

# INDIAN CONSTITUTION

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# INDIAN CONSTITUTION

# Introduction to the Constitution of India and the Preamble

- Meaning of Constitution
- Importance of the Constitution of India
- Preamble to the Indian Constitution
- Features of the Preamble

- (i) Why do we need a written constitution?
- (ii) What is the speciality of Indian Constitution?
- (iii) Why Constitution is considered to be supreme in India?

What is a constitution?

It is the Supreme law of the land.

Set of rules for effective functioning and to create a orderly society

The constitution is something that sets the limits and boundaries of the governments' interaction and powers.

The Constitution works as a means by which the government in the rule knows as to what extent they can impose rules and regulations on the citizen of the country.

Constitutionalism - Constitutionalism' means limited government or limitation on government.

## Why do we need a written Constitution?

- Police state
- Welfare state - Protector and Provider – Social and Economic Well being of the people.
- Most democratic country have written Constitution
- In a democratic country, the Constitution keeps a check on the excessive power of the government.
- India is Multi -lingual, Multi-religious in nature, so to balance and protect the interest of all and live in harmony/ peacefully.

**What is the speciality of Indian Constitution?**

**Why Constitution is considered to be supreme in India?**

1. Constitution is a basic document and it builds the degree of trust and ensures coordination.
2. Provisions relating to different organs of government are present.  
eg: legislative, executive, judiciary, TNPSC, UPSC, Election Commission etc
3. Concept of Separation of Powers
4. Regulate the relationship between Part III and Part IV of Constitution.

# Constitution

- Came into force on 26<sup>th</sup> Jan, 1950 – 395 articles, 8 Schedules, 22 Parts
- How long it took to draft the Constitution? - 2 years, 11 months and 18 days.
- Currently 2021- Around 448 Articles, 25 Parts and 12 Schedules.

# INDIAN CONSTITUTION

## PREAMBLE TO THE CONSTITUTION OF INDIA

- is an **introduction** to the statute containing its essence.
- it embodies in a solemn form of **all the ideals and aspirations** for which the country had struggled during the *British regime*.
- “The Preamble to a Constitution embodies **the fundamental values and the philosophy**, on which the Constitution is based, and the aims and objectives, which the founding fathers of the Constitution enjoined the polity to strive to achieve”

## How preamble was drafted?

- It was the remake of the first resolution on '[Aims and Objects of the Constitution](#)' which was moved on 13 December 1946 by Mr.Nehru and adopted on 22<sup>nd</sup> Jan, 1947.
- Preamble - establish and promote and also [aids the legal interpretation of the Constitution](#) where the language is found to be ambiguous.
- The importance and utility of the Preamble has been pointed out in several decisions of the Supreme Court of India.

# PREAMBLE TO THE CONSTITUTION OF INDIA

The preamble declares :

“We, the people of India having solemnly resolved to constitute India into a **Sovereign, Socialist Secular Democratic and Republic** and to secure its citizens:

**Justice**, Social, Economic and political;

**Liberty** of thought, expression, belief, faith and worship;

**Equality** of status and opportunity; and to promote among them all;

**Fraternity** assuring the dignity of the individual and the unity and the integrity of the Nation.

In our Constituent Assembly this **twenty- sixth day of November, 1949** do hereby, Adopt, Enact and Give to Ourselves this Constitution”

.

## COMPONENTS

- (a) Source of authority of the Constitution
- (b) Nature of Indian State
- (c) Objectives of Constitution
- (d) Adoption of Constitution

## Source of authority

- “We the people of India” – derives its authority from the people of India
- Purnima Banerji – Part of Constituent assembly- Suggestions to replace as “We on behalf of the people of India”.
- Dr. Ambedkar – As it embodies the desire of the people, which has its roots, authority and sovereignty from the people.
- After assembly deliberations/ debate

# NATURE OF INDIAN STATE

Sovereign, Socialist, Secular, Democratic and Republic in nature.

## 1. Sovereign

- supreme power , independent , absolute and uncontrolled – internally supreme and externally free.

## 2. Socialist- added by 42<sup>nd</sup> Amendment Act,1976 – Socialist principles were present in Directive Princilpe of State Policy

- aims at elimination of inequality in income, status and standards of life.
- India follows ‘Democratic Socialism” and not ‘Communistic Socialism”.
- Democratic Socialism’ that holds faith in a mixed economy where both private and public sectors co-exist side by side.

3. **Secular** – added by 42<sup>nd</sup> Amendment Act, 1976.

- Treating all the religions equally with respect.
- State does not recognize any religion.
- Art 25 to 28 of Indian Constitution – Religious freedom to practice, profess and propagate religion of their choice.

4. **Democratic** –

- Demo means ‘PEOPLE’ , Cracy means ‘RULE’
- form of government which gets its **authority from the will of the people**.
  - (a) Direct – Switzerland – Referendum, Initiative, Recall, Plebiscite
  - (b) Indirect - India

- . 5. **Republic** – head of the state is not hereditary monarch.
  - India has a elected head called the ‘President’.

## OBJECTIVES

Justice – Social, Economic and Political

Liberty – of thought, expression, belief, faith and worship.

Equality – of status and opportunity

Fraternity – assuring the dignity of individual and the unity and integrity of the nation.

42<sup>nd</sup> Amendment Act,1976 :-

- 1.Secular - **S.R. Bommai v. Union of India** , the supreme court held that “secularism is the basic feature of the Constitution.”
- 2.Socialist
- 3.Integrity

- **Conclusion:**

- Gives a brief idea about the makers of the Constitution
- Key to open the minds of the makers.
- The preamble does not grant any power to anyone but it gives the structure on which the constitution stands.

# INDIAN CONSTITUTION

## TOPIC 2

Sources of Constitution of India

# Making of Constitution

- Indian constitution is **the fundamental document** that forms **basis of Republic of India**.
- **Mahatma Gandhi and others suggested** for need for a **Constituent Assembly** on the basis of adult suffrage.
- Its time consuming so, **utilize the Provincial Assemblies**, already constituted by election, **as 'elective bodies'** to **send** suitable members to the Constituent Assembly.

Working of constitution

Objective resolution

Committees on constituent assembly – sub committees on Fundamental Rights and Minorities.

Drafting committee

Enactment

Enforcement

Criticism

- **1. Working of Constitution:**
  - Constituent assembly first meeting was on **Dec 9, 1946** – boycotted by Muslim league demanding for separate State of Pakistan.
  - Second meeting was **on Dec 11, 1946** - Dr.Rajendra Prasad and H.C.Mukerjee were elected as President and vice-president of the Assembly respectively.
- **2. Objective Resolution:**
  - Introduced by Nehru as later became the preamble.

- **3. Committees of the Constituent Assembly:**
  - Major and Minor Committees
  - **Major Committee** – Drafting Committee, Advisory Committee, Union Powers committee etc
  - Had sub committees on Fundamental Rights , Minorities, Tribal Areas etc
  - **Minor committee** – Finance and staff committee, Hindi Translation committee, Press gallery committee, House committee etc

## 4. Drafting of the Constitution

7 Members

1. Dr. Ambedkar
2. Gopalswamy Ayyangar
3. Alladi Krishnaswamy Ayyar
4. Dr. K.M. Munshi
5. Syed Mohammed Saadullah
6. T.T. Krishnamachari
7. N. Madhava Rau

## Sources of Indian Constitution

- 1. The Government of India Act, 1935
- 2. British Constitution
- 3. US Constitution
- 4. Irish Constitution
- 5. Canadian Constitution
- 6. Australian Constitution
- 7. Weimar Constitution (Germany)
- 8. Soviet Constitution
- 9. French Constitution
- 10. South African Constitution
- 11. Japanese Constitution

## HISTORY

- Regulating Act, 1773 - Establishment of SC at Calcutta
- Charter Act , 1833 and 1853
- Government of India Act, 1858 - Governor General of India to Viceroy of India
- Indian councils Act, 1861 and 1892 - Indian were associated in the law making process, Initiated the process of decentralisation

- Morley - Minto reforms, 1909
  - Communal Representation for Muslims - 'Separate Electorate'
- Montague- Chelmsford reforms, 1919
  - Demarcating and separating the central and provincial subjects
- **Government of India Act, 1935**
  - Formation of Provincial Legislative Assemblies based on adult franchise.
  - Creation of three list
  - Separate electorate for depressed class, women
  - Emergency Provisions
  - Public Service Commission
  - Judiciary
  - Federal Scheme

**USA:**

- Fundamental Rights
- Judicial Review
- Impeachment of President
- Removal of Supreme Court and High Court Judges
- Preamble
- Independence of Judiciary

**BRITISH:**

- Writs – Right to Constitutional Remedies
- Parliamentary form of government
- Single Citizenship
- Parliamentary Privileges
- Rule of Law

### **IRELAND:**

- DPSP
- Method of election of president
- Members nomination to Rajya Sabha

### **GERMANY:**

- Emergency
- Amendment

### **USSR**

- Fundamental duties

### **CANADA**

- Federalism

- **AUSTRALIA**

- Concurrent List
- Freedom of Trade and Commerce

- **FRANCE:**

- Ideals of Liberty, Equality, Fraternity and Republic - Preamble

÷ 1<sup>st</sup> draft – Feb, 1948.

÷ Eight months discussion – 2<sup>nd</sup> draft on Oct, 1948

- Draft constitution has been before the public for eight months.

#### **Enactment :-**

Final draft on Nov ,1948 and finally adopted on Nov 26,1949.

#### **Criticism:-**

1. Not a Sovereign body
3. Long time in making the constitution
- 4.Dominated by congress
- 5.Lawyer politician domination
6. Dominated by Hindus

# Conclusion

- It is the origin of the state, the government, citizenship, rights, liberty & justice. However, it is often criticized to not be original per se, because many of its provisions are borrowed from other countries.
- Regardless of criticism, the constitution because of its borrowed character, is like a bouquet with best flowers picked up from different gardens.
- Different legal systems have evolved differently, giving rise to different legal principles as fruit of evolution.

# Features of Indian Constitution

- **Topic 3 - Features of Indian Constitution**
  - Indian Constitution is unique in its contents and spirit.
  - Salient Features of Indian Constitution
  - It have several salient features that distinguish it from the constitution of other countries.

## **Salient features**

- Lengthiest Constitution
- Parliamentary form of Government
- Rigidity and Flexibility
- Fundamental Rights
- DPSP – Directive Principles of State Policy
- Adult Suffrage
- An independent Judiciary – Judicial Review
- A Secular State
- Single Citizenship
- Fundamental Duties
- Three –tier System

## 1.Lengthiest Constitution:

- It is the lengthiest in the world.
- It is very comprehensive, elaborate and detailed document
- Originally has preamble, 395 articles, 8 Schedules, 22 Parts
- Currently 2021- Around 448 Articles, 25 Parts and 12 Schedules.

- Four factors contributing to the size of Constitution:
  1. Geographical factors
  2. Historical factors
  3. Single constitution for both centre and state
  4. Dominance of legal luminaries in the Constituent Assembly

Constitution contains not only fundamental principles of governance but also detailed administrative provisions.

- **2. Parliamentary form of Government**
- The Parliamentary system is also known as '**Westminster**' model of government, responsible government and cabinet government.
- Though it is based on UK model there are certain fundamental difference in India.
- It is based on the **principle of cooperation and co-ordination between the legislative and executive organ.**

- **Features** of parliamentary form of government is
  - Presence of nominal and real executives
  - Majority party rule
  - Collective responsibility
  - Leadership of the Prime Minister and so on

### 3. Rigidity and Flexibility

- Rigid – Special procedure for its amendment Eg: American Constitution
- Flexible – Can be amended easily  
Eg: British Constitution
- Indian Constitution – neither rigid nor flexible
- Art 368 – (i) Special Majority (2/3<sup>rd</sup> majority)  
                 (ii) Special Majority + Ratification of states  
                 (iii) Simple Majority

## 4. Fundamental Rights :

- Part III – Six fundamental rights
  1. Right to Equality – (Art 14 – 18)
  2. Right to freedom (Articles 19-22)
  3. Right against exploitation (Articles 23-24)
  4. Right to freedom of religion (Articles 25-28)
  5. Cultural and educational rights (Articles 29-30)
  6. Right to Constitutional Remedies (Art 32) – Writ Jurisdiction

## Kinds of writs

- Habeas Corpus
- Mandamus
- Prohibition
- Certiorari
- Quo-Warranto

Justiciable in nature

Subjected to reasonable restrictions

Promoting the idea of political democracy

## 5. DPSP – Directive Principles of State Policy

- Part IV of the Indian Constitution (Art 36 – 51)
- Promoting the ideal of social and economic democracy
- Establish the welfare state
- Dr.Ambedkar considered this as ‘novel feature’ of the Indian Constitution.

## 6. Adult Suffrage

- Universal adult franchise is based on the elections in India
- Citizens above 18 years can cast their vote without any discrimination based on race, caste, religion, sex, literacy etc
- Voting rights was **reduced from 21 to 18 years** in 1989 by 61<sup>st</sup> Constitutional Amendment Act 1988.
- Essence of democracy, upholds the principle of equality and protects the interest of all.

## 7. An independent Judiciary – Judicial Review

- Hierarchy of courts – Supreme Court – High Court and then subordinate courts
- Supreme Court is the guardian of Constitution
- Single court system in India
- USA – Federal laws enforced by federal judiciary and state laws are enforced by state judiciary

- Independence is ensured through various provisions of Indian Constitution such as
  1. Appointment of judges
  2. Tenure
  3. Service conditions etc
- Separation of judiciary from executive is dealt under Art 50
- Judicial Review

## 8. A Secular State

- Does not uphold any religion as official religion.
- Art 25- 28
- Preamble – secular was added, secure all its citizen liberty of belief, faith and worship
- Art 14,,15,16, 29 and 30
- Constitution embodies the positive concept of secularism – giving equal respect to all the religions.

## 9. Single Citizenship

- USA – Dual Citizenship
- India – irrespective of state they are born enjoy the same political and civil rights

## 10. Fundamental Duties

- inserted as PART IV A by 42<sup>nd</sup> Amendment Act, 1976 on the recommendation of swaran singh committee.
- Reminder to the citizens that rights includes duties as well.

- 11. **Three tier system:**
  - Panchayat Raj system - 73<sup>rd</sup> and 74<sup>th</sup> amendment act
  - Gram Panchayat at the village level
  - Panchayat Samiti at the block level and
  - Zila Parishad at the district level.

# CITIZENSHIP (Article 5 to 11)

- Article 5 to 9 – determines who are the Indians at the commencement of Constitution.
- Article 10 – Continuance of such citizenship
- Article 11 – power of parliament to make law regarding citizenship.
- Citizenship Act, 1955

- Citizens are people who enjoy all civil and political rights.
- Nationality is a place of birth of a person whereas
- Citizenship is his legal status in a country.
- Domicile - intention to reside forever in a country is an essential element for domicile.

## Article 5 :

- During the commencement of the Indian Constitution, each person who has his or her domicile in the territory of India and :
  - (a) who was born in the Indian territory; or
  - (b) either of whose parents was born in the Indian territory; or
  - (c) An individual who has been ordinarily resident in the Indian territory for at least 5 years immediately preceding such commencement, shall be a citizen of India.

# Article 6

- **Migrants from Pakistan:**

Due to Independence Act, 1947, India was partitioned into India and Pakistan, with effect from 15-8-1947.

- A person migrated to India from Pakistan became an Indian Citizen if he or either of his parents or any of his grandparents was born in undivided India and also fulfil any one of the two conditions:

- Migrants from Pakistan before 19<sup>th</sup> July,1948 – ordinary resident in India.
- Migrants from Pakistan to India on or after 19<sup>th</sup> July,1948 – he be the residents for not less than 6 months preceding the date of his application for registration.

## Article 7

Person who migrated to Pakistan from India after march 1, 1947 , shall not be deemed to be a citizen of India.

Provided nothing said above will apply to a person if later he returned to India for resettlement could become an Indian citizen.

# Article 8

## Rights of Citizenship of Certain Persons of Indian Origin Residing Outside India

- Any person who or either of whose parents or grandparents were born in India as stated in the Government of India Act 1955 and who is residing ordinarily in any country outside India shall be considered to be a citizen of India.
- If he has registered as a Citizen of India by an Indian diplomatic or consular representative in that country on an application made by him or her in the prescribed document form to such diplomatic or consular representative, whether before or after the commencement of the Constitution.

- Article 9 - Voluntarily Acquiring Citizenship of a Foreign State Not to be Citizens
- Article 10 – Every person are subjected to the law created by the parliament
- Article 11 - Parliament to Regulate the Right of Citizenship by Law
  - Citizenship Act, 1955
  - Citizenship Amendment Act, 2019

## 2019 Amendment:

- **2019 Amendment**
- Illegal migrants who are Hindus, Sikhs, Buddhists, Jains, Parsis and Christians from Afghanistan, Bangladesh and Pakistan, eligible for citizenship.
- Period of naturalisation for such group of persons from six years to five years.

1. <https://www.sansarlochan.in/en/analysis-of-the-preamble-to-the-indian-constitution/>
2. <https://www.legalserviceindia.com/legal/article-750-preamble-to-the-indian-constitution.html>
3. <https://lawbriefcase.com/in-depth-analysis-of-the-preamble-of-the-indian-constitution/>
4. <https://prepp.in/news/e-492-sources-of-the-indian-constitution-indian-polity-upsc-notes>
5. <https://www.centurylawfirm.in/blog/sources-of-indian-constitution/>
6. <https://legalserviceindia.com/legal/article-8793-salient-features-of-the-indian-constitution.html>

# Fundamental Rights and Duties

# FUNDAMENTAL RIGHTS

- Part III of the Constitution of India
- Art 12- 35

Why are rights important in a society?

- The concept of human rights represents an attempt to protect the individual from oppression and injustice.
- Right to liberty is the very essence of a free society and it must be safeguarded at all times.

## History:

- US - First modern Constitution to give concrete shape to the concept of human rights from its document **Bill of Rights**.
- UK – There is no formal declaration of people's Fundamental Rights in Britain. The **concept of Rule of Law prevails** there, which imposes a legal restraint on legislative and executive power.

- India – The framers derived their inspiration from US Bill of Rights.
  - Part III is the Magna Carta of India.

What was the reason to incorporate Fundamental Rights in the Constitution of India?

- Indian society is fragmented into many religious, cultural and linguistic groups, and it is necessary to give the people a sense of security and confidence.

- FR in India apart from guaranteeing certain basic civil rights and freedoms to all, also fulfil the important function of giving a few safeguards to minorities, protecting religious freedom and cultural rights.
- It is a part of Basic structure of the Constitution.

**Classified into seven headings:**

- Right to Equality (Art 14-18)
- Right to Freedom (Art 19-22)
- Right against exploitation (Art 23-24)
- Right to Freedom of Religion (Art 25-28)
- Cultural and Educational Rights (Art 29-30)
- Right to Property (Art 31)
- Right to Constitutional Remedies (Art 32)

# Art 12

- The term “State” has been defined.
- **What is the need for knowing the definition?**

It's actions can be challenged if FR is violated.

- The “State” includes
  1. Government and Parliament of India
  2. Government and legislature of state
  3. Local authorities
  4. Other authorities

Within the territory of India or under the control of the Government of India.

## Local Authorities:

“Local authority shall mean a **municipal committee, district board**, body of commissioner or other authority legally entitled to or entrusted by the government within the control or management of a municipal or local fund”.

- Local governments includes municipal corporation, district board, village panchayat etc

- The term “State” has been defined in a wider sense so as to include all its agencies.
- All other authorities includes LIC,ONGC, SAIL etc.
- According to Supreme Court, **even a private body or an agency working as an instrument of the State** falls within Art 12.
- They discharge the functions similar to government.

# Art 13

- Art 13 (1) – Pre- Constitutional Law
- Art 13(2) – Post – Constitutional Law
- Art 13(3) – Definition of Law
- Art 13(3) -“law” includes any Ordinance, order, bye-law, rule, regulation, notification, custom or usage having in the territory of India the force of law.

# Pre- Constitutional laws

- Art 13(1) -All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void.
  - Eg: Before 1950, Indian Penal Code, 1908, Indian Contracts Act, 1872 , Code of Civil Procedure, 1908 etc

- Doctrine of Severability
- Doctrine of Eclipse

Eg: - In one case, The Prize Competitions Act of 1955 as it violated their fundamental right to carry on any business, trade or profession.

- Definition of Competition under Section 2(d) not only included the acts which were gambling in nature but also acts which involved personal skills of a person.
- The court declared Sec 2(d) as void.

- Art 13(2) -The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void.

## **Concept of Judicial Review:**

- Power of Supreme Court and High Court to declare the validity of law.
- It has an authority to declare it as unconstitutional or invalid on the ground of violation of FR.
- Power of Judicial Review in India Recently:  
Eg: Triple Talaq Judgment  
Adultry Judgment – Sec 497 of IPC

## Right to Equality (Art 14- Art 18)

# Art 14

- Article 14 –
  - (i) Equality before law – English origin – Negative concept – Because it promotes no discrimination - based on A.V.Dicey's Rule of Law.
  - (ii) Equal protection of laws – US origin - Positive concept – Reasonable classification is permitted.
    - Like should be treated alike- it denotes **equality of treatment in equal circumstances**

- **Exceptions:**
  - Article 361 – Special powers to the president and governor.
  - Armed forces – Military laws.
  - Medical Practitioners – Medical council of India
  - Ministers and executives are given wide discretionary powers
  - Foreign Sovereigns, Ambassadors, Diplomates enjoy special privilege.

# Reasonable Classification

1. **Geographical basis** – each state may have different laws.
2. **Discrimination by state in its own favour** – Eg: Jallikattu
3. **Taxation laws** –  
“Charging more for the theatres in metro cities is valid under Article 14”
4. **Special Courts and procedure** – Article 246(2) – parliament has power to establish special courts to conduct trial for special offences.

# Art 15

The state shall not discriminate against  
**any citizen** on grounds only of

- (i) religion
- (ii) Race
- (iii) Caste
- (iv) Sex
- (v) place of birth or any of them.

Prohibition of discrimination in the places of –  
access to shop, public restaurant , hotels  
and place of public entertainment or  
use of wells , tanks, bathing ghats, roads  
and places of public resort.

## **Exception:**

**Art 15(3)** the state shall make provisions Special provisions made for women and children(**Protective discrimination**) –

Eg: Free education for children, Dowry Prohibition Act etc

**Art 15 (4)** the state shall make provisions Special provisions for the advancement of any socially and educationally backward classes of citizens or for the Scheduled castes and Scheduled Tribe. (**inserted by 1<sup>st</sup> Amendment Act,1951**) –  
**enabling provision**

**Art 15 (5)** the state shall make provisions for the admission to educational institutions including private educational institution. (**inserted by 93<sup>rd</sup> Amendment Acct, 2005**)

- Art 15 (6) the state shall make provisions for the advancement of any economical weaker section of citizens and shall make provisions with regard to their admission in educational institutions other than minority institution.(maximum 10%) (103<sup>rd</sup> Amendment,2019)

# Art 16

- **Article 16 (1)** – Equality of opportunity for all citizens in matters of public employment.
- **Article 16(2)** – no discrimination based on religion, race, caste, sex, descent, place of birth, residence or any of them.
- **Article 16(3)** – Parliament can make any special laws.

- Exceptions:
  - Parliament can prescribe residence as a condition for certain employment or appointment in a state or union territory or local authority or other authority.
  - State can provide reservation for post of govt jobs in favour of backward class of citizens who are not adequately represented in the state services.
  - State can provide reservation for post of govt jobs in favour of Scheduled Caste and Scheduled Tribe.

