legal persons.
- ▶ The rule does not prevent certain classes of persons from being subject to special rules.
- ▶ For example, Article 361 is an exception to the rule of law.
- ▶ It provides that the president of the Governors or the Rajpramukhs shall not be answerable to any court for the exercise and performance of the powers and duties of the office.

- ▶ This is because of, the reason. that Article 14 does not imply that the same laws should apply to all persons or that every law must have universal application because all persons are not, by nature, attainment or circumstances, in the same position.
- ▶ This Article prohibits class legislation which makes improper discrimination by conferring particular privileges upon a class of persons arbitrarily selected but it permits reasonable classification for the purpose of achieving specific ends.
- ▶ For classification to be reasonable, two conditions must be fulfilled:
 - The classification must be based on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group.
 - The differentia must have a rational relation with the object sought to be achieved by the act.
- ▶ It means that there must be some nexus between the differentia and the object so that the classification does not appear arbitrary or discriminatory.
- ▶ What Article 14 strikes at is arbitrariness because any action that is arbitrary must necessarily involve negation of equality.
- ▶ The doctrine of classification which is evolved by the courts is not a paraphrase of Article 14 nor is it the objective or end of that Article.
- ▶ It is merely a judicial formula for determining whether the legislative or executive action in question is arbitrary and therefore the constitutional denial of equality.
- ▶ In fact, the concept of reasonableness and non-arbitrariness pervades the entire constitutional scheme and is a golden thread that runs through the whole of the fabric of the Constitution.
- ▶ In Menaka Gandhi's case, the court had opined that Article 14 was not to be equated with the principle of classification. It was primarily a guarantee against arbitrariness in State action and the doctrine of classification was evolved only as a subsidiary rule for testing or determining whether a particular State action was arbitrary or not.

5.3 Article 15 - Social Equality and Equal Access to Public Areas

- ▶ Article 15 of the constitution states that no person shall be discriminated on the basis of religion, race, caste, sex or place of birth.
- ▶ Every person shall have equal access to public places like public parks, museums, wells, bathing ghats, etc.
- ▶ However, the state may make any special provision for women and children.
- ▶ As per Article 15(4), special provisions may be made for the advancements of any socially or educationally backward class or Scheduled Castes or Scheduled Tribes.
- ▶ For the purpose of Article 15 (4), backwardness must be both social and educational and caste cannot be made the sole or dominant test for determining the backwardness of a class of citizens.
- ▶ It was held that order under Article 15(4) need not be in the form of legislation, it can also be in the form of an executive order.
- ▶ Speaking generally and in a broad way, a special provision should be less than 50% - The actual percentage must depend upon the relevant prevailing circumstances in each case.

- ▶ The court further commented that the interests of weaker sections of society, which are the first charge on the State and the center, have to be adjusted with the interests of the community as a whole.
- ▶ Regarding Article 15 (4), the court observed that it is only an enabling provision and does not impose any obligations on the State to take any special action under it.

5.4 Article 16 - Equality In Matters of Public Employment

- ▶ Article 16 of the Constitution lays down that the State cannot discriminate against anyone in the matters of public employment.
- ▶ All citizens can apply for government jobs, however, there are some exceptions.
- ▶ However, this does not prevent the State from laying down the requisite qualifications for recruitment in government services.
- ▶ It also prohibits discrimination by the State in relation to employment or appointment to any office under the State on the grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them.
- ▶ Article 16 allows the State to reserve seats in favor of backward classes of citizens which according to State are not adequately represented in the services under the State. This may be meant for posts that require knowledge of the locality and language of the area.
- ▶ The State may also reserve posts for members of backward classes, scheduled castes or scheduled tribes which are not adequately represented in the services under the State to bring up the weaker sections of the society.
- ▶ Also, there a law may be passed that requires that the holder of an office of any religious institution shall also be a person professing that particular religion. According to the Citizenship (Amendment) Bill, 2003, this right shall not be conferred to overseas citizens of India.
- ▶ In the landmark case of Indra Sawhney v Union of India also known as the Mandal Commission Case, the Supreme Court dealt with various aspects of the complex issue of reservation and gave out a very thoughtful judgment. Some of the key aspects of the judgment are
 - A creamy layer must be excluded from Backward Classes.
 - Article 16(4) is not an exception to Article 16(1), but an independent clause. Article 16(a) is exhaustive of the subject of reservation in favor of backward classes, though it may not be exhaustive of the very concept of reservation. Reservation for other classes can be made under article 16(1).
 - Reservation shall not exceed the 50% limit. Carry forward rule is valid provided it should not result in the breach of the 50 % rule.
 - Reservation in appointments under Article 16(4) confined to initial appointments only. There shall be no reservation in promotion.
 - Backward classes referred to in Article 16(a) shall not be the same as the Socially and Educationally Backward Classes referred to under Article 15(5).
 - Article 16(4) permits the classification of Backward classes into backward and more backward classes.

- ▶ In the aftermath of the Mandal commission Judgment, clause (4A) was added in Article 16 by way of the Seventy Seventh Amendment Act, 1995 providing for reservation in the matters of promotion.

5.5 Article 17 - Abolition of Untouchability

- ▶ Article 17 of the constitution abolishes the practice of untouchability.
- ▶ The practice of untouchability is an offense and anyone doing so is punishable by law.
- ▶ It can be termed as one of the earliest efforts made in the direction of social reforms.
- ▶ since the Article contemplates the practice of untouchability to be a punishable offense, the legislature enacted the protection of the Civil Liberties Act, 1955 previously known as the Untouchability (Offenses) Act, 1955 to prescribe punishment for untouchability and other practices connected with it.
- ▶ The word untouchability has not been defined either under Article 17 or the Protection of Civil Liberties Act, 1955.
- ▶ The term has not been used in the Article in a literal or grammatical sense.
- ▶ it actually refers to the social disabilities historically imposed on certain classes of people by reason of their birth in certain castes and would not include instigation of a social boycott by reason of the conduct of certain persons.
- ▶ The record 'Harijan' prime facie refers to an untouchable.
- ▶ Untouchability is an integral part of the caste system and is not based on men's rea. Men's rea means guilty, mind.

5.6 Article 18 - Abolition of Titles

- ▶ Article 18 of the constitution prohibits the State from conferring any titles.
- ▶ Citizens of India cannot accept titles from a Foreign State.
- ▶ The British government had created an aristocratic class known as Rai Bahadurs and Khan Bahadurs in India * these titles were also abolished.
- ▶ However, Military and academic distinctions can be conferred on the citizens of India.
- ▶ The awards of 'Bharat Ratna' and 'Padma Vibhushan, cannot be used by the recipient as a title and do not, accordingly, come within the constitutional prohibition.
- ▶ The Supreme Court, on 15 December 1995, upheld the validity of such awards.

5.7 References

M Laxminath "Indian Polity" 4th Edition 2013 Tata McGraw Hill Publication.

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6

Right to Certain Freedom Under Article 19

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6.1 Introduction

- ▶ The constitution of India contains the right to freedom, given in Articles 19, 20, 21A, and 22.
- ▶ Originally, Article 19 contained seven rights. But, the right to acquire, hold and dispose of the property was deleted by the 44th Amendment Act of 1978.
- ▶ These six rights are protected against only state action and not private individuals. Moreover, these rights are available only to the citizens and to shareholders of a company but not to foreigners or legal persons like companies or corporations, etc.
- ▶ The State can impose 'reasonable' restrictions on the enjoyment of these six rights only on the grounds mentioned in Article 19 itself and not on any other grounds.
- ▶ The rights to freedom are the most important fundamental rights guaranteed by the constitution of India. It makes democracy meaningful.

6.2 Article 19- Right to Freedom

- ▶ As per Article 19, the following six freedoms are guaranteed to every person of the country :
 1. Right to freedom of speech and expression.
 2. Right to assemble peaceably and without arms,
 3. Right to form associations or unions,
 4. Right to move freely throughout the territory of India,
 5. Right to reside and settle in any part of the territory of India,
 6. The right to practice any profession or to carry on any occupation trade or business.