- The State shall make provisions for reservation of appointments in favour of any economically weaker section of citizens other than those mentioned above subject to maximum of 10% of the post. (**added by 103<sup>rd</sup> Amendment Act, 2019**)

- Two questions:
  1. Who is socially and educationally backward classes?
  2. What is the limit of reservation?

# Judicial decisions

- **Balaji vs State of Mysore (AIR 1960 Mys 338)** - Caste alone cannot be the sole test to ascertain the backwardness.
- **Preeti Sagar Srivastava vs State of Madhya Pradesh (AIR 1999 SC 2894)** - With 4:1 the court held that , **merit alone can be the criterion for selecting students** to the courses especially in medical and engineering.

- Periakaruppan vs State of Tamilnadu (AIR 1971 SC 2303)

**Held, that classification of backward classes on the basis of castes is accepted but the government should not proceed on the basis that once it is backward it will be backward classes forever. The it would defeat the very purpose of reservation.**

- **Reservation : (Mandal Commission Case)**
- **Indra Sawhney vs Union of India (AIR 1993 SC 477)**  
**9 judges in the ratio of 6: 3 –**

**Held**, Carry forward rule as valid but permitted only in exceptional situations.

- The maximum percentage of reservation can be 50% only.
- Creamy layer (**members of a backward class who are highly advanced socially as well as economically and educationally**) was introduced in the category of Backward Classes but subjected to restriction.
- 10% reservation for economical weaker class was struck down.
- No reservation for promotion.

- **Mukesh Kumar vs The State Of Uttarakhand (7 February, 2020)**
- The present judgment made a settled law that the state government cannot be directed to provide reservations for appointment in public posts, and is not bound to make reservations for SCs and STs in matters of promotions.
- Thus, an individual cannot claim reservation, as his fundamental right. And, **it is the discretion of the state government to decide whether reservations are required in appointments and promotions.**

# Art 17

- **ABOLITION OF UNTOUCHABILITY :**
  - ii. Firstly, it announces that ‘untouchability’ is abolished and its practice in any form is forbidden
  - ii. Secondly, it declares that the enforcement of any disability arising out of ‘untouchability’ shall be an offence punishable in accordance with law

## **Legislations:**

1. Untouchability (Offences) Act
2. ‘Protection of Civil Rights Act, 1955

- Following actions are offences:
  1. Preventing any person from entering any place of public worship
  2. Denying access to any shop, restaurant, public entertainment etc
  3. Insulting any person belonging to SC and ST
  4. Refusing to admit persons in hospitals, educational institutions etc

# Article 18

- Abolition of Titles
- No citizen of India shall accept any title from any foreign State
- No person who is not a citizen of India shall, while he holds any office of profit or trust under the State, accept without the consent of the President any title from any foreign State

- Titles such as Maharaja, Dewan, Bahadur etc are prohibited under Art 18
- Whereas, it permits awards such as Bharat Ratna, Padma Bhushan, Padma Vibhusan, Padma Sri etc

# Art 19

- It has six freedoms whereas originally it had seven freedoms.
- **All citizens** shall have the right ----
- Article 19(1) (a) – to freedom of speech and expression
- Article 19(1) (b) –to assemble peaceably and without arms;
- Article 19(1) (c ) - to form associations or unions;
- Article 19(1) (d) - to move freely throughout the territory of India;

- **Article 19 (1) (e)** - to reside and settle in any part of the territory of India;
- **Article 19 (1) (f)** - omitted by 44<sup>th</sup> Amendment act. (it was right to acquire, hold and dispose of property).
- **Article 19 (1) (g)** - to practice any profession, or to carry on any occupation, trade or business.

- Freedom of speech and expression is not absolute.
- It is subjected to restrictions.
- Article 19 (1) (a) – Article 19 (2)
- Article 19(1) (b) – Article 19 (3)
- Article 19(1) (c ) – Article 19 (4)
- Article 19 (1) (d) ,(e) – Article 19(5)
- Article 19 (1) (g) – Article 19 (6)

- Expression is a matter of **liberty and right**. The liberty of **thought and right to know** are the sources of expression.
- Freedom of expression is more essential in a democratic setup of State where people are **the Sovereign rulers**
- Effective participation of the people in the Government

- Full fledged development of Personality
- Democratic Value
- To ensure Pluralism
- Freedom of Expression is among the foremost of **human rights**. It is the **communication and practical application of individual freedom of thought**.
- Highest of all liberty in India
- **Article 19 has three implied Rights:**
  - (i) Right to Silence
  - (ii) Right to receive information/ Right to know
  - (iii) Freedom of press

- ***Right to Silence***
- *Bijoe Emmanuel v. State of Kerala 1986 3 SC 615*
- Right to Information Act, 2005
- Non-disclosure of information under RTI Act is permitted according to Sec 8, 9 and 11.
- Restrictions – third party information cannot be disclosed.

# **Freedom of press: (Implied right)**

- - Media has same rights like an individual to **write, publish, circulate or broadcast.**
  - **Why India does not have Freedom of Press expressly as it is present in US constitution?**
- Dr.B.R.Ambedkar ,Chairman of Constituent Assembly
- “The press is merely another way of stating an individual or a citizen. The press has no special rights which are to be given or which are not to be exercised by the citizen in his individual capacity.”
- “One did directly what the other did indirectly”.

# **Freedom of Speech and Expression**

- Article 19 (1) (a) and Article 19 (2)
- Freedom of Speech and Expression – Article 19(1)(a) is not absolute.
- It has the restrictions under Article 19(2)

The 8 restrictions were:

1. Security of the state
2. Friendly relations with foreign states
3. Public Order
4. Decency or morality
5. Contempt of Court
6. Defamation
7. Incitement to offence
8. Sovereignty and integrity of India – inserted by 16<sup>th</sup> Amendment Act, 1963.

# **Article 19 (b) – (g)**

- **Article 19(b)** – not absolute subjected to restriction under **Article 19(3)**.
- **Right to assemble peaceably and without arms** – Conduct public meetings, demonstrations and take out processions.
- **Restrictions** -
  - 1. Sovereignty and integrity of India (16<sup>th</sup> Amendment, 1963)
  - 2. Public order
  - 3. Reasonable restriction – Sec 144 of CrPC – Magistrate can restrain , Sec 141 IPC , Unlawful Activities (prevention) Act, 1967.

- **Article 19(1)(c )** – freedom to form association or unions or co-operative societies.
- **Restriction: Article 19(4)**
- 1. Public Order
- 2. Morality
- 3. Sovereignty and integrity

- **Article 19(1) (d) and (e)** – Freedom of movement, to reside and settle in any part pf India.
- **Restriction: Article 19 (5)**
- 1. In the interest of general public
- 2. Protection of interest of ST

- **Article 19(1) (g)** – Freedom to practise any profession, to carry on any occupation, trade or business.
- **Restrictions: Article 19 (6)**
- 1. interest of general public
- 2. reasonable restriction - state can make laws relating to  
**-Professional or technical qualification necessary for practising any profession.**

Eg: Street Hawkers , lotteries , Ban on pan masala or gutkha, Liquor Ban, Gambling.

**Bombay hawkers Union vs Bombay Municipal Corporation( AIR 1985 SC 1206)**

# Case laws

- Kedarnath vs State of Bihar – Sec 124 A of IPC
- Shreya Singal vs Union of India – Sec 66 A of IT Act
- Anuradha Bhasin vs Union of India (2020) – Ban on use of internet.
- **Issues Raised**

## **Issue 1:**

Whether the freedom of speech and expression and freedom to practise any profession, or to carry on any occupation, trade or business over the Internet is a part of the fundamental rights under Part III of the Constitution?

## **Issue 2:**

Whether the freedom of the press was violated due to the restrictions?

- **Held:**
- Right to freedom of speech and expression under Article 19(1)(a), and the right to carry on any trade or business under 19(1)(g), using the medium of internet is constitutionally protected”.
- The freedom of press was not restricted as the circulation was permitted.
- Foundation of Media Professional vs Union Territory of Jammu and Kashmir (2020) – **relaxation in use of internet during covid**

# **Article 20**

- 20(1) – Protection against Ex post facto laws
- 20(2) – Protection against Double Jeopardy
- 20(3) – Protection against self – incrimination

## **Ex post facto laws: (Article 20(1))**

No person shall be **convicted of any offence** except for the violation of law in force **at the time of commission of the act**, nor be subjected to a penalty greater than that which might have been under the law in force.

- **Kedarnath vs State of West Bengal(AIR 1953 SC 404)**
  - committed an offence in 1947 – fine and imprisonment was imposed.
  - amended in 1949 – enhanced the punishment(fine amount).
  - **Held, enhancement does not apply to the this case.**
- **Rathanlal vs State of Punjab(AIR 1965 SC 444)**
  - Boy was convicted for trespass and outraging the modesty of a girl of 7 years.

- convicted for 6 months rigorous imprisonment and fine.
- later, Probation of Offenders Act, 1958 was passed.
  - it provided that person below 21 years should not ordinarily be sentenced to imprisonment
- **Held, the rule of beneficial interpretation is applied and court reduced the punishment.**

# Article 20(2) - Double Jeopardy

- “**Nemo debet vis vexari**” means “ No man should be put twice in peril for the same offence”
- **Maqbool Hussain vs State of Bombay**
  - Gold brought by appellant will be confiscated by customs officers under Sea Customs Act.
  - **later** , he will be charged under FERA(Foreign Exchange Regulation Act).
  - the appellant invoked Art 20(2) and approached the court.
  - **Held, Customs authority is not judicial in nature, so Art 20 (2) does not apply .**

# **Venkataraman v. Union of India**

- the appellant was dismissed from service based on the inquiry under Public Service Enquiry Act, 1960.
- later, he was charged under IPC and Prevention of Corruption Act.
- he challenged before the court and said it is violative of Art 20 (2).
- Held, disciplinary action and prosecution under Prevention of Corruption Act is different so, Art 20(2) does not apply.**

# Article 20(3) - Protection against self-incrimination

- Article 20(3) provides that no person shall be compelled to be a witness against himself.
- It does not apply for - confession statement voluntarily given in the court.
- The protection under this Article is applicable only if it is under compulsion to give evidence.
- **State of Bombay vs. Kathi Kalu oghad, AIR 1961 SC 1808**
- The Court held that it is on the prosecution to find out whether the accused gave the information voluntarily or compulsorily. The Court made it clear that Section 27 of the Evidence Act is not violative of Article 20(3).

# Nandhini Satpathi vs PL Dani

- This case is one of the **most popularly cited cases when it comes to self-incrimination and right to be silent.**
- Nandini Satpathy – former Chief Minister of Orissa – against whom a case had been registered under the Prevention of Corruption Act, was asked to appear before the Deputy Superintendent of Police [Vigilance] for questioning.
- The police wanted to interrogate her by giving her a string of questions in writing. She refused to answer the questionnaire, on the grounds that it was a violation of her fundamental right against self-incrimination. She was booked under sec 179 of IPC.

- **Issue:**  
Whether Nandini Satpathy had a right to silence and whether people can refuse to answer questions during investigation that would point towards their guilt?
- **Held:**  
The Supreme Court **affirmed that the accused has a right to silence** during interrogation if the answer exposes her/him into admitting guilt in either the case under investigation or in any other offence.

- An accused person **cannot be coerced or influenced** into giving a statement pointing to her/his guilt.
- An essential element of a **fair trial** is that the accused cannot be forced to give evidence against her/himself.
- Forcing suspects to sign statements admitting their guilt violates the constitutional guarantee against self incrimination

# Is the following ways legally valid?

- Shock Treatments?
- Narco –Analysis Test?
- Brain Mapping?
- Lie detector Test?

Narco-analysis, brain mapping and lie detector tests against the will of the accused would be violative of Article 20 (3) of the Constitution.

In India, the Narco-analysis test is done by a team comprising of an **anesthesiologist, a psychiatrist, a clinical/ forensic psychologist, an audio-video grapher**, and supporting nursing staff.

- **In India, Narco-analysis was**
- First used in 2002 in the Godhra carnage case.
- Famous Arun Bhatt kidnapping case in Gujarat
- Telgi stamp paper scam
- Nithari village (Noida) serial killings.

- **Selvi v. State of Karnataka**
- Held the use of Narco-analysis, brain-mapping and polygraph tests on accused, suspects and witnesses without their consent as unconstitutional and violation of the 'right to privacy'.
- **The judges said:**
- *"The compulsory administration of the impugned techniques violates the right against self-incrimination. **The test results cannot be admitted in evidence if they have been obtained through the use of compulsion.** Article 20 (3) of the Constitution protects an individual's choice between speaking and remaining silent, irrespective of whether the subsequent testimony proves to be inculpatory or exculpatory.*

# Article 21 of the Constitution of India provides:

- “No person shall be **deprived of his life or personal liberty** except according to procedure established by law.”
- Right to life and personal liberty is an **essential part** of human life.
- Right to life has been considered as the **most fundamental of all human rights**.
- “Right to life” under **Article 21 of the Indian Constitution is supreme** amongst all fundamental rights, enshrined in Part III of the Constitution of India

- The Indian judiciary widely interpreted and gave progressive meanings to the words of “life”, “personal liberty”, and “procedure established by law” for protecting individuals fundamental rights.
- Liberal interpretation of right to life and personal liberty led to the creation of new sub rights .
- Right to life is not an absolute right. State can impose reasonable restrictions by adopting some procedure.

- The expression “procedure established by law” in Article 21 does not mean any arbitrary law rather it **should be reasonable, fair and just.**

# Interpretation to the term “Life”

- In *Kharak Singh v State of UP and Sunil Batra v Delhi Administration*, SC upheld the view of US decision.
- The Supreme Court of India in *Francis Coralie Mullin v Union Territory of Delhi* (AIR 1981 SC 746) observed Right to life includes the right to live with human dignity.

# Interpretation to the term “Personal Liberty”

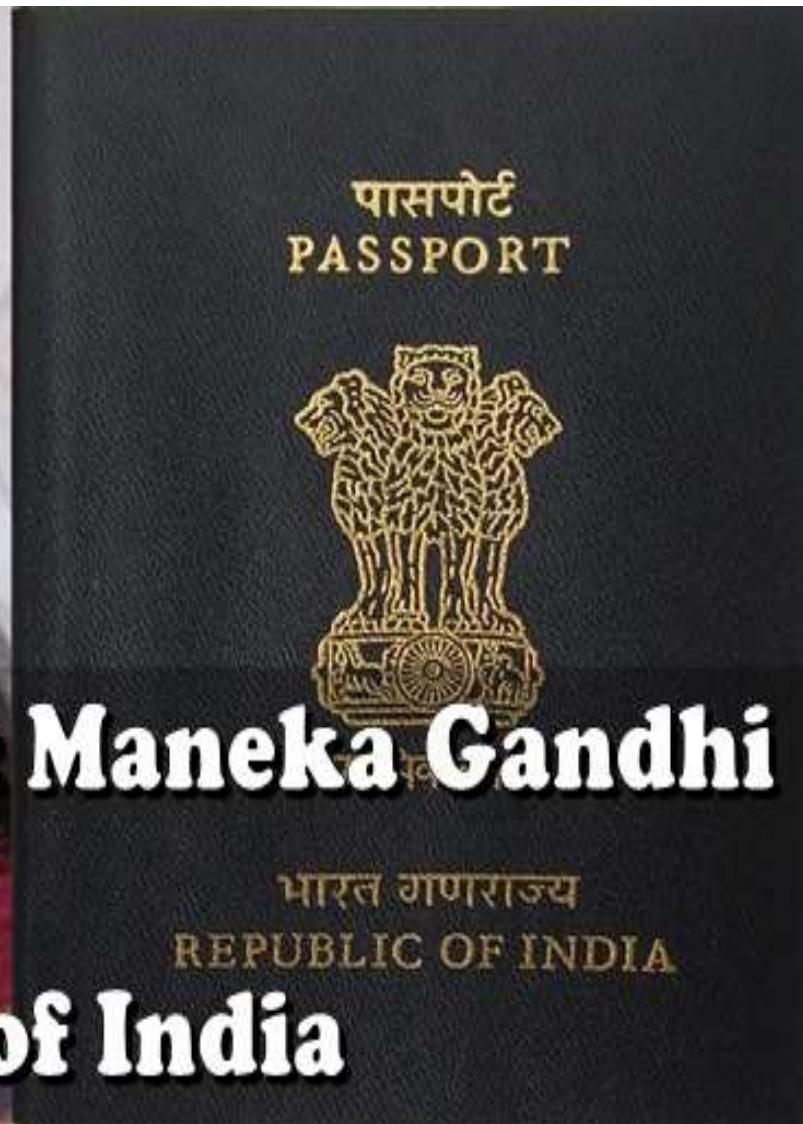
- **A.K. Gopalan v State of Madras**(AIR 1950 SC 27) , the Court refused to accept the liberal interpretation of Constitutional provisions.
- The **Court gave a narrow construction** to words such as “**personal liberty**” and “**procedure established by law**” used in Article 21 of the Constitution.
- Issues:
  1. Whether Preventive Detention Act 1950 is in violation of Article 19 and 21 of the Constitution?
  2. Whether ‘procedure established by law’ under Article 21 of the Indian Constitution is same as ‘due process of law’ under US Constitution?
  3. Whether is there any relation between Article 19 and 21 of the Constitution or they are independent in nature?

- Held that the ‘**personal liberty**’ which is enumerated under Article 21 of the Constitution means nothing more than the liberty of the physical body, that is freedom from arrest and detention without the authority of law.

- In *Kharak Singh v State of UP*, the Supreme Court of India refused to accept the narrowest interpretation of the term “personal liberty”.
- The court held that the term “personal liberty” under Article 21 of the Indian Constitution included not only mere freedom from physical restraint but all other aspects of liberty.



# **Landmark Case: Maneka Gandhi Vs Union of India**



# ***Maneka Gandhi v Union of India***

- A major breakthrough came in *Maneka Gandhi v Union of India*(AIR 1978 SC 597)
- In this case, the action of impounding Maneka Gandhi“s passport was challenged on the ground that it violated her personal liberty. The authorities did not provide her any hearing before impounding her passport.

## **Issues before the Court:**

- Are the provisions under **Articles 21, 14 and 19** are anyway connected or they are mutually exclusive??
- Whether **Section 10(3)(c)** of Passport Act 1967 is a **violation of Article 14** and Article 19 of Constitution??
- Whether the power of passport authority to impound or revoke any individual's passport is arbitrary??
- Is "**Right to travel abroad**" included in Article 21 of the constitution??
- What is the **scope of "procedure established by law"** given in Article 21 of the constitution??
- Whether the word " law" in **Article 21** of the constitution can also be read as **rules of natural justice**??

# Judgment

- **The Supreme Court** not only broadened the meaning of the words “**personal liberty**”, but also adopted the concept of procedural due process within the words “**procedure established by law**”.
- **Art 21, 14 and 19** has a nexus established between these articles.
- Interest of sovereignty and integrity of the state” is not at all vague and wrong under Passport Act so thus rejected issue 2.

- The Court held that personal liberty includes a variety of rights among which one such right is the **right to go abroad**.
- The court said that the “law” in Article 21 does not only mean enacted law but also refers to rules and principles of natural justice.
- Any law prescribed under ” procedure established by law” should be **just, fair and reasonable**. According to Justice Bhagwati ” The procedure **cannot be arbitrary, unfair or unreasonable**”.

# Impact

- Justice Krishna Iyer said, " The spirit of a man is the root of Article 21. Personal liberty makes for the worth of the human person".
- The “Golden Triangle Test” was introduced by the court that any law which is depriving a person’s liberty must not only answer Article 21 but meet also the requirements of Article 14 and Article 19 of the Indian constitution.

# Sub - Rights

- The decision of *Maneka Gandhi v Union of India* inspired the later decisions and made the courts realized to adopt new vistas of personal freedoms like
  - (i) Right to privacy
  - (ii) Right to education
  - (iii) Right to Die
  - (iv) Right to speedy trial
  - (v) Right to bail, Right to appeal
  - (vi) Right to humane treatment inside prison
  - (vii) Right against torture
  - (viii) Right to live with basic human dignity
  - (ix) Right to compensation to the victims
  - (x) Right to clean and healthy environment etc

# **Article 21A**

- **The Constitution (Eighty-sixth Amendment) Act, 2002** inserted **Article 21-A** in the Constitution of India to **provide free and compulsory education of all children in the age group of six to fourteen years** as a Fundamental Right.
- **The Right of Children to Free and Compulsory Education (RTE) Act, 2009** was introduced and enforced on 1 April 2010.

- Education gives a person human dignity. The framers of the Constitution realising the importance of education have imposed a duty on the state under **Art 45 as one of the directive policy.**
- **Article 45** - “The State shall endeavour to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years”.

# Judicial Decisions

- The object was to abolish illiteracy from the country.
- **86<sup>th</sup> Amendment, 2002 also inserted Article 51 A(k) as a fundamental duty.**
- Mohini Jain vs State of Karnataka (**AIR 1992 SC 1858**)
- Unnikrishnan vs State of AP (**1993**) 1 SC 645

# Judicial Decisions

- **Mohini Jain vs State of Karnataka (AIR 1992 SC 1858)**
  - the matter was raised by the petitioners that whether the right of education is a fundamental right under Article 21 of the Constitution?
  - the petitioner was Miss Mohini Jain who was denied admission because of high capitation fee.
  - **Held, charging capitation fee is illegal and right to education flows from Article 21.**

- **Unnikrishnan vs State of AP (1993) 1 SC 645**

The court did not agree with the decision of Mohini Jain that children of all ages have the right to education but **held that the right to education is free and compulsory between the age group of 6 to 14 years.**

-This led to the creation of 86<sup>th</sup> Amendment Act,2002.

- **Protection against arrest & detention**
- Article 22 of Indian Constitution

- Arrest brings humiliation
- Arrest curtails the freedom of individual
- Arrest involves restriction of personal liberty of a person arrested and as such violates the basic human rights of liberty
- Though the Constitution of India as well as international covenants recognize the **power of the state** to arrest any person as a part of its major role in maintaining the law and order problem, the Constitution of India mandates that “**No person shall be deprived of his life or personal liberty except according to procedure established by law.**”

# Article 22

- Article 22 safeguards the rights of individuals who have been arrested and detained for committing an offence.
- Article 22 has contain 7 sub clauses:
- First part – Rights of an arrested person
- Second part – Protection to persons arrested under preventive detention laws

- (1) No person *who is arrested* shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice.

- i) Right To Be Informed Grounds Of Arrest
- (ii) Right To Legal Assistance
- (iii) Right To Be Produced Before The Magistrate Within 24 Hours

- Art. 22 (3) & (4) enact two exceptions to the fundamental rights otherwise guaranteed to the arrested persons under Clause (1) & (2),
- *i.e., these protections are not available in case of an enemy alien*
- a person arrested or detained under any law providing for preventive detention.

Cases:

***D.K. Basu v State of West Bengal***

**Joginder Kumar v. State Of U.P and Others 1994 AIR 1349**

# Safeguards Against The Order Of Preventive Detention

- **Art. 22 Clauses (4) to (7)**
  - i) No law providing for preventive detention shall authorise the detention of a person for a longer period than three months unless
    - (a) an Advisory Board consisting of persons who are, or have been, or are qualified to be appointed as, Judges of a High Court has reported before the expiration of the said period of three months that there is in its opinion sufficient cause for such detention:

- ii) to communicate the grounds of detention to the detenu at the earliest;
- iii) to afford him the earliest opportunity of making a representation against the detention order which implies the duty to consider and decide the representation when made, as soon as possible.
- 44<sup>th</sup> Amendment – reduced the period of detention from three to two months without the opinion of advisory board. However, it is not implemented yet.

- **Preventive detention laws:**
- 1. Preventive Detention Act, 1950 – valid till 1969
  - A.K.Gopalan vs State of Madras (1950)
- 2. Maintenance of Internal Security Act (MISA), 1971 – valid till 1978
- 3. National Security Act, 1980
- 4. Foreign Exchange Conservation and Prevention of Smuggling Activities (COFEPOSA), 1974
- 5. Terrorist and Disruptive Activities (Prevention) Act (TADA), 1985 – repealed
- 6. Prevention of Terrorist Activities Act (POTA), 2002
- 7. Unlawful Activities (Prevention) Act, 2008

# Art 23

Prohibition of traffic in human beings and forced labour

- (1) Traffic in human beings and begar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law
- (2) Nothing in this article shall prevent the State from imposing compulsory service for public purpose, and in imposing such service the State shall not make any discrimination on grounds only of religion, race, caste or class or any of them
-

## Art 24

- Prohibition of employment of children in factories, etc
- (i) No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment

# Right to Freedom of Religion

- 1) Freedom of conscience and free profession, practice and propagation of religion (Article 25)
  -
- 2) Freedom to manage religious affairs (Article 26)
  -
- 3) Freedom as to payment of taxes for promotion of any particular religion (Article 27)
  -
- 4) Freedom as to attendance at religious instruction or religious worship in certain educational institutions (Article 28)

# What is Religion ?

- The term religion has not been defined in the constitution.
- Religion has no precious definition.
- **Religion is a matter of Faith** but belief in God is not essential to constitute Religion.
- Doctrines of each religion constitute its essential part, but the court is competent to examine them.
- Philosophy is different from religion.

# What is a Secular State?

- A secular state is said to be the one where there is no official religion followed.
- To understand it more clearly, secularism is defined in the case of **S.R. Bommai v. Union of India [AIR 1958 SC 731]**, where it was held that “Secularism is the basic feature of the Indian Constitution. The State, in the interest of public order can impose certain restrictions on the freedom of religion”.
- Religion is a matter of individual faith and cannot be mixed with secular activities.

- Secularism means in India, state shall observe neutrality & impartiality to all religions.
- All religions are respected and all beliefs & methods of worship are accepted.
- All minority religions enjoy full freedom and in certain cases protected.
- This is opposite in some neighbouring countries such as Pakistan and Bangladesh which were part of India but later became Islamic countries.

- Before the Constitution 42<sup>nd</sup> amendment Bill added the word “secular” in the constitution of India, the word “secular” appeared only in “Article 25”.
- India is a secular country and there is no state religion.
- India also does not patronizes any religion.
- The Constitution 42<sup>nd</sup> amendment Act made the above thought “explicit” in the constitution.

# Analysis

- Article 25 of the Constitution guarantees freedom of religion to all persons in India. It provides that all persons in India, *subject to public order, morality, health, and other provisions:*
  - (i) Are equally entitled to freedom of conscience, and
  - (ii) Have the right to freely profess, practice and propagate religion.

# Meaning of Public order, morality and health

- This means that Article 25 & 26 are not absolute. No person can do such religious things which affect the public order, morality and health.
- For example no one has right to conduct human sacrifice.
- No one can perform worship on busy highway or other public places which disturb the community.
- System of Devadasi etc.

- Nobody can claim a fundamental right to create noise by amplifying the sound of his speech with the help of loudspeakers.
- In this context, **cracking of fireworks** on Diwali & **using loudspeakers for Ajan** in the morning had also come under Supreme Court's scrutiny.
- The Court **restricted the time of bursting the firecrackers**, and it does not in any way violate the religious rights of any person as enshrined under Article 25 of the Constitution.

- **Judicial Decisions:**
- Appointment of Non-Brahmins as Pujari
- Triple Talaq
- Acquisition of place of worship by State
- Resham vs State of Karnataka – Hijab Issue -Full Bench of Karnataka High Court presided by Chief Justice has upheld the Hijab Ban GO of 5th February 2022. High Court pronounced that Hijab is not essential religious practice in Islam and the school uniform is not violative of fundamental rights and held it to be reasonable restriction.

- **ARTICLE 29 & 30**  
**Cultural & Educational Rights**  
**Rights Of Minorities**

- Cultural and Educational Rights protect the rights of religious, cultural and linguistic minorities, by facilitating them to preserve their heritage and culture.

# Protection of interests of minorities

- Article 29. (1) Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same.
- (2) No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them

# Right of minorities to establish and administer educational institutions

- Article 30. (1) All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.
- (2) The state shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language

- Article 32 of the Indian Constitution

# Introduction

Declaration of fundamental rights is meaningless unless there is an effective machinery for the enforcement of the rights.

- It is the remedy which makes the right real.
- If there is no remedy there is no right at all.
- It was, therefore, our Constitutional-makers while having incorporated a long list of fundamental rights have also provided for an effective remedy for the enforcement of these rights

# Article 32

- Article 32 confers one of the “highly cherished rights”.
- It confers the right to move the Supreme Court for the enforcement of the Fundamental Rights.
- Article 32 provides for the last of the fundamental rights.
- Unlike other rights, it is remedial and not substantive in nature.
- So, if and when a person feels that he is unduly deprived of any of the fundamental rights, he can, under Article 32 of our Constitution, move the Supreme Court for a legal remedy.
- **Article 32 is itself a fundamental right.**

- The apex court is given the authority to issue directions or orders for the execution of any of the rights conferred by the constitution as it is considered ‘**the protector and guarantor of Fundamental Rights**’.
- Note:
  - Article 226 also empowers all the High Courts to issue the writs for the enforcement of fundamental rights.

- Article 32: In the words of Dr. B.R.Ambedkar:
  - “*If I was asked to name any particular Article in this Constitution as the most important - an Article without which this Constitution would be a nullity- I could not refer to any other Article except this one. It is the very soul of the Constitution and the very heart of it.*”
- Article 32 has contain 4 sub-clauses.

## Kinds:

- Habeas Corpus
- Mandamus
- Prohibition
- Quo-warranto and
- certiorari

# WRIT OF HABEAS CORPUS

- It is one of the important writs for personal liberty
- Meaning '*you may have the body*' or produce the body.
- it is an order issued to set free a person who is, in the opinion of the court, arbitrarily arrested or detained by the executive authority.
- It is a process by which a person who is confined without legal justification may secure a release from his confinement.

# When the writ can be issued?

- Writ of Habeas Corpus is issued if an individual is kept in jail or under a private care without any authority of law.
- A criminal who is convicted has the right to seek the assistance of the court by filing an application for “writ of Habeas Corpus” if he believes that he has been wrongfully imprisoned and the conditions in which he has been held falls below minimum legal standards for human treatment.

## 2. writ of Mandamus

- The Latin word 'Mandamus' means 'we order'.
- It is issued against a public authority who is under a legal duty to do or forbear to do something, in the performance of which the petitioner has a legal right.
- The Supreme Court can issue this writ for the reason of directing an inferior court or department to do the needful for protecting or maintaining a Fundamental Right.
- It is normally used for public purposes to enforce performance of public duties.

# Conditions for issue of Mandamus

- ❖ There must rest a legal right of the applicant for the performance of the legal duty.
- ❖ The nature of the duty must be public.
- ❖ On the date of the petition, the right which is sought to be enforced must be subsisting.
- ❖ The writ of Mandamus is not issued for anticipatory injury.

# The writ of 'prohibition'

- It is issued for preventing an inferior court from doing something which it is not legally competent to do.
- Its main purpose is to prevent an inferior court from exceeding its jurisdiction or from acting contrary to the rules of Natural Justice.
- It prevents a tribunal possessing judicial or quasi-judicial powers from assuming or threatening to assume jurisdiction which it does not possess.

# Writ of Prohibition when issued?

- It is usually issued when the lower courts act in excess of their jurisdiction. Also, it can be issued if the court acts outside its jurisdiction. And after the writ is issued, the lower court is bound to stop its proceedings and should be issued before the lower court passes an order.
- Prohibition is a writ of preventive nature. The principle of this is ‘**Prevention is better than cure**’.

# Writ of 'certiorari'

- literally means “to certify”.
- It is a remedial writ and is issued **to quash an order or decision** which has been made without jurisdiction or in violation of the principles of natural justice.
- It is issued **when there is a wrongful exercise of the jurisdiction and the decision of the case is based on it.** The writ can be moved to higher courts like the High Court or the Supreme Court by the affected parties.

- With the weapon of Certiorari, the Supreme Court has the power to remove a case from an inferior court to a superior court in order to protect a Fundamental Right.
- Both certiorari and prohibition have much in common, both in their scope and in rules by which they are governed.
- Both these writs lie against a judicial or quasi-judicial body but not against an executive body.

# Example

- When an inferior Court takes up for hearing a matter over which it has no jurisdiction, the person against whom the proceedings are taken can move the superior Court **for a writ of prohibition**, and on that, an order will issue forbidding the inferior Court from continuing the proceedings.
- On the other hand, if the Court hears that case or matter and gives a decision, the party aggrieved will have to move the superior Court for a **writ of certiorari**, and on that, an order will be made quashing the decision on the ground of want of jurisdiction. Sometimes, the two writs may overlap.

# WRIT OF 'QUO WARRANTO',

- With the help of 'quo warranto', the Supreme Court can protect a Fundamental Right from being violated by a government order based upon favouritism.
- The object of this writ is to prevent a person who has wrongfully usurped an office from continuing in that office – See: University of Mysore vs. Govinda Rao, AIR 1965 SC 491.

“Quo Warranto” means “By what means” or “by what authority”.

## For Instance

- If a person is unduly promoted by superseding his seniors, the Supreme Court can, by such writ, quash the order of such appointment for protecting the Right to Equality as guaranteed by Article 14 and Article 16.
- The aggrieved person, may, however, seek a particular writ to be issued, but it is the Supreme Court which will decide what writ will be appropriate in a particular case.
- In other words, it is the judges, and not the petitioner, who will actually determine the nature of the writs to be issued in a particular case.

# Features of FR

- Some rights are available to citizens and some are available to all.
- They are not absolute. The government can impose reasonable restrictions
- It is negative in character because it places a limitation on the authority of State.
- They are justiciable.

# Rights applicable to all

- **Fundamental rights available to both citizens and foreigners except enemy aliens**
- **Article 14** – Equality before the law and equal protection of laws.
- **Article 20** – Protection in respect of conviction for offences.
- **Article 21** – Protection of life and personal liberty.
- **Article 21A** – Right to elementary education.
- **Article 22** – Protection against arrest and detention in certain cases.
- **Article 23** – Prohibition of traffic in human beings and forced labour.
- **Article 24** – Prohibition of employment of children in factories etc.
- **Article 25** – Freedom of conscience and free profession, practice and propagation of religion.
- **Article 26** – Freedom to manage religious affairs.
- **Article 27** – Freedom from payment of taxes for promotion of any religion.
- **Article 28** – Freedom from attending religious instruction or worship in certain educational institutions.

# **Fundamental Rights applicable only to Citizens**

- **Fundamental Rights Available Only to Citizens of India**
- **Article 15** – Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.
- **Article 16** – Equality of opportunity in matters of public employment.
- **Article 19** – Protection of six rights related to freedom – (a) of speech and expression; (b) to assemble peaceably and without arms; (c) to form associations or unions; (d) to move freely throughout the territory of India; (e) to reside and settle in any part of the territory of India; and (f) to practice any profession, or to carry on any occupation, trade or business.
- **Article 29** – Protection of language, script and culture of minorities.
- **Article 30** – Right of minorities to establish and administer educational institutions.

# Fundamental Duties

- Article 51A was added by **42<sup>nd</sup> Amendment Act, 1976**
- 11 duties under **Part IV A** of Constitution.
- 11<sup>th</sup> duty was added by **86<sup>th</sup> Amendment Act, 2002.**
- **51A. Fundamental duties.—It shall be the duty of every citizen of India—**
- (a) to **abide by the Constitution** and respect its ideals and institutions, the National Flag and the National Anthem;
- (b) to **cherish and follow the noble ideals** which inspired our national struggle for freedom;
- (c) to **uphold and protect the sovereignty, unity and integrity of India;**

- (d) to defend the country and render national service when called upon to do so;
- (e) 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;
- (f) to value and preserve the rich heritage of our composite culture;

- (g) to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures;
- (h) to develop the scientific temper, humanism and the spirit of inquiry and reform;
- (i) to safeguard public property and to abjure violence;
- (j) to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement;
- (k) who is a parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years.

- Cases:
  1. AIIMS Students Union vs AIIMS
  2. Sarbananda Sonowal vs Union of India

1. <https://blog.ipleaders.in/article-21-constitution/>
2. <https://legalstudymaterial.com/article-21-right-to-life-and-personal-liberty/>
3. <https://legalserviceindia.com/legal/article-9195-an-interpretation-of-the-fundamental-rights-with-reference-to-indian-constitution.html>
4. <https://aishwaryasandeep.com/2021/10/04/a-general-analysis-of-fundamental-rights/>

# Constitutional Law I

Unit II LLB 3<sup>rd</sup> & BALLB

By Dr. Syed Asima Refayi

## Powers and Functions of President in India

The primary duty of the President is to preserve, protect and defend the constitution and the law of India as made part of his oath (Article 60 of Indian constitution). The President is the common head of all independent constitutional entities. All his actions, recommendations (Article 3, Article 111, Article 274, etc.) and supervisory powers (Article 74(2), Article 78 c, Article 108, Article 111, etc.) over the executive and legislative entities of India shall be used in accordance to uphold the constitution. There is no bar on the actions of the President to contest in the court of law.

The President of India is the Head of State. The system of government of India is a cabinet form of government. The Indian President is, therefore, a constitutional head like the King or Queen of Britain—that is, all executive powers are constitutionally vested in him, although those are actually exercised and executed by the cabinet.

In India the powers of the Union government are treated as the powers of the President because these powers are used in his name in pursuance of the constitutional stipulation under Article 53 which reads: The executive powers of the Union shall be vested in the President and shall be exercised by him either directly or through the officers subordinate to him in accordance with this Constitution.

The constitutional powers and functions of the President of India may be classified into six principal types.

### Executive Functions

**1. Head of the Union:** The President is at the head of the Union Executive. Consequently, all executive powers are exercised in his name. The executive power of the Union to be exercised by the President is extended to the matters with respect to which Parliament has power to make laws and to conclude treaty and agreement.

**2. Appointments:** As head of the executive, the President appoints the Governors of States, the Judges of the Supreme Court and the High Courts, the Auditor General of India and many other high officials, such as the members of Finance Commission, Election commission, Union Public commission etc.

**3. Appointment of the Prime Minister and other Ministers:** The President also appoints the Prime Minister and with his advice the other Ministers of the Union Council of Ministers. But here too, as in all other appointments, the President can seldom use his discretion. He is, ordinarily, duty-bound to summon the leader of the political party which secures an absolute majority in the Lok Sabha to become the Prime Minister and form the Ministry. He does enjoy some discretionary powers in the matter only under exceptional circumstances. When no single political party wins a clear absolute majority and, as a result, no Council of Ministers can be formed without a coalition of parties the President can exercise his discretion judiciously in appointing the Prime Minister. Such situations developed in the past.

India has entered into an age of coalition politics. And it may so happen that no single party will be able to secure an absolute majority, and the President may be required to exercise his discretionary power for some time to come, in appointing Prime Minister.

**4. Can ask to prove Majority in Lok Sabha:** Union Council of Ministers normally remains in office for five years, unless dissolved earlier for any reason. The President must be satisfied that the Council of Ministers enjoys the confidence of the majority of the Lok Sabha. In case of any doubt he can ask the Council of Ministers to prove its majority in the Lok Sabha, as the Prime Minister Sri H.D. Deve Gowda was asked by the President after the official withdrawal of support by the Congress Party from Ministry. The President can also dissolve the Union Council of Ministers in accordance with Article 75(2) of the constitution, if he finds that the Ministry does not enjoy the support of the majorities in the Lok Sabha.

**5. Supreme Commander:** As head of State, the President is the supreme Commander of the Armed Forces of India and is entitled to declare war or conclude a treaty.

## Legislative Powers and Functions

**1. President is a part of Parliament:** The Union Legislature or Parliament consists of the President and two Houses of Parliament. The President is, therefore, an integral part of Union Legislature. He shall summon from time to time, either separately or jointly, the Houses of Parliament. The President can prorogue the Houses or either House of Parliament and, if necessary, can dissolve the lower Chamber of Parliament, the Lok Sabha. For example, the President solved the twelfth Lok Sabha in early 1999 when the confidence motion in favour of the Vajpayee government was lost in the Lok Sabha.

**2. Summons and Addresses Parliament:** The President may address either or both House of Parliament. In such address, at the first session after general election to the Lok Sabha and at beginning of a joint session of Parliament each year, he may place the reasons for summoning it. Apart from addressing Parliament, the President may also, in case of

necessities, send messages to either House, or to both Houses [Article 86(2)]. Normally, the President does not send such a message, unless however, he has a serious disagreement with the Council of Ministers.

**3. Nomination:** The President nominates a number of members in both Houses. The chief purpose of the nomination is to ensure adequate representation in Parliament of all sections of population which may not always be achieved through elections.

**4. Power in respect of Bills:** The President has certain functions in respect of passing of a Bill. A bill passed by both the Houses of Parliament requires his assent in order to become an Act. He may give his assent to a bill or can withhold assent when a bill, after getting approved in both the Houses, is placed before the President. But, if Parliament, acting on President's refusal to assent to a bill, passes it again with or without amendment, for the second time and presents it to the President for his approval, the President shall not withhold his assent there from under Article 111. In other words, it becomes obligatory upon him to give his assent.

In certain cases, prior sanction of the President is required for initiating any legislation. For instance, bill for formation of a new State or altering the boundaries of the existing State or States is to be placed before Parliament with prior approval of the President. Money bill is another example where obtaining of such approval of the President is a constitutional necessity.

**5. Bill passed by a State Legislature:** A bill passed by a State Legislature may also be reserved for the consideration of the President by the Governor of that State. The President enjoys this right in relation to a bill passed by a State Legislature only in such cases where those are referred to him by the Government of a State under Article 200.

## Power to Promulgate Ordinances

Except when both Houses of Parliament are in session, the President may promulgate such Ordinances as the circumstances appear to him to require (Article 123). Such an ordinance can have the same force and effect of an Act of Parliament. Such an ordinance shall cease to operate unless passed by both Houses of Parliament within the stipulated period. *A.K. Roy vs. Union of India* (1982) illustrates the proposition that the satisfaction of the President must be as to the existence of a situation which makes it necessary for the President to promulgate such an Ordinance.

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, 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 are 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.

## Financial Powers and Functions

The President of India also exercises financial powers. No money bill can be introduced in Parliament without the recommendations of the President. According to the Constitution of India, the Annual Financial Statement is placed by the President before both the Houses of Parliament. This statement shows the estimates of revenue and expenditure of the central Government for the next year. It may be pointed out that the proposal for taxation and expenditure cannot be made without the approval of the President. . No proposal for spending money or raising revenues for purposes of government can be introduced in Parliament without previous permission of the President.

## Emergency Powers of the President

1. The constitution of India empowers the President to proclaim three kinds of Emergencies: National Emergency (Art. 352);
2. Emergency for failure of Constitutional Machinery in a State (Art. 356);
3. Financial Emergency (Art. 360)

### 1 National Emergency

The President of India may issue a Proclamation of National Emergency when the security of India or any part thereof is threatened by war, armed rebellion or external aggression. Such a Proclamation of Emergency may remain in force for an indefinite period. During a Proclamation of National Emergency, the executive power of the States is to be exercised in accordance with the directions given by the Central Government. Parliament has the power to make laws on the subjects enumerated in the State List. The right to freedom of speech and expression, freedom to form association, freedom to practice and profession, etc., embodied in Article 19 shall remain suspended.

## 2. Failure of State Constitutional Machinery

In Case of failure of Constitutional machinery in a State, the President of India is authorized to make a Proclamation to that effect. The maximum duration of this type of emergency is three (3) years. During such an emergency, the President may assume to himself the executive powers of the State. The powers of the legislatures of the State are to be exercised by the Union Parliament.

## 3. Financial Emergency

The President may also issue a Proclamation of Financial if he is satisfied that the financial stability of India is threatened. This type of emergency may continue to remain in force for an indefinite period. The Central Government may give directions to the States for canons of financial propriety. All money-bills passed by the State Legislatures are to be reserved for the consideration of the President.

The President of India grants, pardons, reprieves or remissions of punishment to any person who has been convicted by a Court of Law.

## Diplomatic powers

All international treaties and agreements are negotiated and concluded on behalf of the President. However, in practice, such negotiations are usually carried out by the Prime Minister along with his Cabinet (especially the Foreign). Also, such treaties are subject to the approval of the Parliament. The President represents India in international forums and affairs where such a function is chiefly ceremonial. The President may also send and receive diplomats, i.e. the officers from the Indian Foreign Service. The President is the first citizen of the country.

## Military powers

The President is the Supreme Commander of the Indian Armed Forces. The President can declare war or conclude peace,<sup>[20]</sup> on the advice of the Union Council of Ministers headed by the Prime Minister. All important treaties and contracts are made in the President's name.<sup>[25]</sup> He also appoints the chiefs of the service branches of the armed forces.

## Pardoning Powers / Judicial Powers

The President of India grants, pardons, reprieves or remissions of punishment to any person who has been convicted by a Court of Law. As mentioned in Article 72 of the Indian Constitution, the President is empowered with the powers to grant pardons in the following situations:

- Punishment is for an offence against Union Law

- Punishment is by a Military Court
- Sentence is that of death

The decisions involving pardoning and other rights by the President are independent of the opinion of the Prime Minister or the Lok Sabha majority. In most cases, however, the President exercises his executive powers on the advice of the Prime Minister and the cabinet.

# Federalism – Centre State Relationship

- What is Federalism/ Federal Structure?
- Why India adopted Federalism?
- What was the views of various eminent jurist/historians?

# What is Federalism/ Federal Structure?

## Nature of Indian Constitution

Two classification (system of government or form of government):

- Unitary
- Federal

Is Indian Constitution Federal in nature or Unitary in nature?

----- Before finding the answer to the said question let us discuss the definition of the terms Unitary and Federal.

**Definition:**

**Unitary Government** – all the powers are vested in the national government and the regional governments derive their power from the national government.

Eg: Britain , Japan, Spain, China etc

**Federal Government** – Powers are divided between the national government and the regional governments by the Constitution itself and both operate in their respective jurisdictions independently.

Eg: US, Australia, Canada, Russia etc

# Why India adopted Federalism?

- Help in addressing the diversities
- Suitable for a country of size of India
- Would help address the fissiparous tendencies by retaining the autonomy of the states.
- Powers of the local self government were also protected.