Freedom of speech and expression

- ▶ Every citizen has the right to assemble peaceably and without arms. It includes the right to hold public meetings, demonstrations and take out processions. This freedom can be exercised only on public land and the assembly must be peaceful and unarmed. This provision does not protect violent, disorderly, riotous assemblies, or one that causes a breach of public peace or one that involves arms. This right does not include the right to strike. Every person has freedom of speech and expression.
- ▶ However, the State can inflict a restriction on this freedom in the interests of the sovereignty and integrity of the country, for the security of the state, friendly relations with foreign countries, public order, in relation to the contempt of court, defamation or incitement to an offense.

Freedom to assemble

- ▶ All citizens have the right to form associations or unions or co-operative societies^{10b}. It includes the right to form political parties, companies, partnership firms, societies, clubs, organizations, trade unions or any body of persons.
- ▶ It not only includes the right to start an association or union but also to continue with the association or union as such. Further, it covers the negative right of not to form or join an association or union. Freedom to form associations or unions or co-operative societies The State can enforce restrictions on such freedom in the interest of public order, morality and the sovereignty and integrity of the country.

Freedom to move, freely

- ▶ An Indian citizen has the freedom to move freely throughout the territory of India.
- ▶ However, the government can impose restrictions on this right only in the interest of the general public.

Freedom to reside and settle

- ▶ citizens of India have the freedom to reside anywhere in the country.
- ▶ However, in the interest of the general public or for the protection of the scheduled tribes the State may impose certain restrictions.

Freedom to practice any profession or to carry on any business occupation or trade

- ▶ Every person can carry any business or practice any profession provided it is not dangerous or immoral.
- ▶ Also, professional or technical qualifications must be acquired before practicing any profession or carrying on any trade.

Restriction on Right to Freedom

- ▶ It is logical that equal rights for all must mean limited rights for any. Hence, the State may impose reasonable restrictions, upon the exercise of any of these rights.
- ▶ The freedom to assemble is subject to two restrictions. The assembly must be peaceable and the members of assembly must not bear arms. However, the Sikhs are allowed to carry 'Kirpan' as part of their religious creed.
- ▶ In the U.S.A. right to, bear arms is a fundamental right. In India, this right is denied in the interest of public order.
- ▶ The right to form associations or unions does not entitle persons to enter into criminal conspiracy either against individuals, groups or against the state.
- ▶ The right to move freely or to reside and settle in any part of India does not cover trespass into homes or restricted areas. State also may restrict this freedom to protect the aboriginal tribes.
- ▶ The right to practice any profession or to carry on any occupation, trade or business is also subject to reasonable restrictions. Thus, professions or, trade or, the business must not be harmful to the interest of the community. The State may also prescribe qualifications for a particular profession or, technical occupation. The State may itself carry on trade or business to the exclusion of citizens.

Power of Courts to enforce freedom of citizens of India

- ▶ Every Indian citizen has the power to move the High Court or the Supreme Court for protecting and securing his personal freedom.
- ▶ The Courts are empowered to issue writs in the nature of Habeas Corpus.
- ▶ The Courts can order the presence of a detained or imprisoned person and set him free in case there is no legal justification for his detainment or imprisonment.

Rights to Freedom during National Emergency

- ▶ The rights to freedom under Article 19 of the Indian Constitution have suspended during the period of the National Emergency declared by the President of India.

- ▶ Further, during the period when the National Emergency is in operation, the President is empowered to suspend the right of citizens to move the Supreme Court for the enforcement of their personal freedom.

Right to Information (RTI)

- ▶ Article 19(1) of the Constitution has given the fundamental status to the right to information in 2005.
- ▶ Under this Article, every citizen has freedom of speech and expression.
- ▶ Also, he or she has the right to know how the government works, what roles does it play and what are its functions.

6.3 Article 22 - Protection Against Arrest and Detention in Certain Cases

- ▶ Article 22 gives protection against arrest and detention in certain cases.
- ▶ Constitution provide following safeguards against arbitrary arrest.
 - Information or ground of arrest should be 'provided'
 - Right to consult and to be defended by a legal practitioner of his choice.
 - A person should be made to present before Magistrate within 24 hours of arrest.
 - A person shall not be detained beyond a period of 24 hours without authority of Magistrate.
- ▶ Above safeguards are not available:
 - To alien enemy
 - .When a person is arrested and detained under 'preventive detention'. Preventive detention means the detention of a person without trial.
- ▶ Safeguards against preventive detention:
 - A person cannot be detained for more than 3 months.
 - Detaining authority should communicate the reason for detention.
 - Detained persons should be given the opportunity of representing against the order.

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7

Scope of the Right to Life and Personal Liberty Under Article 21

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7.1 Article 21- Protection of Life and Personal Liberty

- ▶ This right has been held to be the heart of the Constitution, the most organic and progressive provision in our living constitution, the foundation of our laws.
- ▶ Article 21 of the constitution gives the Right to life, personal liberty, and Right to die with dignity.
- ▶ A person's personal liberty should not be deprived except as per law and after following, the procedure laid down by law.
- ▶ Term 'personal liberty' does not limit to the only body or prison It includes :
 - Right to sleep
 - Right to travel foreign
 - Right to bail and legal help
 - Right against the use of the third-degree method by police.
- ▶ Article 21 can only be claimed when a person is deprived of his 'life' or personal liberty by the State as defined in Article 12 Violation of the right by private individuals is not within the preview of Article 21
- ▶ Article 21 secures two rights:
 - Right to life, and
 - Right to personal liberty
- ▶ The Article prohibits the deprivation of the above rights except according to a procedure established by law.
- ▶ Article 21 applies to natural persons. The right is available to every person, citizen or alien.
- ▶ Thus, even a foreigner can claim this right. It, however, does not entitle a foreigner the right to reside and settle in India.

7.2 Meaning and Concept of The Right to Life

- ▶ Everyone has the right to life, liberty and the security of person.,
- ▶ The right to life is undoubtedly the most fundamental of all rights.
- ▶ 'Life' as mentioned under Article 21 signifies not merely living or the physical act of breathing. It has a much more profound meaning that signifies the :
 - Right to live with human dignity;
 - Right to livelihood;
 - Right to health;
 - Right to pollution-free air; and
 - Right to live a quality life.
 - Right to go abroad;
 - Right to privacy;
 - Right against solitary confinement;
 - Right against delayed execution;

- Right to shelter;
 - Right against custodial death;
 - Right against public hanging; and anything and everything that fulfills the criteria for a dignified life.
- ▶ All other rights add quality to the life in question and depend on the pre-existence of life itself for their operation.
 - ▶ As human rights can only attach to living beings, one might expect the right to life itself to be in some sense primary since none of the other rights would have any value or utility without it.
 - ▶ There would have been no Fundamental Rights worth mentioning if Article 21 had been interpreted in its original sense.
 - ▶ Article 21 of the constitution of India, 1950 provides that. 'No person shall be deprived of his life or personal liberty except according to procedure established by law.' 'Life, in Article 21 of the constitution is not merely the physical act of breathing. It does not indicate mere animal existence or continued drudgery through life.
 - ▶ It has a much wider meaning which includes the right to live with human dignity, right to livelihood, right to health, right to pollution-free air, etc.
 - ▶ The right to life is fundamental to our very existence without which we cannot live as a human being and includes all those aspects of life, which go to make a man's life meaningful, complete, and worth living. under Article 21, so many rights have found shelter, growth, and nourishment. Thus, the bare necessities minimum and basic requirements that are essential and unavoidable for a person is the core concept of the right to life.
 - ▶ In *Sunil Batra v. Delhi Administration*, the Supreme Court reiterated with the approval of the above observations and held that the right to life, including the right to lead a healthy life so as to enjoy all faculties of the human body in their prime conditions.
 - ▶ It would even include the right to protection of a person's tradition, culture, heritage and all that gives meaning to a man's life. It includes the right to live in peace, to sleep in peace and the right to repose and health.

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8

Fundamenta Duties and its Legal Status

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8.1 Introduction

- ▶ Part IV of the Indian constitution deals with Fundamental Duties.
- ▶ As of now, there are 11 Fundamental Duties.
- ▶ Originally, the Constitution of India did not contain these duties. Fundamental Duties were added by 42nd and 86th Constitutional Amendment Acts.
- ▶ Fundamental Duties are applicable only to citizens and not to the aliens.
- ▶ India has borrowed the concept of Fundamental Duties from the USSR.
- ▶ Citizens are morally obligated by the Constitution to perform these duties. However, like the Directive Principles, these are unjustifiable, without any legal sanction in case of their violation or non-compliance.