- Essentials of Federalism:
  1. Division of Powers
  2. Supremacy of Constitution
  3. Rigidity of Constitution
  4. Written Constitution
  5. Authority of Courts

- **Essentials of Federalism:**
  1. **Division of Powers** – 7<sup>th</sup> Schedule – Three list
    - Union List (97 entries) - National importance such as defence, foreign affairs etc
    - State List (66 entries) – look after the matters of regional importance such as Public order, Health
    - Concurrent List (47 entries)
    - Residuary power given to centre
  2. **Supremacy of Constitution** – laws enacted must conform to the provisions of Constitution
  3. **Rigidity of Constitution** – Amendment procedure in tough

4. **Written Constitution** – lengthiest, specifies the structure, organisation, powers and functions of both central and state government.
5. **Authority of Courts** – independent judiciary-  
two reasons
  - a) to protect the supremacy of the Constitution
  - b) to settle the dispute between centre and state

- **Unitary features:**
  - Strong Centre'
  - Single Constitution
  - Flexibility of the Constitution etc

# Views of Eminent jurist/ historians- Critical evaluation

- A federal constitution envisages a demarcation of governmental functions and its powers between the centre and the state as sanctioned by the constitution which is a written document.

## Is Indian Constitution purely federal in nature?

- Prof. Wheare : “The Constitution establishes a system of government which is almost quasi-federal..... a unitary State with subsidiary federal features rather than a federal State with subsidiary unitary features”
- Sir Ivor Jennings has characterized it as “a federation with a strong centralizing tendency”.
- Granville Austin called the Indian Federalism as a “Cooperative Federalism”.

- American Constitution is truly federal type.
- Framers of Constitution took note of the practical needs of the country designed on federal structure ‘not on the footing that it should confirm to some theoretical, definite or standard pattern, but on the basis that it should be able to subserve the need of the vast and diverse country like India’.

**Dr.Ambedkar on Federalism** – “The basic principles of federalism is that the legislative and executive authority is partitioned between the centre and States and not by law or by the Centre **but the Constitution itself..** The Centre and States are co-equal in this matter”

- Thus , the Indian **Constitution is mainly federal** with unique safeguards for enforcing national unity and growth.

# Unitary features in Federal structure

1. Appointment of Governors – Article 155 and 156
2. Parliament's power to legislate in the national interest – Article 249
3. Parliaments powers to form new states and alter boundaries of existing States – Article 3
4. Emergency Provisions – Article 352, 356, 360

# Centre –State Relationship

- Legislative – Art 245 to Art 255
- Administrative – Art 256 to Art 263
- Financial – Art 268 to Art 293

# Legislative – Art 245 to Art 255

- 1. Extent of laws made by Parliament and by the Legislatures of States - Parliament may make laws for the whole or any part of the territory of India, and the Legislature of a State may make laws for the whole or any part of the State.
- Exception – Parliament can make extra territorial legislation. It can be applicable to Indian citizens and their property in any part of the world.

- 2. Subject-matter of laws made by Parliament and by the Legislatures of States – Three list under **Art 246**
- Union List -97 entries
- Concurrent List – 66 entries
- State List- 47 entries

- 3. When can Parliament enact laws in the state field?
  - **National Interest** – Art 249 - resolution must be supported by 2/3<sup>rd</sup> of the members present and voting.
  - One year – further period of one more year
  - **Proclamation of Emergency** – Art 250 -
  - **When states make a request** – Art 252 -One year – further period of one more year

- Art 254. Inconsistency between laws made by Parliament and laws made by the Legislatures of States – **Doctrine of Repugnancy**
- **Which will prevail?** – Central Act will prevail and Legislature of the State shall, to the extent of the repugnancy, be void
- **Art 254 (2)** – Reserved for assent of president  
– State Act will prevail

# Administrative – Art 256 to Art 263

## Article 256 – Obligation of States and the Union:

- State should ensure the compliance with the laws made by the Parliament

## Article 257 – Control of Union over states in certain cases:

- Executive power of states shall be exercised so as not to impede or abridge the executive power of the union
- Construction and **maintenance of means of communication**, declared to be of national or military importance
- Measures to be taken for the **protection of railways** within the state.

- All India Services
- Public Service Commissions

**Financial – Art 268 to Art 293**

CATEGORY	LEVIED	COLLECTED
TAXES (Art 268)	Union Ex: stamp duties on bills of exchange, cheques and promissory notes	Collected and appropriated by States Ex: stamp duties on bills of exchange, cheques and promissory notes
TAXES (Art 269)	Levied by Union but assigned to States Eg: Sale or purchase of goods and consignment of goods	Collected by Union but assigned to States Eg: Sale or purchase of goods and consignment of goods
TAXES (Art-270)	Levied by Government of India- Distributed between Union and States	Collected by Government of India - Distributed between Union and States
Central GST	Union	Union and States
State GST	Union	Union and States

- **Administrative Reforms Commission**
- 6 member under he chairmanship of Moraji Desai
  - study the centre state relation – 22 recommendation were submitted. Few are
    1. Inter – State Council has to be established under Art 263
    2. Delegation of powers to the maximum extent to the states.
    3. Transferring of more financial resources to the states to reduce their burden.

- **Rajmannar Committee** – Tamil Nadu Government - three member committee on the head of Dr.Rajmannar
- **Sarkaria Committee** – in 1983, three member committee – 247 recommendations were submitted- study for one year.

They are:

1. Permanent Inter-State Council should be set up under Art 263
2. All India Service must be strengthened
3. Centre should consult State before making any law on concurrent list.

4. Zonal Councils should be established and activated to promote federalism
  5. The residuary power of the Central Government should remain with the parliament
    - Punchhi Committee
- In 2007
1. To facilitate effective implementation of the laws on List III

- 2. New all- India services in sectors like health, education, engineering and judiciary should be created.
- 3. The current ceiling on profession tax should be completely done away with by a Constitutional Amendment.

# Finance Commission – Art 280

Finance Commission is a **constitutional body** for **the purpose of allocation of certain revenue resources** between the Union and the State Governments.

Duty of the Commission to make recommendations to the President in relation to the

- the **distribution between the Union and the States of the net proceeds of taxes** which are to be, or maybe, divided between them and the allocation between the States of the respective shares of such proceeds;

- the principles which should govern the grants in aid of the revenues of the States out of the Consolidated Fund of India;(Consolidated Fund of India is the account of the revenue the Government of India receives — via income tax, Customs, central excise and the non-tax revenue — and the expenses it makes, excluding exceptional items.)
- any other matter referred to the Commission by the President in the interests of sound finance

## Powers and Position of President of India

In Indian Parliamentary practice, the President is the nominal executive or a Constitutional ruler. He is the head of the nation, but does not govern the nation. Our Union Council of Ministers headed by the Prime Minister is the real executive. And the President rules the country on the advice of the Prime Minister and his colleagues.

**Powers:** We shall now discuss in details, the powers and functions of the President of India in the light of the above discussion. The powers and the functions of the President of India may be classified under five heads, viz., and executive, legislative, financial, judicial and emergency.

**1. Executive Power:** The President of India is the head of the executive of the Union Government. Therefore, all executive powers are vested in the hands of the President. He can exercise these powers either directly or through the subordinate officers.

- According to the Constitution of India, all executive action is also taken in his name. The President appoints the Governors of the States, the Judges of the Supreme Court and High Courts of the States. The Prime Minister of India is appointed by the President. The President also appoints other Ministers in consultation with the Prime Minister.
- The Constitution of India empowers the President to appoint the important officers of the Union Government including the Attorney-General for India, the Comptroller and Auditor-General of India, the Chairman of the Finance Commission, the Election Commissioners etc.
- The President is responsible for the administration of the Union Territories. For this reason, he appoints Chief Commissioners and Lieutenant Governors of the centrally administered areas.
- The President has been empowered to set up a Commission for the settlement of disputes relating to the supply of water between two or more States.
- Moreover, the Constitution has authorized the President to establish an Inter-State Council to enquire into disputes that may arise between, the States as well as to discuss the matters of the common interests between the Union and the States.
- The President alone can remove the Council of Ministers, the Governors of States and the Attorney-General for India.
- The President of India is Supreme Commander-in-Chief of the Army, Navy and the Air Force of the Union. He has the power to declare war.
- The President also enjoys the diplomatic power. He appoints the diplomatic representatives of India to the foreign States. He also receives the credential letters of the diplomatic representatives of other States.
- The President represents India in international affairs. He has the power to conclude treaties with foreign States.

**2. Legislative Powers:** The President of India also enjoys legislative powers. He is an integral part of Indian Parliament. Parliament consists of the President and two Houses—the House of the people (Lok Sabha) and the Council of States (Rajya Sabha).

- The President has the power of to summon and prorogue both the House of Parliament. He can also dissolve the House of the People before the expiry of its term.
- The Constitution of India empowers the President to deliver an address to the Parliament at the commencement of the first session every year. He may also send messages to Parliament.
- The President nominates two members to the Lok Sabha from the Anglo-Indian Community

and twelve members to the Rajya Sabha from among the persons who have acquired special knowledge in art, science, literature and social service.

- In India, a public bill cannot become an act without the assent of the President. A bill passed by the Union Parliament is sent to the President for his assent. The President may give his assent to the bill or may withhold his assent from the bill or he may return the bill to Parliament for its reconsideration. If the bill is again passed by both Houses of Parliament, the President shall have to give his assent.
- When the Parliament is not in session, the President may issue an ordinance. It has the same force as the law or Parliament. But it must be placed before the Parliament when it again assembles. If it is then approved by both the Houses of Parliament, it will cease to operate after six weeks of the date of meeting of Parliament. And the President can call a joint session of both Houses of Parliament to resolve a constitutional deadlock over a public bill.

**3. Financial Powers:** The President of India also exercises financial powers. No money bill can be introduced in Parliament without the recommendations of the President.

- According to the Constitution of India, the Annual Financial Statement is placed by the President before both the Houses of Parliament. This statement shows the estimates of revenue and expenditure of the central Government for the next year.
- It may be pointed out that the proposal for taxation and expenditure cannot be made without the approval of the President.

**4. Judicial Powers:** The President of India grants, pardons, reprieves or remissions of punishment to any person who has been convicted by a Court of Law.

**5. Emergency Powers:** The President of India exercises extra-ordinary powers in times of emergency.

The three kind of Emergency situations are:

1. Emergency due to armed rebellion or external aggression;
2. Emergency arising from the breakdown of constitutional machinery in a State;
3. Financial Emergency.

**Proclamation of National Emergency by the President of India:** The President of India may issue a Proclamation of National Emergency when the security of India or any part thereof is threatened by war, armed rebellion or external aggression. Such a Proclamation of Emergency may remain in force for an indefinite period. During a Proclamation of National Emergency, the executive power of the States is to be exercised in accordance with the directions given by the Central Government. Parliament has the power to make laws on the subjects enumerated in the State List. The right to freedom of speech and expression, freedom to form association, freedom to practice and profession, etc., embodied in Article 19 shall remain suspended.

**Failure of State Constitutional Machinery:** In Case of failure of Constitutional machinery in a State, the President of India is authorized to make a Proclamation to that effect. The maximum duration of this type of emergency is three (3) years. During such an emergency, the President may assume to himself the executive powers of the State. The powers of the legislatures of the State are to be exercised by the Union Parliament.

**Proclamation of Financial Emergency by the President:** The President may also issue a

Proclamation of Financial Emergency if he is satisfied that the financial stability of India is threatened. This type of emergency may continue to remain in force for an indefinite period. The Central Government may give directions to the States for canons of financial propriety. All money-bills passed by the State Legislatures are to be reserved for the consideration of the President.

**Position:** Thus the President of India has been given wide and far-reaching powers which he enjoys both during normal and emergency times. But after the passing of the Constitution Forty-Second (1976) and Forty-Fourth (1978) Amendment Acts, the President of our Republic has become a Constitutional figurehead and nothing beyond that.

Today, President's position is one of great authority and dignity, but at the same time strictly constitutional. Thus the President is bound in every case to act on the advice of his Prime Minister and other Ministers who are responsible to the Lok Sabha and responsive to the public opinion.

In short, the powers really reside in the Ministry and the Parliament and not in the President as such. He has no discretion in our Parliamentary system of government.

The Supreme Court through various decisions has upheld the position that the President is a constitutional head and as such he is as much bound by the advice of his Ministers during emergency as during normal times.

For example, the President can declare a proclamation of the National Emergency (Article 352) only after receiving a written communication of the decision of the Union Cabinet. If the President abuses his powers, he can be removed from office by a process of impeachment.

It does not, however, mean that the President of India is a magnificent cipher or a mere rubber stamp. Unlike the British Monarchy which is hereditary, the President of our Republic is an elected Head of the State. In our coalition politics, there are some grey areas where the President may still have to use his own judgment and wisdom. These are:

- Appointment of the Prime Minister,
- Dismissal of the Union Ministry,
- Dissolution of the Lok Sabha, and,
- Seeking information on all matters of administration and legislation from the Prime Minister etc.

In some such situations, the role of our President may become most crucial and decisive. However, the President has to be free from all political affiliations. He is expected to act with complete constitutional rectitude and impartiality. The nation is expected to be benefitted by his wise leadership and constructive role.

**In short, the President of India is the symbol of national unity, magnet of loyalty and apparatus of ceremony.**

# **PRIME MINISTER AND COUNCIL OF MINISTERS – AN OVERVIEW**

**Prof. Karthik Shiva**

**Assistant Professor of Law**

**VIT School of Law,**

**Vellore Institute of Technology, Chennai**

## **UNION EXECUTIVE**

- Art. 52-78 of the COI – Union Executive
- The Union Executive consists of the
  - a) The President,
  - b) The Vice- President,
  - c) **The Prime Minister,**
  - d) **The Council of Ministers and**
  - e) The Attorney General of India.
- Head of the State – Art. 52 – President of India

# PRIME MINISTER AND COUNCIL OF MINISTERS

- Union Executive in India is inspired by the British Westminster style having a both a Head of the State and Head of the Government
- Head of the State – President – Nominal (De Jure) Executive
- Head of the Government – Prime Minister – Real (De facto) Executive
- The President of India plays a role similar to the British Crown subject to certain conditions and exceptions
- Article 74-78 deals with the PM and COM

## **PRIME MINISTER AND COUNCIL OF MINISTERS**

- Art. 74 → Council of Ministers to aid and advise the President
- Art. 75 → Other Provisions as to Ministers
- Art. 76 → Attorney General of the India
- Art. 77 → Conduct of business of Government of the Union
- Art. 78 → Duties of PM as respect the furnishing of information to the President, etc.

# APPOINTMENT OF PRIME MINISTER

- Art. 75 → President to appoint the Prime Minister
- No specific procedure explicitly laid down under COI
- Constitutional Conventions dictate the appointment of PM → Leader of the majority party in Lok Sabha
- No clear majority → Personal Discretion subject to certain conventions → Leader of Largest Party or Coalition → With requirement to prove majority in LS → Vote of Confidence
- PM can be member of Lok Sabha or Rajya Sabha → Unlike Britain → House of Commons Member requirement for PM

# TENURE OF PRIME MINISTER

- Term of the Prime Minister → Not fixed → Holds office during the Pleasure of the President
- Does not mean that the president can dismiss the Prime Minister at any time.
- Prime Minister enjoying majority support in the Lok Sabha → Cannot be dismissed by the President
- PM loses the confidence of the Lok Sabha → Must Resign failing which President can Dismiss him
- PM → Head of COM → Death/ Resignation/ Dismissal of PM dissolves the Council of Ministers

# ROLE AND FUNCTIONS OF PRIME MINISTER

- Ivor Jennings - “He is, rather, a sun around which planets revolve. He is the keystone of the constitution. All roads in the constitution lead to the Prime Minister.”

The Prime Minister enjoys the following powers as Head of the Union council of ministers:

1. Recommends persons for appointment as ministers by the president.
2. Allocates and reshuffles various portfolios among the ministers.
3. Can ask a minister to resign or advise the President to dismiss him.
4. Presides over the meeting of council of ministers and influences its decisions.
5. Guides, directs, controls, and coordinates the activities of all the ministers.
6. Can bring about the collapse of the council of ministers by resigning from office.

# **ROLE AND FUNCTIONS OF PRIME MINISTER**

In Relation to the President enjoys the following powers in relation to the President:

- I. He is the **Principal channel of communication between the President and the council of ministers.**  
It is the duty of the prime minister:
  - A. to **communicate to the President all decisions of the council of ministers** relating to the administration of the affairs of the Union and proposals for legislation;
  - B. to **furnish such information relating to the administration** of the affairs of the Union and proposals for legislation as the President may call for; and
  - C. if the President so requires, to **submit for the consideration of the council of ministers** any matter on which a decision has been taken by a minister but which has not been considered by the council.
2. He advises the president with regard to the appointment of important officials like **Attorney General of India, Comptroller and Auditor General of India**, chairman and members of the UPSC, election commissioners, chairman and members of the finance commission and so on. In Relation to Parliament

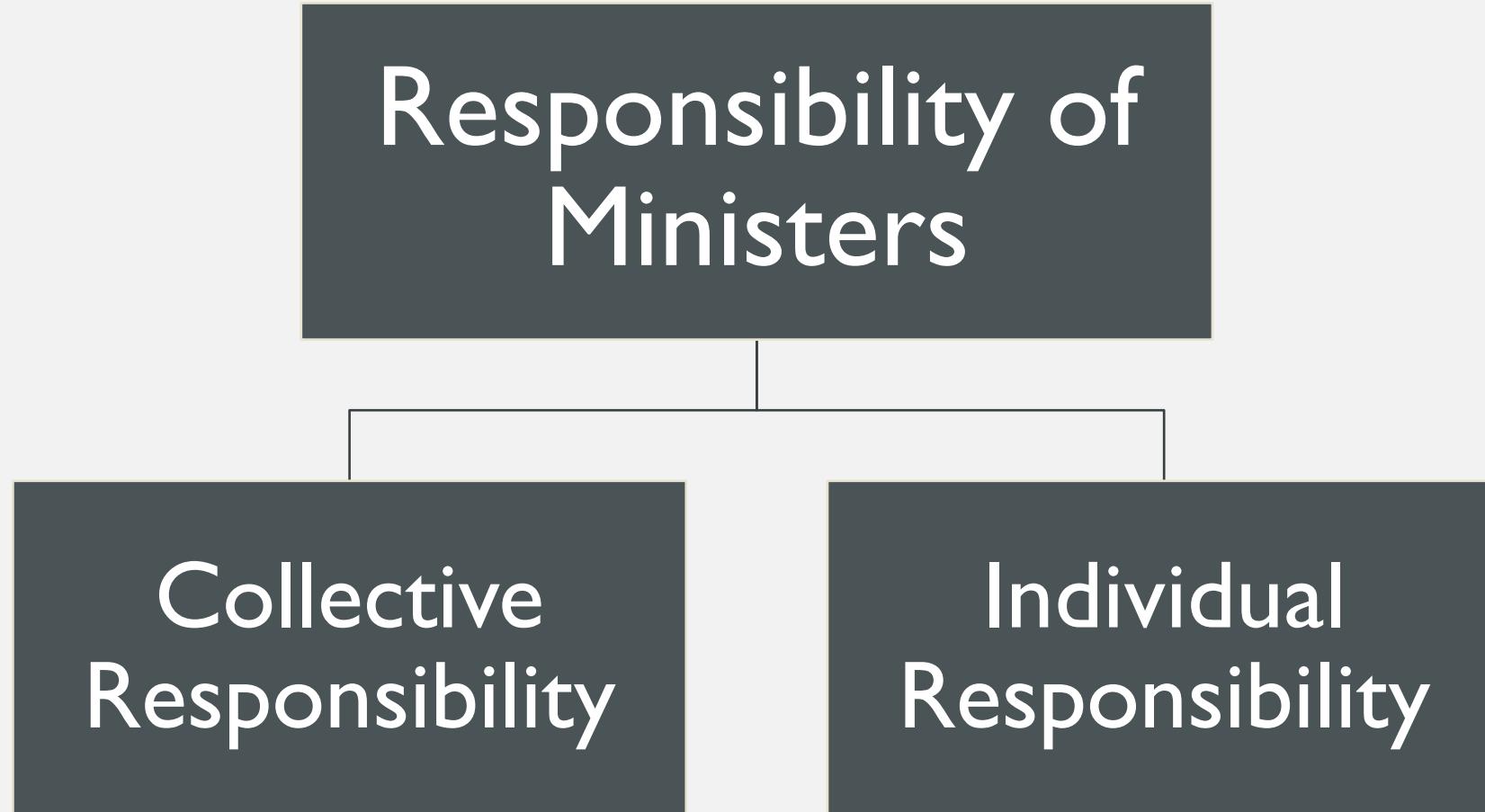
# CENTRAL COUNCIL OF MINISTERS

- Art. 74 → Status of Council of Ministers
- Art. 75 → Appointment, Tenure, Responsibility, Qualification, Oath, Salaries and Allowances
- PM and COM to aid and advise the President in the exercise of his functions
- 42<sup>nd</sup> and 44<sup>th</sup> Constitution Amendment Act → makes aid and advice binding on the President
- Appointed on advice of PM by President → LS or RS Members → Non-members can become minister but must be elected/nominated as MP within 6 months
- Minister → Right to speak and take part in proceedings in both houses → Voting rights in Single House → Art. 88

# FUNCTION AND COMPOSITION OF CENTRAL COUNCIL OF MINISTERS

- Art. 74 → PM and COM to always advise the President → Advice rendered by Ministers not to be enquired by the Court
- Art. 75 (1) → Appointment by President on advice of PM
- Art. 75 (1A) → PM and COM not to exceed 15% of Lok Sabha
- Art. 75 (1B) → Not to be disqualified under anti-defection law to hold minister post
- Art. 75 (2) Minister → COM → Pleasure of the President
- Art. 75 (3) → COM **collectively responsible** to the Lok Sabha → Principle of Collective Responsibility
- Art. 75 (4) → Oath of Office and Secrecy administered by the President
- Art. 75 (5) → Non-member of Parliament for 6 consecutive months shall lose his ministerial position
- Art. 75 (6) → Salaries and Allowance as determined by the Parliament → The Salaries and Allowances of Ministers Act, 1952

# ROLE OF MINISTERS



# RESPONSIBILITY OF MINISTERS

- Concept of Collective Responsibility → Basic Tenet of Parliamentary Form of Government → Art. 75(3) → COM Collectively Responsible to LS → All ministers are jointly responsible for their acts of commission and omission →
- “Swim together or sink together” → No confidence motion is successful every member of COM as to resign → including RS Ministers
- Cabinet decisions bind all cabinet ministers and other ministers even if they differed in the cabinet meeting → Duty to stand by all cabinet decisions → if he strongly disagrees → if not so he has to resign

# **RESPONSIBILITY OF MINISTERS**

- Concept of Individual Responsibility → Implicit in the Doctrine of Pleasure under Art. 75
- Any particular minister who has lost the confidence of the PM can be removed by the President → particular in case of any form of wrongdoing on his part
- Dissatisfaction with performance or difference of opinion → PM can ask him to resign or get him dismissed by the President

# CLASSIFICATION OF MINISTERS

Categories of  
Ministers

Cabinet  
Minister

Minister of  
State

Deputy  
Minister

# CLASSIFICATION OF MINISTERS

- Three Categories → Cabinet Minister, MoS and Dep. Ministers → Difference in ranks, emoluments and political importance → PM as the first among equals
- **Cabinet Ministers** → Important Ministry → Home, Defence, Finance, External Affairs → Members of Cabinet → Attends meetings and Policy making
- **Minister of State** → Independent Charge / Attached to Cabinet Minister → Accordingly Work independently or Work under Cabinet Ministers → Do not attend Cabinet Meetings unless specially invited
- **Deputy Ministers** → No independent charge → attached to Cabinet Ministers or MoS and assist them → Not part of Cabinet and do not attend Cabinet Meetings

# CABINET

- It is a smaller body consisting of 20-30 ministers.
- It includes the cabinet ministers only.
- It is a part and a sub-set of the Council of ministers.
- It meets frequently usually at least once a week to deliberate and take decisions
- Its policy decisions are binding on all ministers
- It has a supervisory role on the Council of Minister
- Not originally stated explicitly in the Constitution of India → Added by 42<sup>nd</sup> Amendment to Art. 352 → PM and Other Ministers of Cabinet Rank
- “*The Cabinet is the steering wheel of the ship of the state*” – Ramsay Muir

# KITCHEN CABINET

- It is sub-classified into a Kitchen/Inner Cabinet
- It is a super-small body of Cabinet with highest decision making powers
- Informal and Extra-Constitutional System that developed in system with a larger cabinet that may stifle decision making
- The objective is to ensure quick, efficient and robust decision making
- It helps in maintaining secrecy in important political matters
- It can meet more often and expeditiously than the full cabinet
- Decisions are cooked and placed before the full cabinet for formal approval
- Also exists in USA and Britain

# **Council of States (Rajya Sabha)**

## **Background**

Parliament of India consists of the President and the two Houses- the Council of States (Rajya Sabha) and the House of the People(Lok Sabha). While the two Houses continue to be reorganized as the Council of States and the House of the People in the constitution, they are in actual practice known respectively as the Rajya Sabha and the Lok sabha. On 23August 1954, the Chairman of the Council of States, Dr. Sarvepalli Radhakrishna made an announcement in the Council about the adoption of Hindi name of the Council of States as ‘Rajya Sabha’. Earlier, on 14 May 1954, the Speaker, Lok Sabha, Shri G.V.Mavalanker made an announcement in the House that the House of the People would thereafter be known as ‘Lok Sabha’.

The origin of the second Chamber can be traced to the Montague-Chelmsford Report of 1918. The Government of India Act, 1919 provided for the creation of a ‘Council of State’ as a second chamber of the then legislature with a restricted franchise which actually came into existence in 1921. The Governor-General was the ex-officio President of the then Council of State. The Government of India Act, 1935, hardly made any changes in its composition.

The Constituent Assembly which first met on 9 December 1946, also acted as the Central Legislature till 1950, when it was converted as ‘Provisional Parliament’. During this period, the Central Legislature which was known as Constituent Assembly (Legislature) and later Provincial Parliament was unicameral till the first election was held in 1952. Extensive debates regarding the utility or otherwise of a Second Chamber in Independent India Ultimately; it was decided to have a bicameral legislature for independent India mainly because a federal system was considered to be most feasible form of Government for such a vast country with immense diversities. A single directly elected House, in fact, was considered inadequate to meet the challenges that free India would face. A second chamber known as the ‘Council of States’, therefore, was created with altogether different composition and method of election from that of the directly elected ‘House of the People’. It was conceived as the other Chamber, with smaller membership than the House of the People. It was meant to be the federal chamber *i.e.*, a House elected by the elected members of Assemblies of the States and three Union Territories in which States were not given equal representation. Unlike several other countries which provide equal representation to all the States in the Upper House, in the

Rajya Sabha . States have unequal representation as they are represented in proportion to their population. Apart from the elected members, provision was also made for the nomination of twelve members to the House by the President. The minimum age of thirty years was fixed for membership as against twenty-five years for the Lower House. The element of dignity and prestige was added to the Council of State by making the Vice-President of India *ex-officio* Chairman of the Rajya Sabha. who presides over its sittings.

### **Constitutional Provisions relating to Rajya Sabha**

#### **Composition/Strength**

Article 80 of the Constitution lays down the maximum strength of Rajya Sabha as 250, out of which 12 members are nominated by the President and 238 are representatives of the States and of the two Union Territories. The present strength of Rajya Sabha, however, is 245, out of which 233 are representatives of the States and Union territories of Delhi Puducherry and Jammu and Kashmir w.e.f. 31.10.2019 and 12 are nominated by the President. The members nominated by the President are persons having special knowledge or practical experience in respect of such matters as literature, science, art and social service.

#### **Allocation of Seats**

The Fourth Schedule to the Constitution provides for allocation of seats to the States and Union Territories in Rajya Sabha. The allocation of seats is made on the basis of the population of each State. Consequent on the reorganization of States and formation of new States, the number of elected seats in the Rajya Sabha allotted to States and Union Territories has changed from time to time since 1952.

#### **Eligibility**

#### **Qualifications**

Article 84 of the Constitution lays down the qualifications for membership of Parliament. A person to be qualified for the membership of the Rajya Sabha should posses the following qualifications:

1. he must be a citizen of India , and makes and subscribes before some person authorized in that behalf by Election Commission an oath or affirmation according to the form set out for the purpose in the Third Schedule to the Constitution.

2. he must be not less than 30 years of age;
3. he must possess such other qualifications as may be prescribed in that behalf by or under any law made by Parliament.

### Disqualifications

Article 102 of the Constitution lays down that a person shall be disqualified for being chosen as, and for being, a member of either House of Parliament –

1. if he holds any office of profit under the Government of India or the Government of any State, other than an office declared by Parliament by law not to disqualify its holder;
2. if he is of unsound mind and stands so declared by a competent court;
3. if he is an undischarged insolvent;
4. if he is not a citizen of India, or has voluntarily acquired the citizenship of a foreign State, or is under any acknowledgement of allegiance or adherence to a foreign State;
5. if he is so disqualified by or under any law made by Parliament.

*Explanation-* [For the purposes of this clause] a person shall not be deemed to hold an office of profit under the Government of India or the Government of any State by reason only that he is a Minister either for the Union or for such State.

Besides, the Tenth Schedule to Constitution provides for disqualification of the members on ground of defection. As per the provisions of the Tenth Schedule, a member may be disqualified as a member, if he has voluntarily *given* up the membership of such political party; or if he votes or abstains from voting in the House contrary to any direction issued by the political party to which he belongs, unless such voting or abstention has not been condoned by the political party within fifteen days. A member elected as an independent candidate shall be disqualified if he joins any political party after his election.

A member nominated to the House by the President, however, is allowed to join a political party if he/she does so within the first six months of taking seat in the House.

A member shall not be disqualified on this account, if he voluntarily gives up the membership of his political party after he is elected Deputy Chairman, Rajya Sabha.

## **Process for Election/Nomination**

### **Electoral College:**

The representatives of the States and of the Union Territories in the Rajya Sabha are elected by the method of indirect election. The representatives of each State and three Union territories are elected by the elected members of the Legislative Assembly of that State and by the members of the Electoral College for that Union Territory respectively, in accordance with the system of proportional representation by means of the single transferable vote. The Electoral College for the National Capital Territory of Delhi consists of the elected members of the Legislative Assembly of Delhi, and that for Puducherry and Jammu Kashmir consists of the elected members of the respective Legislative Assemblies.

### **Biennial/Bye-election**

Rajya Sabha is a permanent House and is not subject to dissolution. However, one-third Members of Rajya Sabha retire after every second year. A member who is elected for a full term serves for a period of six years and on the expiration of this term retires from the membership of Rajya Sabha. The election held to fill a vacancy arising otherwise than by retirement of a member is called 'Bye-election'. A member elected in a bye-election remains a member only for the remainder of the term of the member whose resignation or death or disqualification under the Tenth Schedule led to the vacancy.

## **Presiding Officers - Chairman and Deputy Chairman**

The Presiding Officers of Rajya Sabha have the responsibility to conduct the proceedings of the House. The Vice-President of India is *ex-officio* Chairman of Rajya Sabha. Rajya Sabha also chooses from amongst its members, a Deputy Chairman. There is also a Panel of Vice-Chairmen in Rajya Sabha, who are nominated by the Chairman, Rajya Sabha from the amongst the members of Rajya Sabha. In the absence of the Chairman and Deputy Chairman, a member from the Panel of Vice-Chairmen presides over the proceedings of the House.

## **Secretary-General**

The Secretary-General is appointed by the Chairman of Rajya Sabha and holds rank equivalent to the highest civil servant of the Union. The Secretary-General works with anonymity and is readily available to the Presiding Officers for rendering advice on parliamentary matters. The Secretary-General is also the

administrative head of the Rajya Sabha Secretariat and the custodian of the records of the House. He works under the direction and control of the Chairman, Rajya Sabha.

### **Relation between the two Houses**

Under Article 75(3) of the Constitution, the Council of Ministers is collectively responsible to the House of the People (Lok Sabha) which means Rajya Sabha cannot make or unmake the Government. It can, however, exercise control over the Government and this function becomes quite prominent, particularly when the Government does not enjoy majority in Rajya Sabha.

To resolve a deadlock between the two Houses, in case of an ordinary legislation, the Constitution provides for the joint sitting of both Houses. In fact, there have been three occasions in the past when the Houses of Parliament had met in joint sitting to resolve differences between them. Issues in joint sitting are decided by a majority of the total number of members of both Houses present and voting. The joint sitting is held in the Central Hall of Parliament House presided over by the Speaker, Lok Sabha. However, in the case of a Money Bill, there is no provision in the Constitution for a joint sitting of both Houses as Lok Sabha clearly enjoys pre-eminence over Rajya Sabha in financial matters. As regards a Constitution Amendment Bill, it has been provided in the Constitution that such a Bill has to be passed by the specific majority, as prescribed under article 368 of the Constitution, by both Houses. There is, therefore, no provision for resolving a deadlock between the two Houses in regard to a Constitution Amendment Bill.

Ministers may belong to either House of the Parliament. The Constitution does not make any distinction between the two Houses in this regard. The Ministers have the right to speak and take part in the proceedings of either House but are entitled to vote only in the House of which they are members.

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

Other important matters in respect of which both Houses enjoy equal powers are election and impeachment of the President, election of the Vice-President, approving the proclamation of Emergency, the proclamation regarding failure of constitutional machinery in States and financial emergency. In respect of receiving reports and papers from various statutory authorities, etc., both Houses have equal powers.

Except in the case of collective responsibility of the Council of Ministers and certain financial matters, which fall in the domain of Lok Sabha only, both Houses enjoy equal powers.

### **Special Powers of Rajya Sabha**

The Council of States (Rajya Sabha), has its own distinctive features. Rajya Sabha being a federal chamber enjoys certain special powers under the Constitution. All the subjects/areas regarding legislation have been divided into three Lists - Union List, State List and Concurrent List. Union and State Lists are mutually exclusive - The Parliament cannot legislate on a matter placed in the State List in normal circumstances. However, if Rajya Sabha passes a resolution by a majority of not less than two-thirds of members present and voting saying that it is "necessary or expedient in the national interest" that Parliament should make a law on a matter enumerated in the State List, Parliament becomes empowered to make a law on the subject specified in the resolution, for the whole or any part of the territory of India. Such a resolution remains in force for a maximum period of one year but this period can be extended by one year at a time by passing a similar resolution further.

If Rajya Sabha passes a resolution by a majority of not less than two-thirds of the members present and voting declaring that it is necessary or expedient in the national interest to create one or more All India Services common to the Union and the States, Parliament becomes empowered to create by law such services.

Under the Constitution, the President is empowered to issue Proclamations in the event of national emergency, in the event of failure of constitutional machinery in a State, or in the case of financial emergency. Every such proclamation has to be approved by both Houses of Parliament within a stipulated period. Under certain circumstances, however, Rajya Sabha enjoys special powers in this regard. If a Proclamation is issued at a time when Lok Sabha has been dissolved or the dissolution of Lok Sabha takes place within the period allowed for its approval, then the proclamation remains effective, if the resolution approving it is passed by Rajya Sabha within the period specified in the Constitution under Articles 352, 356 and 360.

### **Rajya Sabha in Financial Matters**

A Money Bill can be introduced only in Lok Sabha. After it is passed by that House, it is transmitted to Rajya Sabha for its concurrence or recommendation. The power of Rajya Sabha in respect of such a Bill is limited. Rajya Sabha has to

return such a Bill to Lok Sabha within a period of fourteen days from its receipt. If it is not returned to Lok Sabha within the said period of fourteen days the Bill is deemed to have been passed by both Houses at the expiration of the said period in the form in which it was passed by Lok Sabha. Rajya Sabha cannot amend a Money Bill; it can only recommend amendments and Lok Sabha may either accept or reject all or any of the recommendations made by Rajya Sabha.

Apart from Money Bills, certain categories of Financial Bills also cannot be introduced in Rajya Sabha. There are, however, some types of Financial Bills on which there is no limitation on the powers of the Rajya Sabha. These Bills may be initiated in either House and Rajya Sabha has powers to reject or amend such Financial Bills like any other ordinary Bill. Of course, such Bills cannot be passed by either House of Parliament unless the President has recommended to that House the consideration thereof.

Despite the limited role, Rajya Sabha does have a bearing on matters relating to finance. The Budget of the Government of India is laid every year before Rajya Sabha also and its members discuss it. Though Rajya Sabha does not vote on Demands for Grants of the Ministries/Departments - a matter exclusively reserved for Lok Sabha - no money, however, can be withdrawn from the Consolidated Fund of India unless the Appropriation Bill has been passed by both the Houses. Similarly, the Finance Bill is also brought before Rajya Sabha. Besides, the Department-related Parliamentary Standing Committees that examine the annual Demands for Grants of the Ministries/Departments are joint committees *consisting* of members from Lok Sabha and Rajya Sabha.

### **Leader of the House**

Apart from the Chairman and the Deputy Chairman, Leader of the House is an important Parliamentary functionary who plays an important role in the efficient and smooth conduct of the business in the House. The Leader of the House in Rajya Sabha is normally the Prime Minister, if he/she is its member or a Minister who is a member of the House and is nominated by the Prime Minister to function, as the leader of the House.

The primary responsibility of the Leader of the House is to maintain coordination amongst all sections of the House for a harmonious and meaningful debate in the House. For this purpose, he remains in close contact not only with the Government but also with the Opposition, individual ministers and the Presiding

Officer. He occupies the first seat (first row) in the Chamber at the right side of the Chair so that he is easily available to the Presiding Officer for consultation.

As per the Rules of Procedure and Conduct of Business in the Council of States, the Chairman consults the Leader of the House with regard to the arrangement of Government business in the House, allotment of days or allocation of time for discussion on the President's Address, discussion on Private Members' business on any day other than Friday, discussion on No Day-Yet-Named Motions, Short Duration Discussions and consideration and return of a Money Bill. He is also consulted by the Chairman in the matter of adjournment or otherwise of the House for the day in case of death of an outstanding personality, national leader or international dignitary.

In the era of coalition governments, the task of the Leader of the House has become more challenging. He ensures that all possible and reasonable facilities are made available to the House for a meaningful discussion on any matter that is brought before it. He works as the spokesperson of the House in expressing sense of the House and represents it on ceremonial or formal occasions.

The following members have been the Leaders of the House in the Rajya Sabha:

	<b>Name</b>	<b>From</b>	<b>To</b>
1.	Shri N. Gopalaswami Ayyangar	May 1952	Feb. 1953
2.	Shri Charu Chandra Biswas	Feb. 1953	Nov. 1954
3.	Shri Lal Bahadur Shastri	Nov. 1954	March 1955
4.	Shri Govind Ballabh Pant	March 1955	Feb. 1961
5.	Hafiz Mohammad Ibrahim	Feb. 1961	Aug. 1963
6.	Shri Yashwantrao Balwantrao Chavan	Aug. 1963	Dec. 1963
7.	Shri Jai Sukh Lal Hathi	Feb. 1964	March 1964
8.	Shri M.C. Chagla	March 1964	Nov. 1967
9.	Shri Jai Sukh Lal Hathi	Nov. 1967	Nov. 1969
10.	Shri Kodradas Kalidas Shah	Nov. 1969	May 1971
11.	Shri Uma Shankar Dikshit	May 1971	Dec. 1975
12.	Shri Kamlapati Tripathi	Dec. 1975	March 1977
13.	Shri Lal K. Advani	March 1977	Aug. 1979
14.	Shri K.C. Pant	Aug. 1979	Jan. 1980
15.	Shri Pranab Mukherjee	Jan. 1980	July 1981

<b>Name</b>	<b>From</b>	<b>To</b>
16. Shri Vishwanath Pratap Singh	Aug. 1981	Dec. 1984
17. Shri N.D. Tiwari	Dec. 1984	April 1987
18. Shri P. Shiv Shanker	April 1987	June 1988
19. Shri M.S. Gurupadaswamy	July 1988	Dec. 1989
20. Shri Yashwant Sinha	Dec. 1989	Nov. 1990
21. Shri S.B. Chavan	Dec. 1990	June 1991
22. Shri Sikander Bakht	July 1991	April 1996
23. Shri Inder Kumar Gujral	20th May 1996	31st May 1996
24. Shri H.D. Deve Gowda	June 1996	Nov. 1996
25. Shri Inder Kumar Gujral	Nov. 1996	April 1997
26. Shri Sikander Bakht	April 1997	March 1998
27. Shri Jaswant Singh	March 1998	Oct. 1999
28. Dr. Manmohan Singh	Oct. 1999	May 2004
29. Shri Arun Jaitley	June 2004	May,2009
	May 2009	May,2014
	June, 2014	<i>April, 2018</i>
	April, 2018	May, 2019
30. Shri Thaawarchand Gehlot	June,2019	July, 2021
31. Shri Piyush Goyal	July,2021	till date

### **Leader of the Opposition (LOP)**

The office of the Leader of the Opposition in a legislature is of immense public importance. Its importance emanates from the central role accorded to the Opposition in a parliamentary democracy. The role of Leader of the Opposition is in fact very challenging as he has to ensure accountability of the government to the legislature and to the public and present alternatives to government proposals/policies. He has to be a very skilled parliamentarian to fulfill this special responsibility to Parliament and to the nation.

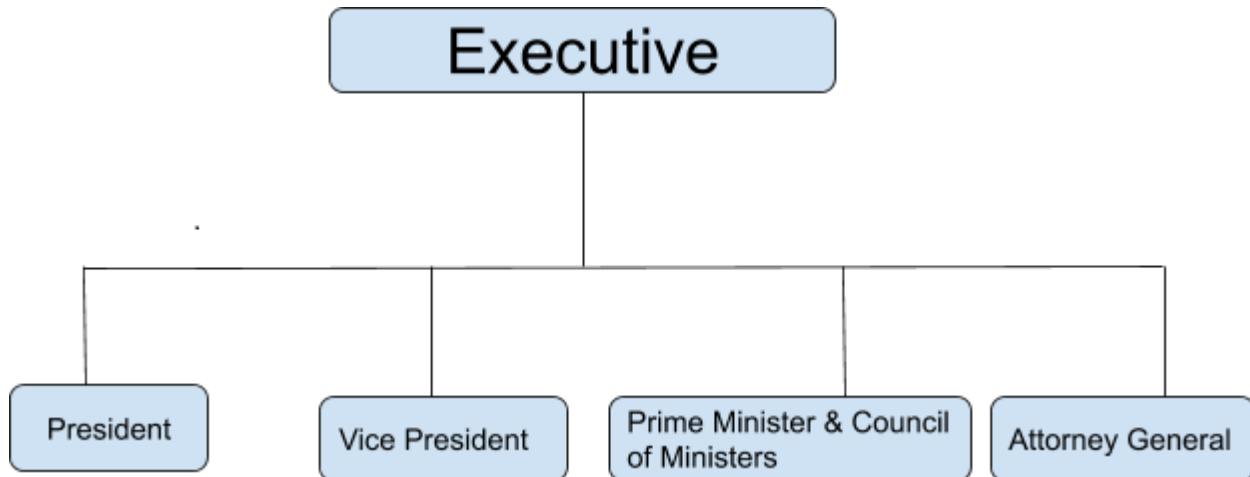
There was no Leader of the Opposition in Rajya Sabha in real sense of the term till the year 1969 till than the practice was to call the Leader of the party in Opposition having the largest number of the members as the Leader of the Opposition, without according him any formal recognition, status or privilege. The office of Leader of the Opposition was given official recognition through the Salary and Allowances of Leaders of the Opposition in Parliament Act, 1977. According to the said Act, the Leader of the Opposition should satisfy three conditions, namely, (i) he should be a member of the House (ii) the Leader in Rajya Sabha of the party in opposition to the Government having the greatest numerical strength and (iii) be recognized as such by the Chairman, Rajya Sabha.

The following members have been the Leaders of the Opposition in the Rajya Sabha:

	<b>Name</b>	<b>From</b>	<b>To</b>
1	Shri Shyam Nandan Mishra	Decermber 1969	March 1971
2	Shri M. S. Gurupadaswamy	March 1971	April 1972
3	Shri Kamlapati Tripathi	30.3.1977	15.2.1978
4	Shri Bhola Paswan Shastri	24.2.1978	23.3.1978
5	Shri Kamlapati Tripathi	23.3.1978 18.4.1978	2.4.1978 8.1.1980
6	Shri Lal K. Advani	21.1.1980	7.4.1980
7	Shri P. Shiv Shanker	18.12.1989	2.1.1991
8	Shri M. S. Gurupadaswamy	28.6.1991	21.7.1991
9	Shri S. Jaipal Reddy	22.7.1991 7.7.1992	29.6.1992 10.4.1996
10	Shri Sikander Bakht	10.4.1996	23.5.1996
11	Shri S. B. Chavan	23.5.1996	1.6.1996
12	Shri Sikander Bakht	1.6.1996	19.3.1998
13	Dr. Manmohan Singh	21.3.1998	21.5.2004
14	Shri Jaswant Singh	3.6.2004 5.7.2004	4.7.2004 16.5.2009
15	Shri Arun Jaitley	3.6.2009	26.5.2014
16	Shri Ghulam Nabi Azad	8.6.2014 16.2.2015	10.02.2015 15.2.2021
17.	Shri Mallikarjun Kharge	16.2.2021	till date

Rajya Sabha plays a very constructive and effective role in our polity. Its performance in the legislative field and in influencing the Government policies has been quite significant. Rajya Sabha has, in fact, worked in a spirit of cooperation with Lok Sabha as per the Constitutional mandate. Rajya Sabha has prevented hasty legislation and has served as dignified chamber representing the federal principle. As a federal chamber, it has worked for the unity and integrity of the nation and has reinforced the faith of the people in parliamentary democracy.

## THE UNION EXECUTIVE [PART V, ARTICLES 52-72]



### **THE PRESIDENT**

**Article 52** provides that there shall be a President of India.

- The president is the head of Indian state. He is first citizen of India

### **Executive power of union article 53**

- Article 53 provides that executive power of the union shall be vested in the president and shall be exercised by him either directly or through officers subordinate to him in accordance with the constitution.
- The president shall be **supreme commander of Defence forces in India**.

### **Election of president article 54**

- Article 54 provides that president shall be elected by the members of electoral college consisting of:
  - A. Elected members of both houses of parliament and
  - B. Elected members of Legislative assemblies of state
- State includes the national capital territory of **Delhi** and union territory of **Pondicherry**. It means that elected members of Legislative assemblies of NCT of

Delhi and union territory of Pondicherry shall also be eligible to vote in the election of president.

- **Member who do not participate in election of president: it is to be noted that**
  1. nominated members of both the houses of parliament; and
  2. nominated members of state legislative assembly; and
  3. **members both elected and nominated of state legislative council[ in case of bicameral Legislature] and**
  4. Nominated members of legislative assemblies of Delhi and Puducherry do not participate in the election of president.
- **Article 55**
  - Provides that there shall be uniformity in the scale of Representation of different states as well as parity between the state as whole and union at the election of the president.
  - **the president election is held in accordance with the system of proportional representation by the means of Single Transferable Vote and the voting is by secret ballot[ article 55(3)]**
- **Term, Resignation And Re Election [Article 56]**
  - Provides that president shall hold office for the term of five years from the date on which he enters upon his office.
  - the president may **resign** by addressing his resignation to the **vice president**
  - The president may for violation of constitution be removed from office by impeachment in the manner provided in **article 61.**
  - The president shall notwithstanding the expiration of his term, continue to hold the office until his successor enters upon his office.
  - Resignation address to vice president shall be communicated by him to the speaker of the house of people.