8.2 Article 51A - Fundamental Duties

- ▶ It shall be the duty of every citizen of India
 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 women;
 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 wildlife, 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.
 11. to provide opportunities for education by the parent the guardian, to his child, or a ward between the age of 6-14 years as the case may be.

8.3 Legal Status of Fundamental Duties

- ▶ The Fundamental Duties have been incorporated into the constitution to remind every citizen that they should not only be conscious of their rights but also of their duties.
- ▶ The Fundamental Rights in Part III, the Directive Principles of State Policy in Part IV and the Fundamental Duties in Part IV forms a compendium and have to be read together.
- ▶ It is true that there is no legal sanction provided for violation or non-performance of Fundamental Duties.
- ▶ There is neither specific provision for enforceability nor any specific prohibition.

- ▶ However, Fundamental Duties have an inherent element of compulsion regarding compliance.
- ▶ It is said that by their nature, it is not practicable to enforce the Fundamental Duties and they must be left to the will and aspiration of the citizens.
- ▶ However, in the case of citizens holding public office, each and all Fundamental Duties can be enforced by suitable legislation and departmental rules of conduct.
- ▶ Appropriate sanctions can be provided for the lapse in respect of each Fundamental Duty and it is quite practicable to enforce the sanction against every citizen holding a public office: for instance, departmental promotions can be deferred, increments can be withheld, etc.
- ▶ If an officer takes part in a strike or stalls the proceedings of his institution, he can be made to forgo the salary for that day.
- ▶ For the proper enforcement of duties, it is necessary that it should be known to all.
- ▶ This should be done by a systematic and intensive education of people that is by publicity or by making it a part of education.
- ▶ In *M.C. Mehta v. Union of India*, the Supreme Court has held that under Article 51-A (g), it is the duty of the Central Government to introduce compulsory teaching of lessons at least for one hour in a week on protection and improvement of the natural environment in all the educational institution of the country.
- ▶ In *AIIMS Students Union vs. AIIMS*, the Supreme Court said that Fundamental Duties are equally important like Fundamental Rights.
- ▶ The legal utility of Fundamental Duties is similar to that of the Directives; while the Directives are addressed to the state, so are the duties addressed to the citizens, without any legal sanction for their violation.
- ▶ The citizen should keep in mind that he owes the duties specified in Article 51-A to the State and if he does not care for the duties, he does not deserve the rights. of course, the duties as such are not legally enforceable in the Courts of law, but if a law has been made to prohibit any act or conduct in violation of the duties, it would be a reasonable restriction on the relevant Fundamental Rights.
- ▶ However, the Fundamental Duties are not enforceable by mandamus or any other legal remedy.
- ▶ Since the Fundamental Duties are not addressed to the State, a citizen cannot claim that he must be properly equipped by the State so that he may perform his duties under Article 51-A.

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9

The Directive Principles of State Policy

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9.1 Meaning of Directive Principles of State Policy

- ▶ Part IV, Articles 36-51 of the Indian Constitution constitutes the Directive Principles of State Policy.
- ▶ It contains the broad directives or guidelines to be followed by the State while establishing policies and laws.
- ▶ The legislative and executive powers of the State are to be exercised under the purview of the Directive Principles of the Indian Constitution.
- ▶ The Indian Constitution was written immediately after India obtained freedom, and the contributors to the Constitution were well aware of the ruined state of the Indian economy as well as the fragile state of the nation's unity.
- ▶ Hence, they created a set of guidelines under the heading Directive Principles for the inclusive development of society.
- ▶ Inspired by the Constitution of Ireland, the Directive Principles contain the very basic philosophy of the Constitution of India, and that is the overall development of the nation through guidelines
- ▶ related to social justice, economic welfare, foreign policy, and legal and administrative matters.
- ▶ However, the Directive Principles cannot be enforced in a court of law and the State cannot be sued for non-compliance of the same.
- ▶ The Directive Principles are divided into the following three categories:

Socialistic Directives

- ▶ This part contains the directives for securing the welfare of the people of India, equal distribution of the material resources of the country protection of the fundamental rights of the children and youth, equal pay for equal work, education, etc.

Gandhian Directives

- ▶ These directives are the guidelines for organizing village Panchayat, the prohibition of intoxicating drinks and cow-slaughter, a secure living wage, decent standard of life, and to promote cottage industries, to provide free and compulsory education to all children up to 14 years of age, etc.

Liberal Intellectual Directives

- ▶ In this section, there are guidelines for uniform civil code throughout the country and the legislatures to follow in issuing orders or making laws.

9.2 Features of Directive Principles of State Policy

- ▶ In a nutshell, the Directive Principles consist of the following guidelines for the States :
- ▶ The State should strive to promote the welfare of the people.
- ▶ Maintain social order through social, economic and political justice.
- ▶ The State should strive towards removing economic inequality.
- ▶ Removal of inequality in status and opportunities.
- ▶ To secure adequate means of livelihood for the citizens.

- ▶ Equal work opportunity for both men and women.
- ▶ Prevent the concentration of wealth in specific pockets through uniform distribution of the material resources amongst all the strata of the society.
- ▶ Prevention of child abuse and exploitation of workers.
- ▶ Protection of children against moral and material abandonment.
- ▶ Free legal advice for equal opportunities to avail of justice by the economically weaker section.
- ▶ Organization of Village Panchayats which will work as an autonomous body working towards giving justice.
- ▶ Assistance to the needy including the unemployed, sick, disabled and old people.
- ▶ Ensure proper working conditions and a living wage.
- ▶ Promotion of cottage industries in rural areas.
- ▶ The State should endeavor towards a uniform civil code for all the citizens of India.
- ▶ Free and compulsory education for children below the age of 14 years.
- ▶ Economic and educational upliftment of the Scheduled Cast and Scheduled Tribe and other weaker sections of the society.
- ▶ Prohibition of alcoholic drinks, recreational drugs, and cow slaughter.
- ▶ Preservation of the environment by safeguarding the forests and wild life.
- ▶ Protection of monuments, places, and objects of historic and artistic interest and national importance against destruction and damage.
- ▶ Promotion and maintenance of international peace and security. just and honorable relations between nations, respect for international law and treaty obligations, as well as a settlement of international disputes by arbitration.

9.3 implementation of the Directive Principles of State Policy

- ▶ As mentioned earlier, unlike the Fundamental Rights which are guaranteed by the constitution of India, the Directive principles do not have a legal sanction and cannot be enforced in a court of law.
- ▶ However, the State is making every effort to implement the Directive Principles in as many sectors as possible.
- ▶ The noteworthy implementation is the 66th constitutional Amendment of 2002 which inserted a new article, Article 21-A, making free education for children below the age of 14 compulsory.
- ▶ For example, the Taxation Inquiry Commission, 1953-1954 was asked to examine the tax structure and to suggest measures to reduce the inequalities of income and wealth and some other related subjects.
- ▶ The Industrial Development and Regulation Act, 1954 and the establishment of the Monopolies Inquiry commission in 1965 were aimed to achieve the objective outlined by the Taxation Inquiry Commission.

- ▶ The Monopolies commission made probing inquiries into the causes and extent of concentration of economic power in private hands, the factors responsible for monopolies tendencies in the national economy and their social consequences.
- ▶ Similarly, in the early years of the 1950s Land Reform Legislation was enacted to abolish intermediaries and zamindari system and now land, both rural and urban, are subject to ceilings and the surplus land has gone to the weaker sections of the community.
- ▶ In compliance with such laws, many States has enacted separate State Act to prevent the concentration of landholdings and fixed a ceiling for an individual owner.
- ▶ A large number of laws have been enacted to implement the organization of village panchayat as a unit of self-government.
- ▶ For raising the standard of living (Article 47) the Government of India adopted the first-ever large-scale program called Community Development Project in 1952 for rural reconstruction in the field of communication, transport, housing facilities, sanitation, agriculture, education, etc.
- ▶ RRegarding the prohibition of intoxicating drinks and drugs (Article 47), most of the States have enacted legislation and imposes some restrictions on it.
- ▶ Necessary legislation has been enacted to protect places and monuments of national importance.
- ▶ As to the separation of the executive from the judiciary (Article 50), ,most of the States have taken legislative measures. Steps have been taken to assist and give free legal aid to needy village people.
- ▶ Lastly, the Government of India has enacted the National Rural Employment Guarantee Act (NREGA) to ensure ha undred days of work assistance to rural people which is in conformity to the Right to work enshrined in the Directive Principles of State Policy of the Indian Constitution.