- |                      |   |
|----------------------|---|
| • <b>Resignation</b> | • <b>President</b> —————→ <b>Vice President</b> —————→ <b>Speaker</b> |
|----------------------|---|

- **Article 57** provides that the person who holds or has held the office of president shall subject to the other provisions of the Constitution be eligible for re-election to that office.

### **Qualification for the election of president [article 58]**

- **Article 58** provides that following shall be the qualification for election of president.
  1. He should be a citizen of India.
  2. He should have completed 35 years of age.
  3. He should be qualified for election as a member of Lok Sabha.
  4. He should not hold any office of profit under the union government or any State government or any local authority or any other public authority.
- A sitting president or vice president of the union, the governor of any state and a Minister of the union or any state is not deemed to hold any office of profit and hence qualified as presidential candidate.

### **Conditions of president's office [article 59]**

- Article 59 provides that the president shall not be a member of either the House of Parliament or of the House of Legislature of any state.
- If a member of either House of Parliament or of house of the Legislature of any state be elected president, he shall be deemed to have vacated his office in that house on the date on which he enters upon his office as a president.
- The president shall not hold any other office of profit.
- The president shall be entitled without payment of rent to the use of his official residence and shall be also entitled to search emoluments, Allowances and privileges as maybe determined by the Parliament by law.
- The emoluments and allowances of president shall not be diminished during his term of office.

### **Oath or affirmation by president [article 60]**

- Article 60 provides that before entering upon his office, the president has to make and subscribe to an oath or affirmation. In his oath the president swears:
  1. To faithfully execute the office.

- 2. To preserve, protect and Defend the constitution and law; and
- 3. To devote himself to the service and well-being of the people of India.
- The Oath of the office of president is administered by Chief Justice of India and in his absence, the senior most judge of Supreme Court available.
- Any other person acting as a president or discharging the functions of the president also undertake the similar oath or affirmation.

### **Impeachment of the president [article 61]**

- Article 61 provides the procedure for impeachment of president.
- Grounds: president is impeached on the ground of violation of constitution. The constitution does not define the meaning of phase ‘violation of the constitution’.
- The impeachment charges can be initiated by either House of the Parliament.
- 14 days prior notice
- These charges should be signed by one fourth member of the house (that framed the charges).
- The president has the right to appear and to be represented at such investigation.
- If the other house also sustains the charges and passes the impeachment resolution by a majority of two third and total memberships, then the president stands removed from his office from the date on which the resolution is so passed.
- in context of impeachment, two things should be noted:-
  - 1. The nominated members Of either House of Parliament can participate in impeachment of the president though they do not participate in his election;
  - 2. The elected member of legislative assemblies of the states and union territories of Delhi and Puducherry do not participate in the impeachment of president do they participate in his election.
  - Till date no president has been impeached.

### **Vacancy, time for holding election etc [article 62]**

- Article 62 provides that an election to fill a vacancy caused by expiration of the term of office of president shall be completed before the expiration of the term of the president.
- vacancy in president's office
  1. On expiry of his tenure of 5 year
  2. by his resignation
  3. on his removal by the process of impeachment
  4. by his death
  5. Otherwise [when he becomes disqualified to hold the office or when his election is declared void].
- In the case of any delay in conducting the elections of new president by any reason, the outgoing president continues to hold office the on his term of 5 years until his successor assumes the charge. It is to be noted that in this situation the Vice-President does not get an opportunity to act as a president.
- If the office false vacant by resignation, removal, death or otherwise, then the election to fill the vacancy should be held within six months from the date of occurrence of such a vacancy.
- The newly elected president remains an office for a full term of five years from the date he assume the charge of his office.

### **Situations where vice president act as a president article 65**

- When a vacancy occurs in the office of president due to his resignation, removal, death or otherwise, the vice president acts as the President until our new President is elected article 65(1).
- When the sitting president is unable to discharge is function due to absence, illness or any other cause the vice president discharges his functions until the president resumes his office article 65(2)
- in the case of office of vice president is vacant, the Chief Justice of India for if his office is also vacant the senior most judge of Supreme Court available acts as the President of discharges the functions of president.

## **Powers of president**

1. Executive Power
2. Legislative Power
3. Financial Powers
4. Judicial Power
5. Military Powers
6. Diplomatic Powers

- **Executive powers:**

- Powers of the union Vest in the president. few important executive powers and functions of President are:
  - i. All executive actions of Government of India are formally taken in the name of president [article 77]
  - ii. Appoints the Prime Minister and other ministers. they hold office during his pleasure [article 75 (1)]
  - iii. He appoints office bearers of constitutional post like the governor of state, Attorney General of India, Comptroller and Auditor General of India, the election commissioner and other Election Commissioner, the Chairman and members of Union Public Service Commission the Chairman and member of finance commission etc.
  - iv. he can appoint commissions to investigate into conditions of SC ST and other backward classes[ article 338, 338 a 338 b]
  - v. He can appoint the Interstate Council to promote Centre state and interested Corporation.[263]
  - vi. He directly administers union territories through administrator appointed by him.[239]
  - vii. He can declare any area as scheduled area and has powers with respect to administration of Scheduled Areas and tribal areas.[244(1) V SCHEDULE]

- **Legislative powers**

Following are the few important legislative powers of the president:-

1. He can summon or prorogue the Parliament and dissolve the Lok Sabha. article 85 [1]
2. He can summon a joint sitting of both the houses of parliament [article 108]
3. He can appoint any member of Lok Sabha to preside over its proceedings when the offices of both the speaker and deputy speaker fall vacant. Similarly he can also appoint any member of Rajya Sabha to preside over its proceedings when the offices of both the Chairman and Deputy Chairman fall vacant.
4. nominates 12 members of Rajya Sabha from person having special knowledge or practical experience in Literature, science, art and social service [article 80(3)]
5. He can nominate two members of Lok Sabha from Anglo Indian community **article 331**. Repealed by 104th constitutional amendment 2019.
6. He decides on question as to disqualification of members of parliament in consultation with election commission (article 103).
7. when a bill is sent to the president after it has been passed by the parliament he can Give his assent to the bill or
  - a. withhold his assent to the bill or
  - b. Return the bill [if it is not a money bill] for reconsideration of the Parliament.
  - c. if the bill is passed Again by the parliament, with or without amendment, the president has to give his assent to the bill [article 111]
8. He can promulgate Ordinance is when Parliament is not in session

## **Military Powers**

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

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

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

## **Diplomatic Powers**

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

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

## **Ordinance making power of the President: Article 123**

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

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

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

The essential conditions to be met by an ordinance are:

- It shall be presented before both the Houses of Parliament for passing when it comes to the session;

- The ordinance shall cease to **operate six weeks** after the date of reassembling of the parliament;
- The ordinance may also expire if the resolutions disapproving it are passed by both the Houses of Parliament;
- Therefore every Ordinance issued by the president during the Recess of Parliament must be laid before both the houses of Parliament when it reassembles. if the ordinance is approved by both the houses it becomes an act and if Parliament takes no action at all, all the ordinance ceases to operate on expiry of 6 Weeks from reassembly of parliament.
- It can be withdrawn at any time by the President;
- **The ordinance must be in consonance to the Constitution of India else it shall be declared void.**
- It is to be noted an ordinance made when both the houses are in session is void. Thus the power of the president to legislate by Ordinance is not a parallel power of legislation.
- **Grounds of promulgation** he can make an ordinance only when he is satisfied that the circumstances exist that render it necessary for him to take immediate action.
- In **RC Cooper vs. Union of India 1970** the supreme court held that the president's satisfaction can be questioned in a court on the ground of malafide.
- In **A K Roy versus Union of India** the supreme court held that Ordinance would be subject to the test of vagueness, arbitrariness, reasonableness and Public Interest.
- Scope of Ordinance making power is coextensive with that of Legislative powers of parliament. It means that an ordinance can be issued only on those subjects on which Parliament can make laws.
- The ordinance making power of the president is not a discretionary power, and he can promulgate or withdraw an ordinance only on the advice of Council of Ministers headed by the Prime Minister.
- In **D C Wadhwa vs. State of Bihar 1987** the Supreme Court ruled that successive Re promulgation of Ordinance without any attempt to get the Bill passed by the Assembly would amount to fraud on constitution and the ordinance so promulgated is liable to be struck down. it held that the

exceptional power of law making through Ordinance cannot be used as a substitute for legislative powers of state legislative assembly.

## **Financial Roles**

- Money bills can be introduced in the Parliament only with the prior recommendation of president [article 109 and 110]
- He Causes to be laid before the Parliament the annual financial statement that is the union budget [article 112]
- The Contingency Funds of India are at the disposal of the President. He can make advances out of the contingency fund of India to meet any unforeseen expenditure. [ART 267]
- He also causes the presentation of audits in the Parliament. [151]
- He constitutes a finance commission after every five years to recommend the distribution of revenues between the centre and the states [article 280]

## **Judicial powers**

The President enjoys the following privileges as his judicial powers:

- He can rectify the judicial errors;
- He exercises the power of grant of pardons and reprieves of punishments; or suspend, remit or commute sentences of any person convicted of any offence.
- President can seek the advice of Supreme Courts on: article 143
  1. Legal matters,
  2. Constitutional matter,
  3. Matters of national importance.

So he can seek advice from the Supreme Court on any question of law or fact. However the advice tendered by the Supreme Court is not binding on the president.

## **Pardoning power: Article 72**

Article 72 provides for the provisions relating to the pardoning powers of the President. President can grant pardons, respites, reprieves, and remissions of punishments or

remit suspend or commute the sentence given to a person by the court in the following cases:

- When the sentence is granted through a court-martial;
- When the sentence or punishment is given for offense of violation of any law relating to matters that fall in the ambit of Union's executive powers;
- When a death sentence is passed by a court.
- **Pardon:** it removes both the sentence and the conviction and completely absolved the Convict from all sentences punishments and disqualification
- **Commutation:** it denotes the substitution of one form of punishment for a lighter form. For example a death sentence may be commuted to rigorous imprisonment.
- **Remission:** it applies reducing the period of sentence without changing its character. for example sentence of rigorous imprisonment for two years may be limited to a rigorous imprisonment for one year
- **Respite:** it denotes awarding a lesser sentence in place of one originally awarded due to some special facts such as physical disability of a Convict for pregnancy of a women offender.
- **Reprieve:** it implies a stay of execution of sentence [especially that of death] for a temporary period. Its purpose is to enable the convict to have time to seek pardon or commutation from the president.

In **Maru Ram v Union of India**, Supreme Court held that pardoning power under Article 72 is to be exercised by the President, on the advice of the Central Government and not on his own will and that the advice is binding on the head of the Republic.

Pardoning Power: subject to judicial review

In **Kuljit Singh Alias Ranga Vs Lt. Governor of Delhi & Ors** In this case, death sentence of one of the appellants was confirmed by the Supreme Court. His mercy petition was also rejected by the President. Then, the appellant filed a writ petition in the Supreme Court challenging the discretion of the President to grant pardon on the ground that no reasons were given for rejection of his mercy petition. The court dismissed the petition and observed that the term "pardon" itself signifies that it is entirely a discretionary remedy and grant or rejection of it need not to be reasoned.

In **Kehar Singh vs. Union of India and Anr 1989**: the Supreme Court held that while exercising the pardoning power of president can scrutinize the evidence on record and can come to a different conclusion. In doing so the president does not modify or supersede the judicial records. The petition for Mercy has no right to an oral hearing by the president.

In **Epuru Sudhakar vs. government of Andhra Pradesh 2006** the Supreme Court held that pardoning power of president under article 72 and of governor under article 161 are subject to judicial review. Pardoning cannot be exercised on the basis of caste and political reasons.

### **Articles 72 and 161 of Constitution**

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

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

### **Emergency Powers**

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

- When a National Emergency is declared in case of external aggression or internal armed rebellion, the President holds the powers to declare a state of

emergency. Thus the President's rule gets established in the country. However, the prime minister and the Council of Ministers must recommend such an emergency;

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

### **Privileges of the President: Article 361**

Under Article 361, the President is protected from being answerable to any court for:

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

The conduct of the President can be reviewed only if either House of Parliament designates or appoints any court tribunal or any other body to investigate the charges under Article 61.

But it bars no person from bringing any valid proceeding against the Governor or Government of India.

This Article immunes the President against all types of criminal proceedings during the term of his office.

No issuance of any order relating to the arrest and imprisonment of the President can be made by any court during his term of office.

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

- The act is done or alleged to have been done, whether before or entering the office of the President, by him was in his personal capacity;
- Two months prior notice is provided, to the president or was sent to his office, stating:
  1. The nature of the proceeding;
  2. The cause of action;

3. The details of the other party including name, description, and place of residence;
4. The relief claimed by the other party;

### **Position of the President [art. 74(1)]**

The position of the President has changed, with respect to his discretion to use his power, has changed since the inception of the Constitution. The two major changes came through the 42nd and 44th Amendment Act of the Constitution.

Prior to the 42nd Amendment Act of 1976

Prior to the 42nd amendment to the Constitution, the President was free to make decisions based on his wisdom. He may also consider the Council of Ministers for their advice on the action. As the Constitution at that time talks about constituting a Council of Ministers with a Prime Minister, as its head, to aid and advise the President in carrying out his duties.

After the 42nd Amendment Act, 1976

Later, the Constitution was amended to add the phrase that the President shall act on the aid and advice of the council of ministers. But the provision was still ambiguous whether the advice given by the Council of Ministers is binding on the president or not.

44th Amendment Act, 1978

This amendment was brought to swipe off the ambiguity created by the 42nd amendment. This provision said that:

- President can send back the advice to the Council of Ministers for reconsideration once;
- If the same advice is sent again without modifications by the Council then the President is bound to accept it.



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**11**

# PARLIAMENT OF INDIA

  
**Notes**

You have read in the preceding lesson that India has a parliamentary form of government in which the Prime Minister and his Council of Ministers are collectively responsible to the lower House of the Parliament i.e. Lok Sabha. In a parliamentary form of government the Parliament is the most important organ. It is the people who elect their representatives to be members of the Parliament and these representatives legislate and control the executive on behalf of the people. The Prime Minister and his Council of Ministers remain at the helm of affairs so long as they enjoy the confidence of Lok Sabha. The Parliament (Lok Sabha) may dislodge them from power by expressing a no confidence against the Prime Minister and his Council of Ministers. Thus the Parliament occupies a central position in our parliamentary system.

*A view of Indian Parliament*

## Objectives

After studying this lesson, you will be able to

- recall that the Parliament of India consists of the President and the two Houses;

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- describe the composition of the Rajya Sabha and the Lok Sabha;
- explain the functions of Indian Parliament;
- describe the procedure of lawmaking in the Indian Parliament, and
- compare the functions and powers of both the Houses and show that Lok Sabha is more powerful.

### 11.1 Composition of the Parliament

The Parliament has two Houses—Rajya Sabha and Lok Sabha. Rajya Sabha is upper House and represents the States of India while the Lok Sabha is lower House. It is also called popular House because it represents the people of India. The President is an integral part of the Parliament though he is not a member of either House. As an integral part of the Parliament, the President has been assigned certain powers and functions, which you have read in the last lesson. In this lesson you will study about the two Houses in details.

#### 11.1.1. Rajya Sabha: Membership and Election

Rajya Sabha or the Upper House of the Parliament is a permanent body as it cannot be dissolved. The membership of the Rajya Sabha cannot exceed 250. Out of these, the President nominates 12 members on the basis of their excellence in literature, science, art and social service and the rest are elected. At present its total membership is 245.

Rajya Sabha is the body representing States in Indian Union. The elected members of the States' Legislative Assemblies elect the members of the Rajya Sabha on the basis of proportional representation through the single transferable vote system. But all the States do not send equal number of members to the Rajya Sabha. Their representation is decided on the basis of population of respective States. Thus the bigger State gets bigger representation and the smaller ones have lesser representation. While the big State like UP has been assigned 31 seats, the smaller states like Sikkim and Tripura send only one member each. Delhi Assembly elects three members of Rajya Sabha and Pondicherry sends one member. Other Union Territories are not represented in the Rajya Sabha.

#### 11.1.2 Qualifications

The qualifications for becoming a Rajya Sabha member are as follows:

1. He/she should be a citizen of India and at least 30 years of age.
2. He/she should make an oath or affirmation stating that he will bear true faith and allegiance to the Constitution of India.
3. Thus according to the Representation of People Act 1951, he/she should be registered as a voter in the State from which he is seeking election to the Rajya Sabha. But in 2003, two provisions have been made regarding the elections to Rajya Sabha- (i) Any Indian citizen can contest the Rajya Sabha elections irrespective of the State in which he resides; (ii) elections are to be conducted through open voting system.

#### 11.1.3 Tenure

Every member of Rajya Sabha enjoys a safe tenure of six years. One-third of its members



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retire after every two years. They are entitled to contest again for the membership. But a member elected against a mid-term vacancy serves the remaining period only. This system of election ensures continuity in the working of Rajya Sabha.

#### 11.1.4 Officials of Rajya Sabha

The Vice-President of India is the ex-officio Chairman of the Rajya Sabha. He/she presides over the meetings of Rajya Sabha. In his absence the Deputy Chairman, who is elected by its members from amongst themselves, presides over the meeting of the House. The Deputy Chairman can be removed by a majority of all the then members of Rajya Sabha. But the Chairman (Vice-President) can only be removed from his office by a resolution passed by a majority of all the then members of Rajya Sabha and agreed to by the Lok Sabha.

As the Vice-President is an ex-officio Chairman and not a member of Rajya Sabha, he/she is normally not entitled to vote. He/she can vote only in case of a tie.

**Tie** means a situation in which there are equal vote cast in favour and against a bill or resolution. In such a situation the presiding officer may exercise a casting vote in favour/against to break the tie.



#### Intext Questions 11.1

1. What can be the maximum strength of Rajya Sabha?
2. How many members the President nominates in Rajya Sabha?
3. Who can vote to elect the members of Rajya Sabha?
4. What is the tenure of a member of Rajya Sabha?
5. What is the minimum age for becoming a member of Rajya Sabha?
6. Who is the ex-officio Chairman of Rajya Sabha?

#### 11.1.5 Membership and Election of the Lok Sabha

Unlike Rajya Sabha, Lok Sabha is not a permanent body. It is elected directly by the people on the basis of universal adult franchise. It is also called the popular House or lower House. The maximum permissible membership of Lok Sabha is 550 out of which 530 are directly elected from the States while 20 members are elected from the Union Territories. Besides, the President may nominate two members from the Anglo-Indian community if he/she feels that the said community is not adequately represented in the House.

Certain number of seats have been reserved for Scheduled Castes and Scheduled Tribes in the Lok Sabha. Initially this provision was made for ten years from the commencement of the Constitution, which has been extended time and again for further ten years by various constitutional amendments. The 79th Amendment has extended it for sixty years from the commencement of the Constitution. Reservation of seats for the Scheduled Castes or Scheduled Tribes means the persons belonging to SC/ST will represent such reserved seats. That implies that only persons belonging to SC/ST can contest from the reserved constituencies. But we have joint electorate and all the voters of the reserved constituency

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vote irrespective of their caste/tribe. There is no separation of voters in terms of caste or tribe.

The representation to the Lok Sabha is based on population. Therefore UP which is the most heavily populated State in India sends as many as 80 members while smaller States like Mizoram, Nagaland and Sikkim send just one representative each to the Lok Sabha. Seven members represent Delhi.

For the purpose of elections to the Lok Sabha, the States are divided into single member constituencies on the basis of population.

#### 11.1.6 Qualifications

All the citizens of 18 years of age and above are entitled to vote in the elections to Lok Sabha subject to the laws made by the Parliament. Any Indian citizen can become a member of Lok Sabha provided he/she fulfills the following qualifications:

1. He/she should be not less than 25 years of age.
2. He/she should declare through an oath or affirmation that he has true faith and allegiance in the Constitution and that he will uphold the sovereignty and integrity of India.
3. He/she must possess such other qualifications as may be laid down by the Parliament by law. He must be registered as a voter in any constituency in India.
4. Person contesting from the reserved seat should belong to the Scheduled Caste or Scheduled Tribe as the case may be.

#### 11.1.7 Tenure

The normal term of Lok Sabha is five years. But the President, on the advice of Council of Ministers, may dissolve it before the expiry of five years. In the case of national emergency, its term can be extended for one year at a time. But it will not exceed six months after the emergency is over. On several occasions Lok Sabha was dissolved prior to the end of its term. For example the 12<sup>th</sup> Lok Sabha elected in 1998 was dissolved in 1999.

#### 11.1.8 Officials of the Lok Sabha

**The Speaker and the Deputy Speaker:** The presiding officer of Lok Sabha is known as Speaker. The members of the House elect him. He/she remains the Speaker even after Lok Sabha is dissolved till the next House elects a new Speaker in his place. In his absence, a Deputy Speaker who is also elected by the House presides over the meetings. Both the Speaker as well as the Deputy Speaker can be removed from office by a resolution of Lok Sabha passed by a majority of all the then members of the House.

Some of the powers and functions of the speaker are given below :

1. The basic function of the Speaker is to preside over the house and conduct the meetings of the House in orderly manner. No member can speak in the House without his permission. He/she may ask a member to finish his speech and in case the member does not obey he/she may order that the speech should not be recorded.
2. All the Bills, reports, motions and resolutions are introduced with Speaker's permission. He/she puts the motion or bill to vote. He/she does not participate in the voting but



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when there is a tie i.e. equal number of votes on both sides, he/she can use his casting vote. But he/she is expected to caste her vote in a manner so that her impartiality and independence is retained.

3. His/her decisions in all parliamentary matters are final. She also rules on points of order raised by the members and her decision is final.
4. He/she is the custodian of rights and privileges of the members.
5. He/she disqualifies a member of his/her membership in case of defection. He/she also accepts the resignation of members and decides about the genuineness of the resignation.
6. In case of joint sitting of Lok Sabha and Rajya Sabha, the Speaker presides over the meeting.



### Intext Questions 11.2

1. What is the maximum permissible membership of Lok Sabha?
2. Which State sends the maximum number of members to Lok Sabha?
3. How many Anglo-Indian members may be nominated by the President in Lok Sabha?
4. For which section of the society seats are reserved in the Lok Sabha?
5. Who can vote in Lok Sabha elections?
6. Who can dissolve the Lok Sabha?
7. Who elects the Speaker of Lok Sabha?

## 11.2 Functions of Parliament

The functions and powers of the Indian Parliament can be divided into legislative, executive, financial and other catagories.

### 11.2.1 Legislative Functions

Basically the Parliament is a law-making body. In an earlier lesson you have seen that there is a division of power between the Centre (Union) and the States. There are three lists – Union List, State List and the Concurrent List. Only Parliament can make laws on the subjects mentioned in the Union List. You know that the Union List has 97 subjects. Along with the State Legislatures, the Parliament is empowered to make laws on the Concurrent List. In case, both the Centre as well as the States make a law on the subject mentioned in the Concurrent List then the central law prevails upon the state law if there is a clash between the two. Any subject not mentioned in any list i.e. residuary powers are vested with the Parliament.

Thus the law making power of the Parliament is very wide. It covers the Union List and Concurrent List and in certain circumstances even the State List also.