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10

Federal Structure and Distribution of Legislative And Finance Power Between Union and States

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10.1 Federal System

- ▶ A federal system of government is one that divides the powers of government between the Central (Federal) Government and State and Local Governments.
- ▶ one is a central authority which looks after the major affairs of the country. The other is more of a local government which looks after the day to day functioning and activities of their particular region.
- ▶ For example, our Indian Constitution says that India too is a federal country. As you know we have two levels of parliament' at Centre the Union Government and at State level' we have the individual State Governments.
- ▶ India is a Union of States' The Constitution of India has divided the legislative, executive and financial powers between the Centre and the states, which gives the Constitution a Federal character whereas the judiciary is integrated into a hierarchical structure.
- ▶ The Centre-State relations are divided into three parts' which are mentioned below:
 - 1 Legislative Relations (Article 245 -255)
 - 2 Administrative Relations (Article 256 -263)
 - 3 Financial Relations (Article 268 -'293)

10.2 Features of Federal Government

The best way to comprehensively understand the federal is to learn about its features. Following are key features of Government

- ▶ It has two levels of government in the country. There can even be more. But the entire power is not concentrated with one government.
- ▶ Each level of government will have a specific power to laws, legislate and execute these laws. Both of the government will have clearly marked jurisdiction. It will not be that of the governments is just a figurehead government.
- ▶ Another important feature is that the constitution must guarantee this federal system of government. Which means the powers and duties of both or all government must be listed down in the constitution of that country hence guaranteeing a federal system of governance.
- ▶ Just one level of government cannot make unilateral changes or amendments to the important and essential provisions of the constitution. Such changes must be approved by all the levels of the government to be carried through.
- ▶ Now, there are two levels of government with separate jurisdictions and separate duties. Yet, there is still a possibility that a conflict may arise between the two Governments. The Courts must have the power to interfere in such a situation and reach a resolution.
- ▶ While there is power-sharing between the two-level of government, there should also be a system in place for revenue sharing. Both levels of government should have their own autonomous revenue streams. Because if one such government depends on the other for funds to carry out its functions, it really is not autonomous in its true nature.

10.3 Legislative Relations - Articles 245 - 255

Article 245 to 255 in part XI constitution deals with different aspects of legislative relations between Centre and States. These include:

- ▶ The territorial jurisdiction of law made by the Parliament and by the Legislatures of States.
- ▶ Distribution of legislative subjects.
- ▶ Power of the parliament to legislate with respect to a matter in the State List
- ▶ Centre's control state legislation

However, Seventh Schedule of the Constitution provides for the distribution of legislative powers between the Centre and the States.

The legislative subjects are divided into:

- List I (the Union List),
 - List II (the Concurrent List) and
 - List III (the State List)
- ▶ At present, there are 100 subjects in the Union list which includes subjects such as foreign affairs, defence, railway postal services, banking, atomic energy, communication, currency etc.
 - ▶ At present, there are 61 subjects in the State list. The list includes subjects such as police, public order, roadways, health, agriculture, local government, drinking water facilities, sanitation etc.
 - ▶ At present, there are 52 subjects in the Concurrent List. The list includes subjects such as education, forests, protection of wild animals and birds, electricity, labour, welfare, criminal law and procedure, civil procedure, population control and family planning, drugs etc.
 - ▶ Article 245 empowers the centre to give directions to the states in a certain case in regards to the exercise of their executive power.
 - ▶ Article 246 states that Parliament has exclusive powers to make laws with respect to any of subject matters specified in List I, II and III of Seventh Schedule.
 - ▶ Article 247 vests the power of establishment of additional courts by Parliament for a matter related to Union List.
 - ▶ Article 248 states that the Parliament has exclusive power to make any law with respect to any matter not included in the Concurrent List or State List.
 - ▶ Article 249 empowers the Parliament to legislate with respect to a matter in the State List in the national interest.
 - ▶ Under Article 250, the Parliament becomes empowered to make laws on the matters related to State List when a national emergency (under Article 352) is in operation.
 - ▶ Under Article 252, the parliament is empowered to legislate for two or more States by their consent.

10.4 Administrative Relations

- ▶ Article 256 to 263 deals with the administrative relations between the Centre and the States.

- ▶ Article 256 states that the executive power of every State shall be so exercised as to ensure compliance with the laws made, by the parliament and any existing laws which apply in that State, and the executive power of the Union shall extend to the giving of such directions to a State as may appear to the Government of India to be necessary for that purpose.

10.5 Cooperation Between the Centre and the States

- ▶ The constitution lays down provision to secure corporation and coordination between the centre and the state this include
- ▶ Article 261 states that 'full faith and credit shall be given throughout the territory of India to public acts, records and judicial proceedings of the Union and of every State.
- ▶ According to Article 262, the parliament may by law provide for the adjudication of any dispute or complaint with respect to the use, distribution or control of the waters of, or in, any Inter-State river or river valley.
- ▶ Article 263 empowers the President to establish an Inter-State Council to inquire into and advise upon disputes between States, to investigate and discuss subjects in which some or all of the States, or the Union and one or more of the States, have a common interest.
- ▶ As per Article 307, Parliament may by law appoint such authority as it considers appropriate for carrying out the purposes of the constitutional provisions related to the interstate freedom of trade and commerce.

10.6 Centre-State Relations during Emergency

- ▶ During a National Emergency (under Article 352), the State Government become subordinate to the Central Government. All the executive functions of the state come under the control of the Union Government.
- ▶ During a State Emergency (under Article 356), the President can assume to himself all or any of the functions of the Government of the State and all or any of the powers vested in or exercisable by the Governor or authority in the State other than the Legislature of the State.
- ▶ During the operation of Financial Emergency (under Article 360), the Union may give directions to any State to observe such canons of financial propriety as may be specified in the directions, and to the giving of such other directions as the President may deem necessary and adequate for the purpose.

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11

Parliamentary Form of Government in India

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11.1 Introduction

- ▶ The democratic system of government can be divided into the parliamentary and the presidential system based on the relationship between the executive and the legislature.
- ▶ In a parliamentary system, an executive is a part of the legislature. Which implements the law and plays an active role in framing it as well.
- ▶ In a parliamentary system, the head of the state may be a monarch or a president, but both of these positions are ceremonial.
- ▶ The head of the Government, who is generally called as the Prime Minister, is the real head. Thus, all the real executive powers are vested in the Prime Minister.

11.2 Parliamentary Form of Government or Parliamentary System

- ▶ The Parliament of India is the supreme legislative body of the Republic of India. It is a bicameral legislature composed of the President of India and the two Houses:
 - **The Rajya Sabha (Council of States); and**
 - **The Lok Sabha (House of the People).**
- ▶ The President in his role as head of a legislature has full powers to summon and prorogue either House of Parliament or to dissolve Lok Sabha.
- ▶ The President can exercise these powers only upon the advice of the Prime Minister and his Union Council of Ministers.
- ▶ Those elected or nominated (by the President) to either House Parliament are referred to as Members of Parliament (MP).
- ▶ The Members of Parliament, Lok Sabha have directly elected the Indian public voting in Single-member districts and the Member of Parliament, Rajya Sabha are elected by the members of all state Legislative Assembly by proportional representation.
- ▶ The Parliament has a sanctioned strength of **545 members in Lok Sabha including the 2 nominees from the Anglo-Indian community by the President, and 245 members in Rajya Sabha including the 12 nominees from the expertise of different fields of science, culture, art, and history.**
- ▶ India has a parliamentary system of Government.
- ▶ **Article 74 and Article 75 deal with the parliamentary system the Centre and Articles 163 and 164 deals with the States.**
- ▶ The Parliament meets at Sansad Bhavan in New Delhi.

11.3 Lok Sabha

- ▶ **Lok Sabha (House of the People) or the Lower House has 545 members.**
- ▶ 543 members are directly elected by citizens of India on the basis of universal adult franchise representing parliamentary constituencies across the country **and 2 members are appointed by the president of India from the Anglo-Indian Community.**

- ▶ **Every citizen of India who is over 18 years of age (Article 326)**, Irrespective of gender, caste, religion, or race and is otherwise not disqualified is eligible to vote for the Lok Sabha.
- ▶ **The Constitution provides that the maximum strength of the house can be 552 members.**
- ▶ It has a term of five years.
- ▶ To be eligible for membership in the Lok Sabha, a person must be a citizen of India and must be 25 years of age or older, mentally sound, should not be bankrupt, and should not be criminally convicted.

11.4Rajya Sabha

- ▶ Rajya Sabha (Council of States) or the Upper House is a permanent body not subject to dissolution.
- ▶ One-third of the members retire every second year and are replaced by newly elected members.
- ▶ Each member is elected for a term of six years.
- ▶ Its members are indirectly elected by members of the legislative bodies of the States.
- ▶ **The Rajya Sabha can have a maximum of 250 members.**
- ▶ It currently has a sanctioned strength of 245 members, of **which 233 are elected from States and Union Territories and 12 are 'nominated by the President.**
- ▶ The number of members from a state depends on its population.
- ▶ **The minimum age for a person to become a member of Rajya Sabha is 30 years.**

11.5Elements and Features of the Parliamentary System

- ▶ Following are the elements and features of the Parliamentary System:

Nominal and Real Head

- ▶ The head of the state holds a ceremonial position and is the nominal executive. For example, the President.
- ▶ In India, the head of Government is the Prime Minister who is the real executive.
- ▶ **Article 75 of the Indian constitution provides for a Prime Minister to be appointed by the President.**
- ▶ According to Article 74, the prime minister headed the council of ministers would aid and advise the president in the exercise of his functions.

The executive is a Part of Legislature

- ▶ The Executive forms apart of the legislature. In India, the person should be a member of parliament to become a member of the executive. However, the constitution provides that a person can be appointed as a minister for a period of not more than six consecutive months if he is not a member of the parliament, after which the person ceases to be a minister.

Majority Party Rule

- ▶ The party which wins majority seats in the elections of the Lower House forms the Government.
- ▶ In India, the President invites the leader of the majority party in Lok Sabha to form the Government.
- ▶ The President appoints the leader as the Prime Minister and the other ministers are appointed by the president on the advice of the Prime Minister.
- ▶ The President may invite a coalition of parties to form the government, in case, no party has got a majority.

Collective Responsibility

- ▶ The council of Ministers is collectively responsible to the Parliament.
- ▶ The Lower House of parliament has the ability to dismiss a government by getting the no-confidence motion passed in the House.
- ▶ In India, the government survives until the time it enjoys the support of the majority of members in the Lok Sabha.
- ▶ Thus, Lok sabha is empowered to introduce no-confidence motion against the Government.

Prime Minister as the Centre of Power

- ▶ In India, the Prime Minister is the real executive.
- ▶ He is the head of the government, the council of ministers and the ruling government.
- ▶ Thus, he has to play a significant and important role in the working of the Government.

11.6 President of India

- ▶ The office of the President is very august and the Constitution attaches to it many privileges and immunities.
- ▶ The President along with the council of Ministers headed by the Prime Minister comprises the central executive which has been dealt from Article 52 to 78 of the Constitution.
- ▶ The President is the head of the State and the former executive.
- ▶ All executive action at the center is expressed to be taken in his name.
- ▶ This power has been granted to him under Article 53(I) which states that the executive power shall be vested in the president and shall be exercised by him directly or through officers subordinate to him.
- ▶ The President of India is the head of State and first citizen of India and the Supreme Commander of the Indian armed forces.
- ▶ In theory, the president possesses considerable power.
- ▶ In practice, the president's role is comparable to those of a
- ▶ constitution monarch, and indeed the office replaced that of the British monarch (represented by the Governor General) upon India's independence.
- ▶ The Constitution only formally vests functions in the hands of the President.
- ▶ In reality, he has no function to discharge his discretion and or his individual judgment.

- ▶ He has to act on ministerial advice and therefore the prime Minister and the council of Ministers constitute the real and effective executive.
- ▶ The office of the president is created by article 52 of the constitution and the matters of election are dealt from Article 54 to 60 of the Constitution.
- ▶ The President is elected by the method of indirect election i.e. by an electoral college consisting of elected members of both Houses of Parliament and of the State legislative assemblies.
- ▶ The method of indirect election was emphasized the ministerial character of the executive that the effective power resides in the Ministry and not in the President as such.
- ▶ secondly, the method of the direct election would have been very costly and energy-consuming.
- ▶ There was also the fear that a directly elected president may in course of time assume all the power.
- ▶ The President derives its power from Article 53 which vests in him all the executive authority including the Supreme Command of the Armed Forces.
- ▶ There are several other provisions in the constitution that mention specific functions of the President.
- ▶ Briefly, the President has the power to appoint all important offices including those of the Prime Minister and other central Ministers, Governors, Judges of the Supreme Court and the High Courts and even Election commissioners. He even has the authority to appoint commissions with respect to the administration of scheduled areas.
- ▶ Most importantly, the President is vested with wide powers during Emergency under Article 352 to 360 of the Constitution including the suspension of Fundamental Rights.
- ▶ Moreover, every bill comes to him for his assent and can either refuse to give his assent or send it back for reconsideration. Powers of the President can be classified as:
 - Executive functions
 - Legislative functions
 - Judicial functions

11.7 Executive Functions of President

- ▶ The exercise of the executive power of the union is the function of the President.
- ▶ A primary function of the executive is to administer and execute the laws enacted by the parliament and maintain law and order.
- ▶ However, the executive function cannot be limited to this and a modern state is not expected to confine itself to a mere collection of taxes, maintaining law and order and defending the country from external aggression. The executive operates over a large area and discharges varied and complex functions.
- ▶ The central Executive is entitled to exercise executive functions with respect to all those subjects which fall within the legislative sphere of Parliament besides exercising executive functions which are exercisable by the Government of India under any treaty or agreement.

- ▶ A few provisions in the constitution confer on the president some express executive powers such as:
 - Power to make important appointments like Prime Minister and other Central Ministers, Governor, Judges of the Supreme Court and the High Court, Chairman and members of the Union Public service commission, the Attorney General, the Chief Election Commissioner and other Election commissioners, and the controller and Auditor General of India.
 - He also has the power to appoint various commissions like the Finance Commission, National Commission for the Scheduled Caste and the Scheduled Tribes.
 - Power to enter into contracts on behalf of the Indian union.
 - Power to issue directions to state in certain circumstances.
- ▶ Besides the above, the executive power of the union is also vested in the union in accordance with Article 53. This executive power may be exercised either directly or through officers, subordinate to him in accordance with the Constitution.
- ▶ However, a dispute exists with regards to this power due to the absence of a definition of the term 'executive power' in the Constitution
- ▶ The executive cannot act against a statute or exceed its statutory powers. If there exists a law on that particular matter the executive is bound to act in accordance with it.

11.8 Judicial Powers of President

- ▶ The central executive is empowered to appoint judges of the Supreme court and the High court under Article 124(2) and 217(1) respectively.
- ▶ Another important judicial power vested with the President is the power to pardon under Article 72 lays down the cases when the President has the power to suspend remit or commute sentences
- ▶ In all cases where the punishment or sentence is by a Court Martial.
- ▶ In all cases where the punishment or sentence is for an offense against any law relating to a matter to which the executive power of the Union extends.
- ▶ In all cases where the sentence is a sentence of death.
- ▶ However, pardon should not be regarded as a matter of right' It is an act of grace. A pardon not only removes the punishment but also places the offender in the same position as if he had never committed the offense. The effect of the pardon is to clear the person from all infamy and from all consequences of the offenses for which it is granted and from all statutory or other disqualifications upon conviction.
- ▶ The scope of the power of the President under Article 72 to commute a death sentence into a lesser sentence has been left open by the Court after observing that whether a case is appropriate to be sent for the consideration of Presidential Pardon depends on the facts and the circumstance of each particular case.
- ▶ Therefore, this power of the president can be subjected to judicial review if the Court discovers mala fide intention or political vengeance.