### 11.2.2 The Executive Functions

In a parliamentary system of government there is a close relationship between the legislature and the executive. And the executive is responsible to the legislature for all its acts. The

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Prime Minister and his Council of Ministers are responsible to the Parliament individually as well as collectively. The Parliament can dislodge a ministry by passing a vote of no-confidence or by refusing to endorse a confidence motion. In India this has happened several times. This happened in 1999 when the Atal Bihari Vajpayee Government lost the confidence motion in the Lok Sabha by just one vote and resigned.

But the no-confidence motion or the confidence motions are the extreme ways of maintaining the accountability of the Parliament over the executive. They are employed in exceptional cases. Parliament also maintains its control over executive in a routine manner through several ways. Some of them are as follows:-

- a. The members of Parliament can ask questions and supplementary questions regarding any matters connected with the affairs of the Central Government. The first hour of every working day of Parliament relates to the Question Hour in which the Ministers have to answer the questions raised by the members.
- b. If the members are not satisfied with the Government's answer then they may demand separate discussion on the subject.
- c. The Parliament also exercises control over the executive through several motions. For example calling attention notice or adjournment motion are such ways by which some recent matters of urgent public importance are raised. The government always takes these motions very seriously because the government's policies are criticized severely and their likely impact on the electorate whom the government would have to face ultimately. If the motion is passed then it means that the government is censured.

**Censure Motion:** This motion implies severe indictment of the government; but it does not require resignation of the Council of Members.

- d. The Lok Sabha can express its lack of confidence in the executive by disapproving budget or money bill or even an ordinary bill.

#### 11.2.3 The Financial Functions

The Parliament performs important financial functions. It is the custodian of the public money. It controls the entire purse of the Central Government. No money can be spent without its approval. This approval may be taken before the actual spending or in rare cases after the spending. The budget is approved by the Parliament every year.

#### 11.2.4 The Electoral Functions

The elected member of Parliament one members of the Electoral College for Presidential election. As such, they participate in the election of the President of India. They elect the Vice-President. The Lok Sabha elects its Speaker and Deputy Speaker and the Rajya Sabha elects its Deputy Chairman.

#### 11.2.5 Power of Removal

Certain high functionaries may be removed from office on the initiative of the Parliament. The President of India may be removed through the process of impeachment (you have read about it in Lesson No. 10). The judges of Supreme Court and of High Courts can be removed by an order of the President, which may be issued only if a resolution of their removal is passed by both Houses of Parliament by special majority (see Lessons 12 and 15).



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## 11.2.6 Functions Regarding the Amendment of the Constitution

Most of the parts of the Constitution can be amended by the Parliament by special majority. But certain provisions only be amended by the Parliament with the approval of States. However India being a federal State, the amending power of the Parliament is highly limited. The Supreme Court has ruled that the Parliament cannot change the basic structure of the Constitution. You have already read about the amending procedure in another lesson.

## 11.2.7 Miscellaneous Functions

Besides the above-mentioned functions, the Parliaments also performs a variety of other functions. Some of them are as follows:-

- a. While it is the power of the President to declare Emergency, the Parliament approves all such Proclamations of Emergency. Both the Lok Sabha and Rajya Sabha have to approve the Proclamation.
- b. Parliament may form a new State by separating the territory from any State or by uniting two or more States. It may also change the boundaries and the name of any State. In the recent years (2000), new states of Chhattisgarh, Jharkhand and Uttarakhand were created.
- c. Parliament may admit or establish new States in the Indian Union (Sikkim in 1975).
- d. The Parliament can abolish or create Legislative Councils in the States. This is done only on the request of concerned States Assemblies.

Thus the Indian Parliament, though limited by the federal nature of the political system, has wide functions to perform. In performing its functions, it has to mirror the aspirations and needs of the people of India. It also has to function as an agency for resolving socio-economic or political conflicts in the country. It also helps in building consensus on specific issues, which are crucial to the nation like foreign policy formulation.



### Intext Questions 11.3

1. What is the name of the list on which only the Parliament can make laws?
2. Who makes laws on the subjects mentioned in the State List?
3. How many States can request the Parliament to make law on some subject mentioned in the State list?
4. Who Can admit a new State in the Indian Union?

## 11.3 Law-making Procedure in the Parliament

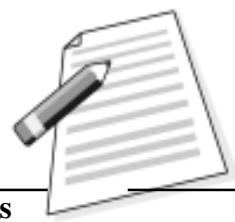
As pointed out earlier basically the Parliament is a law making body. Any proposed law is introduced in the Parliament as a bill. After being passed by the Parliament and getting the President's assent it becomes a law. Now you will study how the law is made by the Parliament. There are two kinds of bills, which come up before the Parliament:-(i) ordinary bill and (ii) money bill. Here we shall discuss the legislative procedure in each of these kinds of bills.



### **11.3.1 Ordinary Bills**

Every member of the Parliament has a right to introduce an ordinary bill and from this point of view, we have two types of bills – government bills and private member's bills. A Minister moves a government bill and any bill not moved by a Minister is a Private Member's Bill, which means that the bill has been moved by a member of parliament but not a minister in the Government. The Government bills consume most of the time of the Parliament. The Bills pass through several stages. : -

- (A) With the introduction of the bill, the First Reading of the bill starts. This stage is simple. The Minister wanting to introduce a bill, informs the presiding officer. He/she puts the question of introduction to the House. When approved, normally by voice-vote, the Minister is called upon to introduce the bill.
  - (B) Second Reading: -This stage is the most vital stage. After general discussion the House has four options: - (i) it may straightaway take the bill into detailed (clause-by-clause) consideration or (ii) refer it to a select committee of the House or, (iii) refers it to the Joint Committee of both the Houses or (iv) circulate it among the people to elicit public opinion. If the bill is referred to a select committee of the House or the joint select committee of both the Houses, the concerned committee examines the bill very minutely. Each and every clause is examined. The committee may also take the opinion of professionals and legal experts. After due deliberations, the committee submits its report to the House.
  - (C) Third Reading:- After the completion of the second reading, the Minister may move that the bill be passed. At this stage normally no discussion takes place. The members may oppose or support the adoption of the bill, by a simple majority of members present and voting.
2. Bill in the other House: -After the bill has been passed by one House, it goes to the other House. Here also the same procedure of three readings is followed. The following consequences may follow: -
- (A) It may pass it; then the bill is sent to the President for his assent.
  - (B) It may pass the bill with amendments. The bill will be sent back to the first House. In such a case, the first House will consider the amendments and if it accepts the amendments then the bill will be sent to President for his assent. In case the first House refuses to accept the amendments, then it means there is a deadlock.
  - (C) It may reject it. It means there is a deadlock. In order to remove the deadlock between the two Houses, the President may call for a joint sitting of the two Houses. Such joint sittings are very rare in India and till now only three times such meetings have taken place. They were convened on the occasion of passage of Dowry Prohibition Bill 1959, Banking Service Commission (Repeal) Bill, 1978, and Prevention of Terrorism Bill, 2002.
  - (D) President's assent to the Bill:- After being passed by both the Houses or the Joint Sitting of both Houses, the bill is referred to the President for his assent. The President also has some options in this regard: - (i) He may give his assent and with his assent, the bill becomes a law. (ii) He may withhold his assent, but may suggest some changes. In such a case the bill is sent back to the House from where it had originated. But if



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both the Houses pass the bill again with or without accepting the recommendations of the President, the President has no option but to give his assent. (iii) In 1986, the President Giani Zail Singh invented a new option. He neither gave his assent nor he returned it to the Parliament for reconsideration of the Postal Bill. He sought some clarifications, which were never provided. The bill thus, lapsed.

### 11.3.2 Money Bills

The money bills are such bills which deal with money matters like imposition of taxes, governmental expenditure and borrowings etc. In case there is a dispute as to whether a bill is a money bill or not, the Speaker's decision is final. The money bill has to undergo three readings like an ordinary bill but few considerations are also added here. They are (I) Money bill can be introduced only in Lok Sabha and not in Rajya Sabha and that too with the prior approval of and on behalf of the President. (ii) After being passed by the Lok Sabha, the bill goes to the Rajya Sabha. Rajya Sabha has 14 days at its disposal for consideration and report. (iii) The Rajya Sabha cannot reject the money bill. It may either accept it or make recommendations. (iv) In case Rajya Sabha chooses to make recommendations, the bill will return to Lok Sabha. The Lok Sabha may accept these recommendations or reject them. In any case the bill will not go back to Rajya Sabha. Instead it will be sent directly to the President for his assent. (v) If the Rajya Sabha does not return the bill within 14 days, it will be deemed to have been passed by both the Houses of the Parliament and sent to the President for his assent.

The bill that deals with the money matters i.e. imposition, abolition, alteration of any tax or the regulation of the borrowing of money or giving of any guarantee by the Government of India or amendment of law with respect to any financial obligation undertaken by the Government of India or related to Consolidated Fund or Contingency Fund of India, is called a **Money Bill**.

### 11.3.3 The Budget

The Budget is an annual financial statement showing expected revenue and expenditure of public money. It is not a bill. Every year the budget is presented by the Finance Minister in the Lok Sabha. The budget – making is a big exercise. The Finance Ministry prepares the budget but it involves the entire government. The budget in India is presented in two parts- Railway Budget and the General Budget.

- (i) Presentation of the Budget: - The railway budget is generally presented by the Railway minister in the third week of February, while the general budget is presented normally on the last working day of February. The general budget is presented along with the speech of the Finance Minister. The budget remains a closely guarded secret till its presentation. After the speech, the Finance Minister introduces the Finance Bill, which contains the taxation proposals of the government. The House rises thereafter and there is no discussion on the day of the presentation of the Budget.

A new system of **departmental select committees** has been introduced in India since 1993-94. The Lok Sabha sets up committees for all major Ministries and Departments of Union Government. The select committees consider demand for grants in details and submit their recommendations to the Lok Sabha. After general discussion on the budget, the Houses are adjourned for about three weeks. During this period select committees of Departments of Ministry scrutinise budget demands and may make recommendations.

## MODULE - 3

### Political Science

#### Structure of Government



Notes

This saves time of the full House. The full Lok Sabha now does not discuss demands for grants, one by one, in details.

Quorum means the minimum number of members required to be present to enable the House to meet. This is one-tenth of the total membership of the House. This means the meeting of the Lok Sabha or Rajya Sabha can take place only if one tenth of the total membership of the House is present.



#### Intext Questions 11.4

1. What is a Government Bill?
2. What is a Private Member's Bill?
3. When are the Private Member's Bills discussed?
4. Which bill cannot be introduced in Rajya Sabha?
5. When is the joint sitting of the two Houses of Parliament held?
6. What constitutes quorum in either House of Parliament?

#### 11.4 Rajya Sabha and Lok Sabha – A Comparative Study

You have seen earlier that the two Houses of Parliament differ in their composition. From the federal point of view the Rajya Sabha represents the States in the Indian Union while the Lok Sabha is the representative of the Indian people. This is also the reason why the method of election differs. The members of Legislative Assemblies of the States elect the members of Rajya Sabha while the people directly participate in the elections to the Lok Sabha. Rajya Sabha is a permanent House while the Lok Sabha is constituted for a specified term of five years. From the constitutional point of view, the relationship between the two Houses can best be studied from three angles which are as follows: -

1. There are certain powers and functions in which Lok Sabha is superior to the Rajya Sabha. Introduction and adoption of money bills and removal of a cabinet by passing no confidence motion are two examples relevant here.
2. In certain areas Rajya Sabha has been vested with exclusive powers. It does not share these powers with the Lok Sabha. For example, it can declare a subject in state as a matter of national importance and facilitate a central legislation.
3. In several areas, both the Houses enjoy equal powers. The examples are adoption of bills other than money bills, approval of proclamation of emergency, moving of adjournment and other types of motions.

Members of both houses of Parliament get Rs. 2 Crore per annum from the Members of Parliament Local Development Fund. This fund is not directly allotted to the MP but to the respective district headquarters and the MP can use it for development projects in his area.



## **Intext Questions 11.5**

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**Fill in the blanks:**

1. Budget can only be introduced in the \_\_\_\_\_
  2. Only \_\_\_\_\_ can create a new All-India service
  3. Each member of Parliament gets a sum of Rs. \_\_\_\_\_ as Local Development Fund every year.



# What You Have Learnt

You have learnt in this lesson that the Parliament is country's central legislative body. It has two Houses-Rajya Sabha and Lok Sabha and the President is an integral part of the Parliament. Rajya Sabha is a permanent body, which can never be dissolved. Each member of Rajya Sabha enjoys a term of six years and one-third of its member retire after every two years. The Rajya Sabha represents the States in Indian Union. In contrast, the Lok Sabha or the lower House has a fixed term of five years and the President before the expiry of stipulated five years can also dissolve it. Members of the Lok Sabha are directly elected by people on the basis of universal adult franchise. While the Vice-President chairs the meetings of Rajya Sabha, the Lok Sabha is presided over by the Speaker. You have read about the powers of the Speaker. You have read that the quorum of both the Houses is one-tenth of the total membership. Without the quorum, no meeting of the House/Houses can take place. You have also read in details about the various legislative, executive, financial, electoral, judicial and miscellaneous functions of the Parliament, and its law making procedure. Finally, you have been able to compare the two Houses and find that Lok Sabha is more powerful than Rajya Sabha.



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## Notes



## Terminal Exercises

1. Describe the composition of Rajya Sabha and method of election of its members?
  2. Describe powers of the Speaker of Lok Sabha?
  3. Discuss the functions of Parliament?
  4. Describe the law-making procedure in India?
  5. Analyse the relationship between the two Houses of the Parliament?
  6. Write short notes on the following:-
    - a. Qualification for membership of Rajya Sabha
    - b. Second reading
    - c. The Budget

## MODULE - 3

### Structure of Government



Notes

### Political Science



### Answers to Intext Questions

#### 11.1

1. 250
2. 12
3. Members of State Assemblies
4. 6 years -- 1/3 entire every 2 years
5. 30 years
6. The Vice-President

#### 11.2

1. 550
2. Uttar Pradesh
3. Two
4. Scheduled Castes and Scheduled Tribes
5. All the Indian citizens of 18 years of age and above
6. President
7. Members of Lok Sabha

#### 11.3

1. Union List
2. State Legislatures
3. Two or more State Legislatures
4. The Parliament

#### 11.4

1. A bill moved by a Minister in the Government is a Government bill.
2. A bill moved by Member of Parliament but not a minister, is called Private member's bill.
3. Private Member's bills are discussed only on Fridays.
4. Money bills cannot be introduced in Rajya Sabha.
5. Joint Sitting of the two Houses is held to remove the deadlock between the two Houses over a non-money bill.
6. One-tenth of the strength of a House.

## 11.5

1. Lok Sabha
2. Rajya Sabha
3. Rs. 2 crore

### Hints for Terminal Exercises

1. Refer to Section 11.1.1
2. Refer to Section 11.1.Q
3. Refer to Section 11.2
4. Refer to Section 11.3
5. Refer to Section 11.4
6. Refer to Section (A) 11.1.2
7. Refer to Section (B) 11.3.1
8. Refer to Section (C) 11.3.3

**Notes**



# **SUPREME COURT AND HIGH COURTS: A COMPREHENSIVE OVERVIEW**

Karthik Shiva  
Assistant Professor  
VIT School of Law  
VIT Chennai

# INTRODUCTION

- Judicial wing of the government
- Independence Of Judiciary and Impartiality as the Bedrock Of Constitutional Democracy
- Neutral and Impartial Umpire Between the Centre and State
- Sole Power of Interpretation of the Constitution
- Guardian of Fundamental Rights of the People
- Supreme Court – As Sentinel Qui Vive
- Protection of Civil Liberties and Freedoms of the People
- From Encroachment/ Interference by the State
- Legislative/ Executive Action Infringing Constitutional Safeguards
- Declared as Ultra Vires and Unconstitutional – Judicial Review

# JUDICIAL SYSTEM IN INDIA

Judiciary

Supreme Court of  
India  
Art. 124-147

State  
High Courts  
Art. 214-232

Subordinate  
Courts  
Art. 233-237

# SUPREME COURT OF INDIA

- Highest Judicial Body in India
- Successor of the Federal Court of British India – Replaced the Judicial Committee of the Privy Council
- Ultimate and Final Justice Delivery Mechanism
- Highest Court of Appeal in Criminal, Civil and Constitutional Matters
- Comprises of a Chief Justice and Other Justices
- Composition → 7 + CJI (1950) → 17 + CJI (1977) → 25 + CJI (1986) → 30 + CJI (2009)
- Presently - Supreme Court (Number of Judges) Amendment Act, 2019 → 33 + CJI (TOTAL 34)
- Most Potent Judicial Organs in The World – Supreme Court – Broad Judicial Review Powers (Judicial Activism + PIL), Self-Appointment Of Judges And Basic Structure Constitutionalism

# **QUALIFICATIONS FOR APPOINTMENT OF SC JUDGES**

**Art. 124(3)** – A person shall not be qualified for appointment as a judge of the Judges of the Supreme Court unless he is

- A. Citizen of India; and**
- B. Served as a Judge of the High Court(s) for at least 5 years; or**
- C. Practiced as a advocate in the High Court(s) for at least 10 years; (District Judge service included) or**
- D. In the Opinion of the President a distinguished Jurist**

**Should not have completed 65 years of age – Art. 124(2)**

# VACANCY OF JUDGES OF THE SUPREME COURT

**Art. 124 Proviso** – A person who is a judge of the SC

A. **Resign** by writing under his hand addressed to the President

B. **Removed** from office as u/art. 124 (4)

**Art. 124 (4) → Removal of Judge →** Grounds of Proved Misbehaviour/ Incapacity – 2/3 majority of LS + RS – followed by a Presidential Order

**Art. 124 (5) →** Parliament is empowered to make law to regulate procedure for investigation and proof of misbehaviour/ incapacity

# **APPOINTMENT OF JUDGES**

**Art. 124(2)** - The Judges of the Supreme Court are

- A. Appointed by the president**
- B. On the Recommendations of The National Judicial Appointments Commission u/art. 124A (Held Unconstitutional in NJAC Case) – (Constitutional Provision)**
- C. In Consultation with the Such Other Judges of The Supreme Court And of the High Courts in the States As The President May Deem Necessary (Real/Actual Principle) – Collegium System**
- D. Shall hold office until the age of 65 years of age**

# APPOINTMENT OF JUDGES

- **Appointment Power is vested in the hands of the President – exercised by the executive – PM and COM**
- **Executive Appointment of Judiciary** – Sole and exclusive power to appoint the judges of the SC and HCs - Exercised by PM and COM - mere consultation – President was free to decide in contravention of the opinion of the judicial members
- **Appointment of CJI** – seniority rule was followed – broken during the aftermath of the **Kesavananda Bharati v. State of Kerala** case – **Justice AN Ray** – superseded Justice Shelat, Hegde and Grover – resigned in protest – followed up by **supersession of Justice Hans Raj Khanna** – aftermath **ADM Jabalpur Case**

# **APPOINTMENT OF JUDGES**

- **Collegium System** – Self-Appointment of Judges – Professional Inbreeding, Nepotism and Favouritism, etc.
- **National Judicial Appointments Commission (NJAC) System** – Ninety Ninth Constitution (Amendment) Act, 2014
- **Sankal Chand Himatlal Sheth's Case → First Judges Case (1982)**  
→ **Second Judges Case (1993) → Third Judges Case (1999) → NJAC Case (2016)**
- **Collegium System → CJI + 2 Senior Most Judge of SC (1993) → CJI + 4 Senior Most Judges of Supreme Court (1999)**

# APPOINTMENT OF JUDGES

- **First Judges Case → SP Gupta v. Union of India (1982)** – The Court held that consultation does not mean concurrence and it only implies exchange of views.
- **Second Judges Case → Supreme Court Advocates on Record Association v. Union of India (1993)**
- **Third Judges Case → In Re Special Reference Case (1999)**
- **Fourth Judges Case → NJAC Case → Supreme Court Advocates on Record Association & Anr. v. Union of India (2016)**

# INDEPENDENCE OF JUDICIARY

- **Bar on Practice – Art. 124(7)** – SC Judge not to practice in any court or before any authority within the territory of India – **Art. 220** – no practice other than SC or other HCs
- **No discussion on conduct of Judges – Art. 122**
- **Protection of Salaries and Conditions – Art. 125 (2)** – Allowances, Leaves or Pensions not to be varied to disadvantage after appointment – **SC – Art 221(2) – HC**
- **Charged Expenditure to CFI** – Non-votable Item of Consolidated Fund of India
- **Protection of Tenure** – HC & SC Judges cannot be removed easily – requires motion for removal – proved misbehaviour/ incapacity – 2/3 majority of both houses of Parliament - **Art. 124(4) & Art. 217(b)**

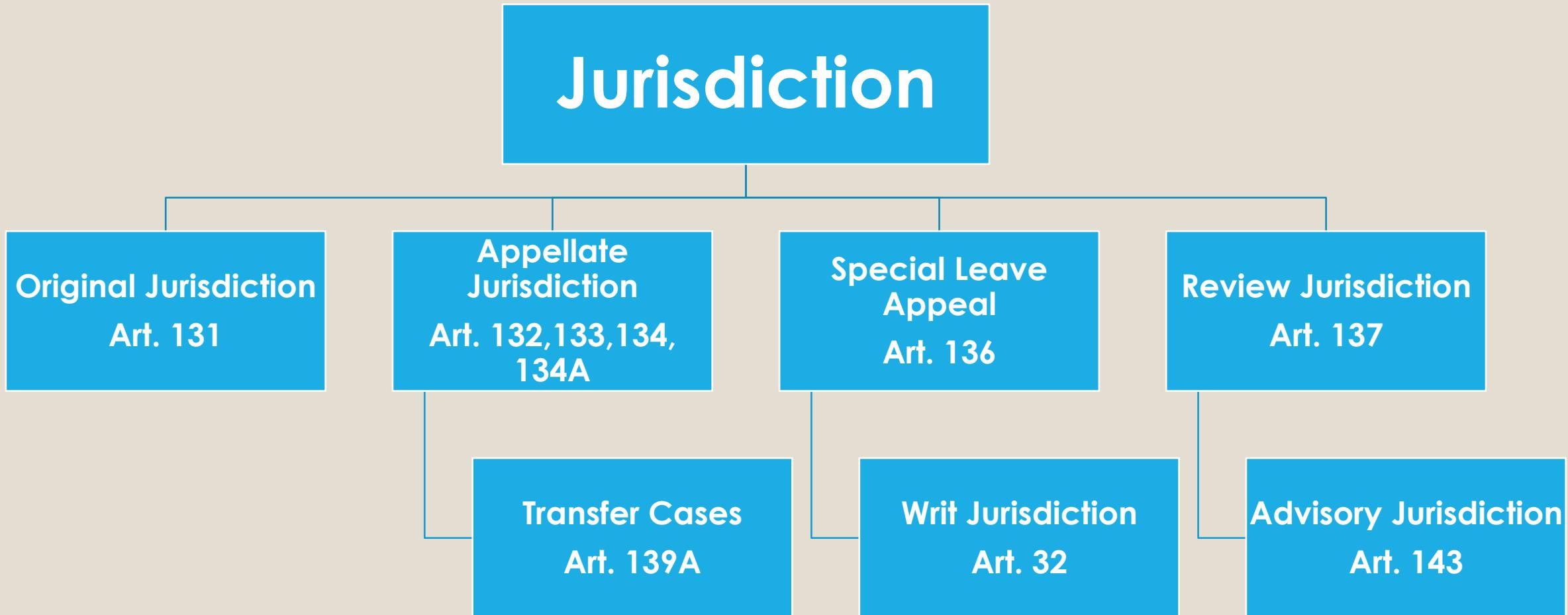
# INDEPENDENCE OF JUDICIARY

- **Judicial Appointments – Collegium System** – No unguided discretion of executive – SC – Art 221(2) – HC
- **Power to Punish for Contempt** – Art. 129 and Art. 215 – SC & HC – Court of Record – Necessary corollary of justice delivery system - shield not a sword – enforce justice/law – maintain impartiality and Rule of Law
- **Power of the SC not curtailable** – Expandable not limitable - Art. 138 (Enlargement by Parliament), Art. 139 (Writ Extension) & Art. 140 (Ancillary Jurisdiction)