11.9 Legislative Powers of President

- ▶ The legislative power of the central executive can be divided into the following heads:

Participation of the executive in the legislative process

- ▶ The President along with the council of ministers is both members of the parliament and participates intimately in the legislative making process. The President has the power to convene and prorogue to dissolve Lok Sabha. The President has the power to pass a bill and his assent is required for the transforming a bill passed by the two houses into an act
- ▶ The central executive's consent is also required in the passing certain types of State legislation which fall under the ambit of Article 288(2).
- ▶ Moreover, in certain aspects, the President's recommendation is required before the Bill is introduced before the two houses of Parliament.
- ▶ Bill relating to the alteration or states of formation of new states. (Article 3)
- ▶ A Money Bill cannot be introduced without the recommendation of the President (Article 117(1)).
- ▶ Bill involving expenditure from the Consolidated Fund of India.
- ▶ Any bill affecting any tax in which the states are interested.

Ordinance making power

- ▶ The more controversial and debatable legislative power of the President has always been the Ordinance Making Power.
- ▶ Usually, the power to make the laws rests with the Parliament.
- ▶ However, Article 123 confers special power on the President empowering him to promulgate ordinances when the Parliament is not in session and the circumstances are such which require immediate action.
- ▶ An ordinance cannot be promulgated when both the houses of parliament are in session. However, it may be passed when only one House is in session the reason being that a law cannot be passed by only one House and thus it cannot meet a situation calling for immediate legislation. This power granted to the President in the Indian Constitution is unique and no such power has been conferred upon the executive in Britain or the USA.
- ▶ In justification of the inception of the Ordinance Making power in the Constitution, Dr. Ambedkar said that there might be a situation of emergency when the Houses of the Parliament is not in session. It is important that this situation should be dealt with and it seems to me that the only solution is to confer upon the President the power to promulgate the law which will enable the executive to deal with that particular situation because it cannot resort to the ordinary process of law because the legislature is not in session.
- ▶ Article 123 empowers the President to promulgate ordinance as the circumstances which appear to require when: Both Houses of the Parliament are not in session.

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12

Powers and Procedure of Amendment In Indian Constitutional

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12.1 Introduction

- ▶ To evolve and change with all changes in society and the environment is a necessity for every constitution.
- ▶ The makers of the Constitution of India were fully aware of this need. As such, while writing the constitution, they also provided for a method of its amendment.
- ▶ Further, they decided, to make the constitution both rigid as well as flexible.
- ▶ They laid down a flexible amendment method in respect of its some parts and for several others, they provided for a rigid method.

12.2 Method of Amendment

- ▶ Part XX of the Constitution of India contains only one Article 368. It deals with the power of the Parliament to amend the constitution.
- ▶ The Union Parliament has the power to change some specified features of the Constitution by passing an ordinary law. There are two special methods of amendment under Article 368:
- ▶ Amendment by 2/3rd majority of Parliament (First Method)
- ▶ Amendment by 2/3rd majority of the Parliament plus ratification by at least half of the several State Legislatures (Second Method)

12.3 Amendment by 2/3rd Majority of Parliament- First Method

- ▶ Most parts of the Constitution (with exception of some specific provisions) can be amended by this method.
- ▶ Under this method, the constitution can be amended by. the union Parliament alone.
- ▶ For this purpose' an amendment bill can be passed by each of the two Houses of Union parliament by a majority of its total membership (i.e. the absolute majority) and by a two_third majority of members present and voting in each House.
- ▶ It is a rigid method in so far as it prescribes a special majority for amending the constitution but it is considered to be a flexible method because under it the union parliament alone can pass any amendment

12.4 Amendment by 2/3rd Majority Ratification by at least half Legislatures - Second Method

- ▶ In respect of some specified provisions of the Constitution, a very rigid method of the amendment has been prescribed.
- ▶ In respect of these the amendment-making involves two stages:
- ▶ First, the amendment bill is to be passed by both the Houses of the Union parliament by a majority of total membership and a 2/3rd majority of members present and voting in each House.

- ▶ Secondly, after this, the Amendment Bill has to secure ratification from at least half of the several State Legislatures (now at least 14 state legislatures). Only, then it gets finally passed and incorporated as a part of the Constitution when the President puts his signatures on the bill.
- ▶ The following provisions of the constitution can be amended by this rigid method :
 - Election of the president.
 - Scope of the executive power of the Union.
 - Scope of the executive power of a State.
 - Provisions regarding High Courts in Union Territories.
 - Provisions regarding the Supreme Court of India.
 - Provisions regarding High Courts in States.
 - Legislative Relations between the Union and States.
 - Any of the Lists in the Seventh Schedule. (Division of powers between the Union and States)
 - Representation of States in the
 - The provisions of Article 368. (Method of Amendment)

12.5 Additional Amendment-making the Two Houses of Parliament

- ▶ There are several amendments that result in some changes in the constitution but can be passed in the houses by simple majorities. Such bills are not considered to be constitution Amendment Bills for the purpose of Article 368. These include the following:
 - An admission or formation of new States and alteration of areas, boundaries or names of existing States.
 - Citizenship provision.
 - Provision regarding delimitation of constituencies.
 - A quorum of the two Houses of Parliament.
 - Privileges and Salaries and allowances of the Members of Parliament.
 - Rules of procedure in each House of the parliament.
 - English as a language of the Parliament.
 - Appointment of Judges and jurisdiction of the Supreme Court.
 - Creation or abolition of Upper Houses in any State.
 - Legislatures for Union Territories.
 - Elections in the country.
 - The official language of India.
 - Second, fifth and Sixth Schedules of the Constitution.
- ▶ These methods of amendment reflect a mixture of rigidity and flexibility in the Indian Constitution.

12.6 Main Features of the Amendment Method

- ▶ Part XX of the Constitution deals with the Amendment of the Constitution. It has only one Article i.e' Article 368.
- ▶ The provider to amend the constitution is mainly with the Union Parliament. No amendment can be made without Parliament's action and consent. Union Parliament alone has the power to initiate bills for amending the constitution.
- ▶ There are three basic ways in which amendments can be made:
- ▶ Most provisions can be amended by the Union Parliament by passing an amending act by a majority of the total membership, and a 2/3rd majority of members present and voting in each House.
- ▶ Ten provisions of the constitution can be amended, Bypassing of the amendment bill by 2/3rd majority of the members of each of the two Houses of Parliament, It becomes finally passed when approved by at least half of the State Legislatures.
- ▶ Some provisions can be amended by the Parliament by making law by a simple majority of its two Houses.
- ▶ Signature of the President is required as the final act which transforms a duly enacted amendment bill into an Amendment Act.
- ▶ State Legislatures have been denied the power to initiate amendments.
- ▶ All amendments are subject to the Judicial Review power of the courts. (The Supreme Courts and State High Courts only) Any part of any amendment or any amendment as a whole can be declared invalid by the Court in case it is found to be unconstitutional.
- ▶ The Parliament has the power to amend every part of the Constitution. However, the Supreme Court has ruled that the Parliament has no power to change the 'Basic Structure of the Constitution.

12.7 References

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13

History of Amendments in Indian Constitution

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13.1 Main Amendments in Constitution

- ▶ As our society and its needs are ever-evolving, if the constitution does not keep pace, it will become redundant or lead to a break down of Law and order.
- ▶ First Amendment did in 1951.
- ▶ So, as an advancing and subsisting document, numerous amendments have been made to it till 2019.
- ▶ Amendments to the Constitution require a special majority of 'two-third, members present and voting to be passed in Parliament.
- ▶ We would like to discuss a few important amendments hereinafter

Abolition of states according to classes and the introduction of Union Territories and reorganization of states by language (7th Amendment Act, 1956)

- ▶ Abolished the existing classification of states into four categories i.e., Part A, Part B, Part C and
- ▶ Part D states, and reorganized them into 14 states and 6 union territories.
- ▶ Extended the jurisdiction of high courts to union territories.

Provided for the establishment of a common high court for two or more states.

The mini-constitution inserted socialism and Secularism in the preamble, a provision on fundamental (42nd Amendment 1976)

- ▶ Secularism and socialism were inserted to restore the faith of the nation that minorities would be safe and not be exploited by the rich.
- ▶ Also, the rich would not be allowed to dominate the country's economy.
- ▶ The main reason to add socialism was to promote social as well as economic equality in the country.
- ▶ Similarly, the main reason to add secularism was to imply that there was no official state religion of the country.

Right to Property deleted from the list of Fundamental Rights (44th Amendment 1978)

- ▶ The Fundamental Right to property in India was removed to permit the reorganization of land and to facilitate land acquisition for developmental projects.
- ▶ This was carried out by the Indian Government at that time since it was not affluent enough to pay people whatever they demanded their land.

Voting age reduced from 21 to 18 (61th Amendment 1989)

- ▶ Prime Minister Rajiv Gandhi explained it as an expression of the government's full faith in the youth of the country
- ▶ The youth are aware and informed and thus, lowering the voting age would provide an opportunity for the unrepresented youth of the nation to vent out their feelings and motivate them to become a part of the political process eventually.

Introduction of Panchayati raj (73th Amendment 1992)

- ▶ Granted constitutional status and protection to the Panchayati raj institutions. For this purpose, the Amendment has added a new Part-IX entitled as 'the panchayats' and a new Eleventh Schedule containing 29 functional items of the panchayats.

Introduction of Nagarpalika and Municipality (74th Amendment 1992)

- ▶ During the early 90s local bodies in states had become ineffective in holding regular elections or the maintenance of public infrastructure, electricity and water supply.
- ▶ Thus, an immediate need to introduce effective authorities to execute the numerous plans and programs was felt by the government.
- ▶ Granted constitutional status and protection to the urban local bodies. For this purpose, the Amendment has added a new Part IX-A entitled as 'the municipalities' and a new Twelfth Schedule containing 18 functional items of the municipalities

Free and compulsory education to children between 6 to 14 years (86th Amendment 2002)

- ▶ one of the most important amendments, the government directed the private school to take 25% of their class strength from economically.
- ▶ weaker or disadvantaged groups of society through a random selection process with the help of the government funding'
- ▶ this initiative was taken to try and provide elementary education to all.
- ▶ Moreover, the local and state governments were made to ensure its proper implementation.

13.2References

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14

Emergency Provisions

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14.1 Introduction

- ▶ The emergency provisions are contained in part XVIII of the constitution, from Articles 352 to 360.
- ▶ National Emergency is mentioned in Article 352 and president's rule is mentioned in Article 356 of the Indian Constitution.
- ▶ During an Emergency, the Central Government becomes all-powerful and the states go into the total control of the Centre.
- ▶ It converts the federal structure into a unitary one without a formal amendment of the Constitution.

14.2 The Constitution stipulates three types of emergencies

National Emergency

- ▶ An emergency due to war, external aggression or armed rebellion (Article 352).
- ▶ This is popularly known as 'National Emergency'.
- ▶ However, the Constitution employs the expression 'proclamation of emergency' to denote an emergency of this type.

President's Rule

- ▶ An Emergency due to the failure of the constitutional machinery in the States (Article 356).
- ▶ This is popularly known as 'President's Rule'. It is also known by two other names- 'State Emergency' or 'Constitutional Emergency'.
- ▶ However, the Constitution does not use the word 'emergency' for this situation.

Financial Emergency

- ▶ Financial Emergency due to a threat to financial stability or
- ▶ the credit of India (Article 360).
- ▶ This type of emergency is never proclaimed in India.

14.3 National Emergency - Article 352

- ▶ Article 352 of the Indian Constitution talks about the National Emergency.
- ▶ Under Article 352, the President can declare a national emergency when the security of India or a part of it is threatened by war or external aggression or armed rebellion. It may be noted that the president can declare a national emergency even before the actual occurrence of war or external aggression or armed rebellion if he is satisfied that there is an imminent danger.
- ▶ National Emergency is imposed whereby there is a grave threat to the security of India or any of its territories due to war, external aggression or armed rebellion. Such emergency shall be imposed by the President on the basis of a written request by the council of ministers headed by the Prime Minister. When they are satisfied that there is an imminent danger thereof.
- ▶ Every proclamation is required to be laid before each House of Parliament, it will cease to operate after one month from the date of its issue unless in the meantime it is approved by the

Parliament the proclamation may continue for a period of 6 months unless revoked by the President.

- ▶ For the further continuance of emergency, the resolution has to be passed by either House of Parliament by a majority of not less than two-thirds members of the Houses.
- ▶ During the times of such emergency, the executive, legislative and financial power rests with the Centre whereas the state legislature is not suspended.
- ▶ The Union Government under Article 250 of the Constitution gets, the power to legislate in regards to subjects enumerated in the State List.
- ▶ Except Article 20 and 21, all the Fundamental Rights are suspended
- ▶ Under Article 359, the President may suspend the right to move to the Courts for enforcement of Fundamental Rights during the time 'of emergency.
- ▶ National Emergency has been imposed thrice in the country in 1962 at the time of Chinese aggression, in 1971 during the Indo-Pak war, in 1975 on the grounds of internal disturbances.

14.4 Parliamentary Approval and Duration

- ▶ The proclamation of Emergency must be approved by both the Houses of Parliament within one month from the date of its issue. Originally, the period allowed for approval by the Parliament was two months but was reduced by the 44th Amendment Act of 1978.
- ▶ However, if the proclamation of emergency is issued at a time when the Lok Sabha has been dissolved or the dissolution of the Lok Sabha takes place during the period of one month without approving the proclamation, then the proclamation survives until 30 days from the first sitting of the Lok Sabha after its reconstitution, provided the Rajya Sabha has in the meantime approved it. If approved by both the Houses of Parliament, the emergency continues for six months and can be extended to an indefinite period with the approval of the Parliament every six months.
- ▶ This provision for periodical parliamentary approval was also added by the 44th Amendment Act of 1978. Before that, the emergency, once approved by the Parliament, could remain in operation as long as the Executive (cabinet) desired. However, if the dissolution of the Lok Sabha takes place during the period of six months without approving the further continuance of Emergency, then the proclamation survives until 30 days from the first sitting of the Lok Sabha after its reconstitution, provided the Rajya Sabha has in the mean-time approved its continuation.
- ▶ Every resolution approving the proclamation of emergency or its continuance must be passed by either House of Parliament by a special majority, that is, (a) a majority of the total membership of that house, and (b) a majority of not less than two-thirds of the members of that house present and voting. This special majority provision was introduced by the 44th Amendment Act of 1978. Previously, such resolution could be passed by a simple majority of the Parliament

14.5 President Rule (Failure of Constitutional Machinery in State) - Article 356

- ▶ It is also known as State Emergency.
- ▶ Article 356 talks about the failure of constitutional machinery in the state also known as the President's Rule.
- ▶ If the President on Governor's report or otherwise is satisfied that the situation has arisen that the Government can not be carried in accordance with the constitutional provisions then, he may issue State Emergency.

- ▶ President can declare emergency either by the report of the Governor or he himself is satisfied that the situation is such that the emergency has to be imposed.
- ▶ But at times, the President may declare an emergency when a report is not received from the Governor.
- ▶ This was done by President Venkataraman in 1991 in the State of Tamil Nadu even though he did not receive a report from the Governor.
- ▶ After the 42nd Amendment of the constitution the State Emergency was made immune from judicial review. But later in the 44th Amendment the legality of President's rule could be challenged.
- ▶ The proclamation relating to state emergency shall be laid before each House of Parliament unless both Houses approve it, the emergency shall cease to have effect after the expiry of a period of two months.
- ▶ Further, the duration of proclamation can be extended to 6 months each time by both Houses of Parliament passing resolution approving its continuance.
- ▶ Beyond the period of a year, the proclamation can only be continued if the Election commission certifies that it is not possible to hold an election in the State or that territory
- ▶ Following are the consequences of State Emergency
- ▶ The President assumes all the executive power of the State himself. The state administration runs by him or any person appointed by him generally the Governor.
- ▶ During such proclamation, the state assembly is either dissolved or suspended. But the MLAs do not lose their membership of the Assembly
- ▶ Parliament makes laws regarding the state list. The parliament only passes the budget for the State.
- ▶ The High Court of the state functions independently.
- ▶ The President also proclaims ordinances in the State
- ▶ During the State Emergency, the Union Government has absolute control over the State except for the judiciary
- ▶ If one looks at the past instances of State Emergency in the country three common grounds emerge that have been invoked under Article 356: breakdown of law and order, political instability, corruption and maladministration

14.6 Parliamentary Approval and Duration

- ▶ A proclamation imposing President's Rule must be approved by both the Houses of Parliament within two months from the date of its issue.
- ▶ However, if the proclamation of President's Rule is issued at a time when the Lok Sabha has been dissolved or the dissolution of the Lok Sabha takes place during the period of two months without approving the proclamation, then the proclamation survives until 30 days from the first sitting of the Lok Sabha after its reconstitution, provided the Rajya Sabha approves it in the meantime.
- ▶ If approved by both the Houses of Parliament, the President's Rule continues for six months. It can be extended for a maximum period of three years with the approval of the Parliament, every six months.

- ▶ However, if the dissolution of the Lok Sabha takes place during the period of six months without approving the further continuation of the President's Rule, then the proclamation survives until 30 days from the first sitting of the Lok Sabha after its reconstitution, provided the Rajya Sabha has in the meantime approved its continuance.

14.7 Financial Emergency - Article 360

- ▶ The President under Article 360 of the Constitution has the power to declare Financial Emergency if he is satisfied that the financial stability or the credit of India or any part of its territory is threatened.
- ▶ It has to be laid before both the Houses of Parliament and ceases to operate at the expiration of two months unless meanwhile approved by the resolution of Houses.
- ▶ During the operation of Financial Emergency, the executive authority of the union extends to the giving of directions to any state to observe certain specified canons of financial propriety and such other directions that the President may find necessary.
- ▶ The directions may include reduction of salaries or allowance of those serving a state, of all those in connection with the affairs of the union including judges of High Court and Supreme Court. There has been no occasion of Financial Emergency in India.

Effects of Financial Emergency

- ▶ The proclamation of Financial Emergency may have the following consequences:
- ▶ The Union Government may give direction to any of the States regarding financial matters.
- ▶ The President may ask the states to reduce the salaries and allowances of all or any class of persons in government service.
- ▶ The President may ask the States to reserve all the money bills for the consideration of the Parliament after they have been passed by the State Legislature.
- ▶ The President may also give directions for the reduction of salaries and allowances of the Central Government employees including the Judges of the Supreme Court and the High Courts.

14.8 Parliamentary Approval and Duration

- ▶ A proclamation declaring financial emergency must be approved by both the Houses of Parliament
- ▶ within two months from the date of its issue. However, if the proclamation of Financial Emergency is issued at a time when the Lok Sabha has been dissolved or the dissolution of the Lok Sabha takes place during the period of two months without approving the proclamation, then the proclamation survives until 30 days from the first sitting of the Lok Sabha after its reconstitution, provided the Rajya Sabha has in the meantime approved it. Once approved by both the Houses of Parliament, the Financial Emergency continues indefinitely till it is revoked. This implies two things:
 1. There is no maximum period prescribed for its operation; and
 2. Repeated parliamentary approval is not required for its continuation.

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15

Local Self Government Constitutional Scheme in India

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15.1 Introduction

- ▶ We know there is a Government in India at the Center and State levels. But there is another important system for local governance.
- ▶ The foundation of the present local self-government in India was laid by the Panchayati Raj System (1992).
- ▶ But the history of Panchayati Raj starts from the self-sufficient and self-governing village communities.
- ▶ In the time of the Rig-veda (1700 BC), evidence suggests that self-governing village bodies called 'Sabhas' existed. with the passage of time, these bodies became panchayats (council of five persons).
- ▶ Panchayats were functional institutions of grassroots governance in almost every village. They endured the rise and fall of empires in the past, to the current highly structured system.

15.2 Local Self-Government

- ▶ Local Self-Government implies the transference of the power to rule to the lowest rungs of the political order.
- ▶ It is a form of democratic decentralization where the participation of even the grass root level of the society is ensured in the process of administration.

15.3 History of Local Administration

- ▶ The village Panchayat, as a system of administration, began in the British days, as their offer to satisfy the demands for local autonomy.
- ▶ They opened up the governance of the lowest levels to the citizens.
- ▶ The Government of India Act, 1935 also authorizes the provinces to enact legislation.
- ▶ Later, the conceptualization of the system of local self-government in India took place through the formation and effort of following four important committees from the year 1957 to 1986:
 - Balwant Rai Mehta Committee (1957)
 - Ashok Mehta Committee (1977-1978)
 - G V KRao Committee (1985)
 - L M Singhvi Committee (1986)
- ▶ Though the 64th Constitutional Amendment Bill was introduced in the Lok Sabha in 1989 itself, Rajya Sabha opposed it.
- ▶ It was only during the Narasimha Rao government's term that the idea finally became a reality in the form of the 73rd and 74th Constitutional Amendment Acts, 1992.

15.4 Panchayati Raj System under 73rd and 74th Constitutional Amendment Acts, 1992

- ▶ The Acts of 1992 added two new Parts IX and IX-A to the Constitution.

- ▶ It also added two new schedules - II and 12 which contain the lists of functional items of Panchayats and Municipalities.
- ▶ It provides for a three-tier system of Panchayati Raj in every state - at the village, intermediate and district levels.

Panchayat and Municipality

- ▶ Panchayat Municipality are the generic terms for the governing body at the local level
- ▶ Both exist as three-tier ,System at the lower, intermediate and upper levels.
- ▶ The 73rd Constitutional Amendment Act provides for a Gram Sabha as the foundation of the Panchal at Raj system.
- ▶ It is essentially a village assembly consisting of all the registered voters in the area of the Panchayat.
- ▶ The State has the power to determine uhat kind of powers it can exercise, and rvhai functions it has to perform at the village level.
- ▶ The 74th Constitutional Amendment Act provides for three types of MuniciPalities :
 - Nagar Panchayat for a transitional area between a rural and urban area.
 - Municipal Council for a small urban area
 - Municipal Corporation for a large urban area
- ▶ Municipalities represent urban local self-government'
- ▶ Most of the provisions of the two acts are parallel, differing only in the fact that they are being applied to either a Panchayat or a Municipality respectively.
- ▶ Each Gram Sabha is the meeting of a particular constituency called ward.
- ▶ Each ward has a representative chosen from among the people themselves by direct election.
- ▶ The chairperson of the panchayat or Municipality at the intermediate and distinct level are elected from among these representatives at the immediately lower level by indirect election.

15.5 Elections Held in the Local Government Bodies

- ▶ All seats of representatives of local bodies are filled by people chosen through direct elections.
- ▶ The conduct of elections is vested in the hands of the State Election Commission.
- ▶ The Chairpersons at the intermediate and district levels shall be elected indirectly from among the elected representatives at the immediately lower level.
- ▶ At the lowest level, the Chairperson still be elected in a mode defined by the state legislature.
- ▶ Seats are reserved for Scheduled Cast and Scheduled Tribe proportional to their population.
- ▶ Out of these reserved seats, not less than one-third shall be further reserved for women.
- ▶ There should try a blanket reservation of one-third seats for women in all the constituencies taken together too (which can include the already reserved seats for SC and ST).
- ▶ The Acts bar the interference of courts in any issue relating to the election to local bodies.

15.6 Qualifications Needed to be a Member of the Panchayat or Municipality

- ▶ Any person who is qualified to be a member of the state legislature is eligible to be a member of the Panchayat or Municipality.
- ▶ But he shall not be disqualified on the ground that he is less than 25 years of age if he has attained the age of 21 years. This means that unlike the state legislature, a person needs to attain only 21 years of age to be a member of panchayat/Municipality.
- ▶ The local governing bodies are elected for a term of five years.
- ▶ Fresh elections should be conducted before the expiry of the five-year term.
- ▶ If the Panchayat/Municipality is dissolved before the expiry of its term, elections shall be conducted within six months and the new Panchayat/Municipality will hold office for the remainder of the term if the term has more than six months duration.

15.7 References

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