# SEAT OF THE SUPREME COURT

- Art. 130 – The Supreme Court shall sit in Delhi or in such other place or places, as the **Chief Justice of India** may, with the **approval of the President**, from time to time, appoint.
- **Default Seat** – Supreme Court at Delhi
- **Constitutionally Permissible** to establish benches in other places
- **Proposal for regional benches** – mooted for long time
- **Law Commission Recommendation** – 229<sup>th</sup> LCI Report 2009 - Split into **Constitution Bench and 4 Cassation Benches** – 4 region – North, East, West and South
- **Courts of Cassation** (French - Cour de cassation) - ‘cassare’ – reverse or overturn – Highest Appellate Courts for non-constitutional matters

# JURISDICTION OF THE SUPREME COURT OF INDIA



# **ORIGINAL JURISDICTION OF THE SUPREME COURT**

- Art. 131 – Original Jurisdiction of the Supreme Court
- Jurisdiction to the exclusion of all other courts in India
- Primarily a corollary of India's federal structure
- Disputes between the States inter se and the States and the Union Government will be decided directly by the Supreme Court
- Through exercise of original jurisdiction
- Impartial Umpire – Supreme Court – Disputes between the Centre and the State

# APPELLATE JURISDICTION OF THE SUPREME COURT

- Art. 132, 133, 134, 134A – Provisions relating to Appellate Jurisdiction
- Art. 132 & 134A – General Appellate Provision → Appellate

Jurisdiction of SC in appeals from HC in certain cases → substantial question of law relating to interpretation of the constitution → civil, criminal or other proceeding → based on certificate from HC concerned

# APPELLATE JURISDICTION OF THE SUPREME COURT

- Art. 133 & 134A – Appellate Jurisdiction of Supreme Court in appeals from HC in regard to civil matters → Substantial question of law of general importance that needs to be decided by the Supreme Court
- Art. 134 – Appellate Jurisdiction of Supreme Court in regard to criminal matters →
  - 1. HC → Reversed acquittal → Sentenced to Death
  - 2. HC withdrawn for trial before itself → Convicted and Sentenced to death
  - 3. Certified by HC to be fit for appeal

# **APPELLATE JURISDICTION OF THE SUPREME COURT**

- **Art. 136 – Special Leave to Appeal by the Supreme Court**
- **Art. 137 – Review Jurisdiction**
- **Art. 139A – Transfer of certain cases → From HC to SC →  
Matter pending before two or more HCs – same question of  
law – pending before SC and HC – SCs Power to withdraw to  
itself**

# **ADVISORY JURISDICTION OF THE SUPREME COURT**

- **Art. 143 – Advisory Jurisdiction of the Supreme Court**
- **Jurisdiction to invoked by the President of India**
- **Question of Law or Fact of Public Importance**
- **Expedient to the get the Opinion of the SC**
- **SC may after hearing the matter report to the President its opinion**

# JUDICIAL SYSTEM IN INDIA

Judiciary

Supreme Court of  
India  
Art. 124-147

State  
High Courts  
Art. 214-232

Subordinate  
Courts  
Art. 233-237

## **The Supreme Court of India: Composition, Power and Jurisdiction**

It is the highest court of justice in India. It is the final platform for appeal in India. That is why it is the most relevant topic for law exams and UPSC exams. Every judgement passed by the Supreme Court is final and binding to all other courts. In this article, we will discuss the composition, powers, jurisdiction and functions of the Supreme Court of India.

### **The Supreme Court of India**

The Supreme Court is the apex court in the Indian judiciary. There is no court above the Supreme Court. It has the highest authority to uphold the provisions of the constitution of India, to protect the rights of the citizen of India and to protect the rule of law. The constitution of India provides the **Independence of Judiciary** by giving the hierarchical setup which contains High Courts and other subordinates courts.

### **History of the Supreme Court of India**

Previously, the federal court of India was created under the Government of India Act, 1935. It was considered as the apex court during the British time. This court was used to settle the disputes between the federal states and provinces. This court was also used to hear the appeals against the judgements given by High Courts.

After the independence of India, all the courts like Privy Council and federal court were replaced by the Supreme Court of India. It was come in the existence in January 1950. At that time there were 7 judges with the chief justice.

The constitution of India is the supreme law of the land and it contains the provisions which are enforced by the law. But without any enforcement of the law, the provisions given under the constitution were meaningless. That's why the judiciary is independence so that it can interpret the laws given under the constitution of India. Now, we can say that the supreme court of India works as the guardian of the constitution of India and all the fundamental rights given to the citizens of India.

### **Composition of Supreme Court**

The article 124(1) of the constitution of India says that there shall be one Supreme Court in India, which shall consist the Chief Justice of India, and other 34 judges including the Chief Justice of India.

- The judges sit in benches of 2 or 3 is called a Division Bench
- The judges sit in benches of 5 or more is called a Constitutional Bench at the time where there is a matter of fundamental questions of the law.

### **Bench to Decide the Cases**

All the cases related to the Constitution of India shall be decided by the five judge's bench whereas the other cases are decided by at least three judges bench.

### **The seat of Supreme Court**

Delhi is declared as the seat of SC of India. Though the CJI has the power to assign any place or places as the seat of Supreme Court because this is an optional not mandatory.

### **Qualifications for the judges of Supreme Court of India:**

The conditions to become the judge of the Supreme Court are given under Article 124(3) of the Indian constitution.

- He must be a citizen of India. The person who is not a citizen of India cannot appear as a candidate for the judge of the Supreme Court of India.
- If he is an eminent jurist.
- The person must be the judge of a high court for at least five years or more.
- He has practised as an advocate in a high court of India or as an advocate of two or more High Court for at least 10 years.

### **Term of office of Judges of Supreme Court of India**

The judges of SC hold the office until he attains the age of 65 years.

### **Independence of Judiciary**

In India, the judiciary is known as the Independent. The constitution of India provides the independence of the judiciary. Click to read the full article on Independence of judiciary.

### **Jurisdiction of Supreme Court of India**

There are various types of the jurisdiction of SC:

#### **Original jurisdiction (Article-131)**

The SC has the original jurisdiction of several cases. These are the cases which cannot be heard by other courts of justice. It includes the cases.

- The case between Government of India and one or more states of India.
- The case where the government of India and any state or states are one party and other state or more than one state is a different party.
- A dispute arises between two or more states where the question is depending on the existence of the legal right.

### **Conditions to appeal in the Supreme Court in civil cases**

1. The civil case involves the substantial question of law
2. If the High Court opinion that the confliction arose in the case should be decided by the Supreme Court.

### **Conditions to appeal in the Supreme Court in criminal cases**

1. If the HC has reversed the acquittal order passed by session judge and give the death sentence to the accused.
2. If the HC has withdrawn a criminal case for trial from any subordinate court and passed the death sentence to the accused.
3. When the High court thinks that the case is fit for the appeal in the Supreme Court.

Normally, all the cases, where the interpretation of any article of the constitution is needed, the SC hears the appeal in those cases. The Supreme Court can also take the cases suo-moto (on its own).

### **Appellate jurisdiction (Article-132,133,134)**

The Supreme Court is the highest court of appeal in India. It has the appellate jurisdiction in all the cases of civil and criminal. All the cases decided in any high court of India have the jurisdiction to appeal in the Supreme Court. The appeal for the cases can come before the SC when High court issues a certificate for the effect.

### **Advisory jurisdiction (Article-143)**

The supreme court of India has advisory jurisdiction. The president of India can seek advice from the SC where the matter is legal and high public importance. The SC has the power to give the opinion to the President but the president of India is not bound with the decision.

### **The jurisdiction in case of fundamental rights**

The article 32 of the constitution of India has given the power to the Supreme Court to issue the writs for the enforcement of the fundamental rights given under the constitution of India. That's why the SC acts as the guardian of the fundamental rights given to the citizens of India.

## **Final interpreter for the constitution of India**

The constitution of India is the supreme law of the land in India. SC acts as the final guardian and interpreter of the Constitution. The SC has the power to reject any law which is unconstitutional. This is also known as the court's power of judicial review.

## **Powers of the Supreme Court**

- Power to punish for contempt of Court.
- **Power to review own judgements-** The Supreme Court is not binding to its own decisions. It has the powers to review, change or revise its own decision.
- **Appointment of ad hoc judges under article-127**
- **The jurisdiction in case of Electoral College** -The Electoral College is used for the election of the president and vice president of India. But if there is any conflict arises during the elections, the Supreme Court has the power to hear that case and the decision given by the Supreme Court will be final for the Electoral College.
- **Appointment of retired judges of SC or HC-** Article 128
- **Appointment of acting Chief Justice-**Article 126
- **Revisory Jurisdiction** under Article-137
- **As a court of records**-All, the cases decided in the Supreme Court are recorded. The decision passed by the Supreme Court has the binding on all the courts in India. All the High courts and other subordinate courts used the decisions and the judgements of the SC to decide the case related to the judgement. The judgement passed by the Supreme Court cannot be challenged by questioning.
- **Special leave to appeal-** The supreme court of India has the power to grant special leave of appeal against the judgement, decree, order passed by any court or tribunal of India.

## **The procedure of the Supreme Court**

- It has the power to make the rules regarding the functioning and procedures followed by all the courts in India.
- With the approval of the President of India, the SC can lay down the conditions and restrictions for its employees.
- When the office of president is vacant then it is the duty of the vice president to take the responsibility of president office. But if somehow, the vice president is not there, the Chief justice of India has the power to fill up the vacancy and can act as the president of India for that period of time.

## **Can Supreme Court overrule President India?**

The President of India cannot overrule the judgement passed by SC. It is the Parliament who can amend any law to overrule the Judgement of the Supreme Court. The President has the power to

pardon power even in the decision given by the supreme court of India. But technically, here the President is not overruling the Judgement, he only pardons the accused.

## **Conclusion**

So it can be said that the supreme court of India is the most powerful court in India with having the largest jurisdiction and the protector of the Constitution of India. It is playing an important role in the evolution of the constitution of India by interpreting its articles and by invalidating the unconstitutional laws.

# GOVERNOR, CHIEF MINISTER AND STATE COUNCIL OF MINISTERS – AN OVERVIEW

Prof. Karthik Shiva  
VIT School of Law,  
Vellore Institute of Technology, Chennai

## **STATE EXECUTIVE**

- Art. 153-167 of the COI – State Executive – Part VI
- The Union Executive consists of the

- a) The Governor,
- b) **The Chief Minister,**
- c) **The Council of Ministers and**
- d) The Advocate General

Head of the State – Art. 153 – Governor of the State

# **GOVERNOR OF THE STATE**

- **Parallel pattern of government at the state level comprising of state executive and state legislature i.e. Parliamentary Form**
- **Part VI of the Constitution of India – State Executive**
- **No office of Vice-Governor like Vice President**
- **Governor of the State – Nominal / Titular / Constitutional Head**
- **Also serves as an Agent of the Central Government**
- **Dual Role of Governor**
- **Separate Governor for each state usually – same person can hold governorship in 2 or more states after 1956 (7<sup>th</sup> Constitution Amendment Act)**

# **GOVERNOR OF THE STATE**

- **Art. 153 – Governor of States**
- **Art. 154 – Executive Power the State**
- **Art. 155 – Appointment of Governor**
- **Art. 156 – Term of Office of the Governor**
- **Art. 157 – Qualifications for appointment as Governor**
- **Art. 158 – Conditions of Office of Governor**
- **Art. 159 – Oath or Affirmation by Governor**
- **Art. 160 – Discharge of functions of Governor in certain contingencies**
- **Art. 161 – Power of Governor to grant pardon, etc.**
- **Art. 162 – Extent of executive Power of the State**

## **APPOINTMENT OF GOVERNOR OF THE STATE**

- **No election of Governor – Direct or Indirect by the people**
- **Appointed by President by warrant under his hand and seal**
- **Essentially a nominee of the Central Government**
- **Independent Constitutional Office – not under the control or subordinate to the Central Government**
- **Idea of direct election of Governor was mooted akin to USA but subsequently dropped in place a nominee system based on Canadian model**

## **QUALIFICATIONS OF GOVERNOR OF THE STATE**

**The Constitution lays down 2 qualifications for the appointment of Governors**

- 1. He should be a citizen of India**
- 2. He should have completed 35 years of age**

### **Constitutional Conventions**

- 1. Outsider to the State → Free from Local Politics**
- 2. Consultation with CM of State → Ensure smooth functioning**

**Both conventions have been violated in some cases**

# **CONDITIONS OF OFFICE OF GOVERNOR**

**The Constitution lays down the following conditions for the the governor's office:**

- 1. He should not be a member of either House of Parliament or state legislature. Any such person is appointed as governor vacates his seat on the date on which he enters his office as governor.**
- 2. He should not hold any other office of profit.**
- 3. He is entitled without payment of rent to the use of his official residence (the Raj Bhavan).**
- 4. He is entitled to such emoluments, allowances and privileges as may be determined by Parliament.**
- 5. When the same person is appointed as the governor of two or more states, the emoluments and allowances payable are shared by the states in such proportion as determined by the president.**
- 6. His emoluments and allowances cannot be diminished during his term of office.**

## **PROTECTIONS, OATH AND TERM OF OFFICE OF GOVERNOR**

- The governor is also entitled to a number of privileges and immunities.
- He enjoys personal immunity from legal liability for his official acts.
- During his term of office, he is immune from any criminal proceedings, even in respect of his personal acts. He cannot be arrested or imprisoned.
- After giving two months' notice, civil proceedings can be instituted against him during his term of office in respect of his personal acts.
- The oath of office to the governor is administered by the chief justice of the concerned state high court and in his absence, the senior-most judge of that court available.
- A governor holds office for a term of five years from the date on which he enters upon his office.
- This term of five years is subject to the pleasure of the President.
- He can resign at any time by addressing a resignation letter to the President.

# **POWERS OF THE GOVERNOR**

- **The Governor's powers is many aspect such as executive, legislative, financial and judicial powers more or less analogous to the President of India.**
- **But, he has no diplomatic, military or emergency powers like the president.**
- **The broad classification of the Governor's power can be made as follows;**
  - **Executive Power**
  - **Legislative Power**
  - **Financial Powers**
  - **Judicial Powers**

# **CONSTITUTIONAL POSITION OF THE GOVERNOR**

**The governor has constitutional discretion in the following cases:**

- 1. Reservation of a bill for the consideration of the President.**
- 2. Recommendation for the imposition of the President's Rule in the state.**
- 3. While exercising his functions as the administrator of an adjoining union territory (in case of additional charge).**
- 4. Determining the amount payable by the Government of Assam, Meghalaya, Tripura and Mizoram to an autonomous Tribal District Council as royalty accruing from licenses for mineral exploration.**
- 5. Seeking information from the chief minister with regard to the administrative and legislative matters of the state.**

# **CHIEF MINISTER AND COUNCIL OF MINISTERS**

- State Executive in India is inspired by the British Westminster style having both a Head of the State and Head of the Government
- Head of the State Executive – Governor – Nominal (De Jure) Executive
- Head of the State Government – Chief Minister – Real (De facto) Executive
- Article 163-167 deals with the CM and COM

# **CHIEF MINISTER AND COUNCIL OF MINISTERS**

- Art. 163 → Council of Ministers to aid and advise Governor
- Art. 164 → Other Provisions as to Ministers
- Art. 165 → Advocate General of the State
- Art. 166 → Conduct of business of Government of a State
- Art. 167 → Duties of CM as respect the furnishing of information to the President, etc.

# APPOINTMENT OF CHIEF MINISTER

- Art. 164 → Governor to appoint the Chief Minister
- No specific procedure explicitly laid down under COI
- Constitutional Conventions dictate the appointment of CM → Leader of the majority party in State Legislative Assembly
- No clear majority → Personal Discretion subject to certain conventions → Leader of Largest Party or Coalition → With requirement to prove majority in LS → Vote of Confidence
- CM can be member of State Legislative Assembly or Council → Predominantly SLA

## TENURE OF CHIEF MINISTER

- Term of the Chief Minister → Not fixed → Holds office during the Pleasure of the Governor
- Does not mean that the Governor can dismiss the Chief Minister at any time.
- Chief Minister enjoying majority support in the State Legislative Assembly → Cannot be dismissed by the Governor
- CM loses the confidence of the State Legislature → Must Resign failing which Governor can Dismiss him
- CM → Head of COM → Death/ Resignation/ Dismissal of CM dissolves the Council of Ministers

# **ROLE AND FUNCTIONS OF CHIEF MINISTER**

The Chief Minister enjoys the following powers as Head of the Union council of ministers:

1. Recommends persons for appointment as ministers by the Governor.
2. Allocates and reshuffles various portfolios among the ministers.
3. Can ask a minister to resign or advise the Governor to dismiss him.
4. Presides over the meeting of council of ministers and influences its decisions.
5. Guides, directs, controls, and coordinates the activities of all the ministers.
6. Can bring about the collapse of the council of ministers by resigning from office.

# **ROLE AND FUNCTIONS OF CHIEF MINISTER**

In Relation to the Governor enjoys the following powers in relation to the President:

- I. He is the **Principal channel of communication between the Governor and the council of ministers.**  
It is the duty of the prime minister:
  - A. to **communicate to the Governor all decisions of the council of ministers** relating to the administration of the affairs of the Union and proposals for legislation;
  - B. to **furnish such information relating to the administration** of the affairs of the Union and proposals for legislation as the Governor may call for; and
  - C. if the Governor so requires, to **submit for the consideration of the council of ministers** any matter on which a decision has been taken by a minister but which has not been considered by the council.
2. He advises the Governor with regard to the appointment of important officials like **Advocate General of India**, chairman and members of the SPSC, State Election commissioners, and so on.

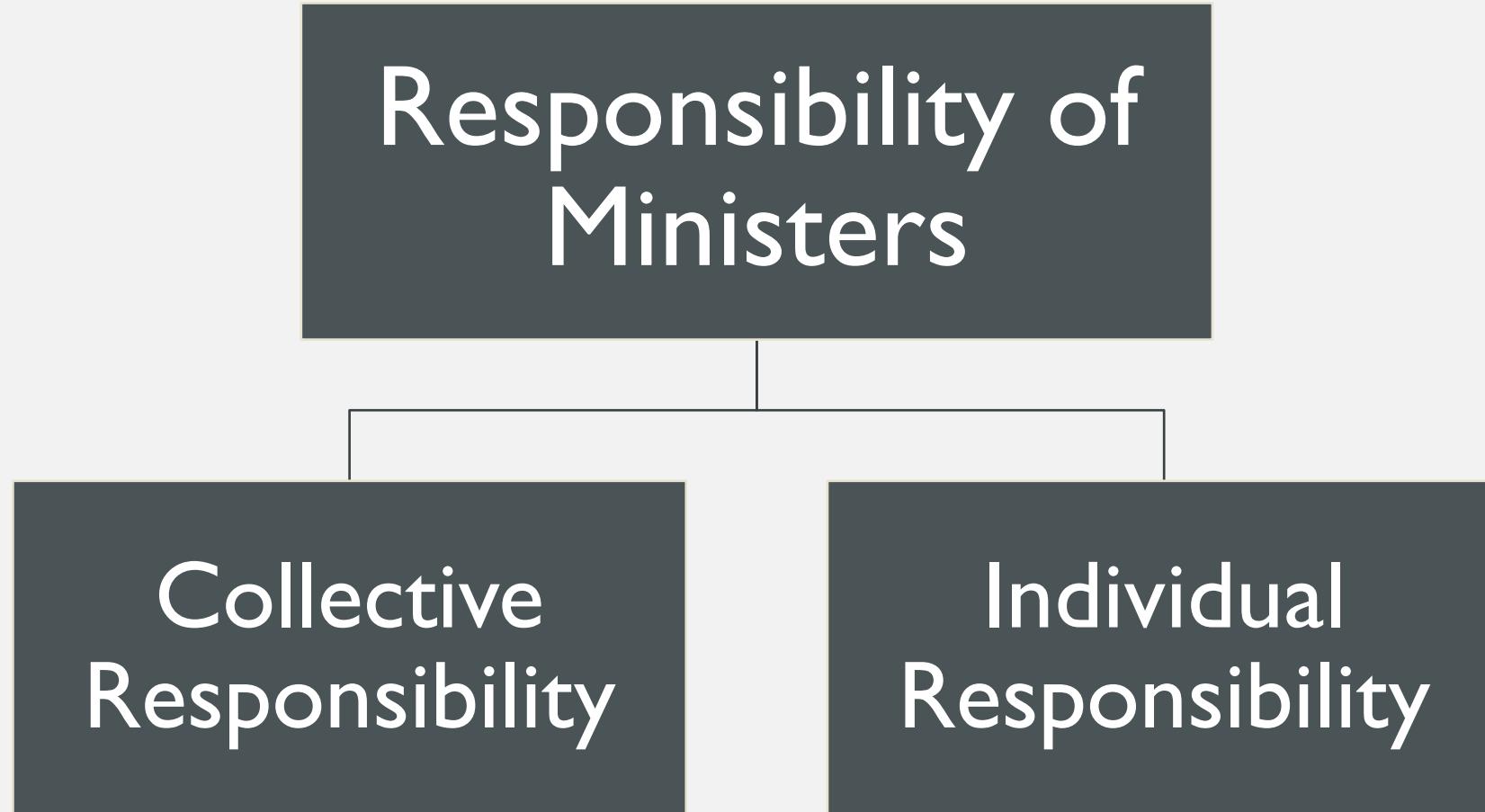
# **STATE COUNCIL OF MINISTERS**

- Art. 163 → Status of Council of Ministers
- Art. 164 → Appointment, Tenure, Responsibility, Qualification, Oath, Salaries and Allowances
- CM and COM to aid and advise the Governor in the exercise of his functions
- 42<sup>nd</sup> and 44<sup>th</sup> Constitution Amendment Act → makes aid and advice binding on the Governor
- Appointed on advice of CM by Governor → LA or LC Members → Non-members can become minister but must be elected/nominated as MP within 6 months
- Minister → Right to speak and take part in proceedings in both houses → Voting rights in Single House → Art. 177

# FUNCTION AND COMPOSITION OF CENTRAL COUNCIL OF MINISTERS

- Art. 163 → CM and COM to always advise the President → Advice rendered by Ministers not to be enquired by the Court → Exception discretionary powers of Governor
- Art. 164 (I) → Appointment by Governor on advice of CM → Mandatory appointment of Tribal Welfare Minister in MP, Odisha, Chhattisgarh and Jharkhand
- Art. 164 (I) → Minister → COM → Pleasure of the Governor
- Art. 164 (IA) → CM and COM not to exceed 15% of LA
- Art. 164 (IB) → Not to be disqualified under anti-defection law to hold minister post
- Art. 164 (2) → COM **collectively responsible** to the Legislative Assembly → Principle of Collective Responsibility
- Art. 164 (3) → Oath of Office and Secrecy administered by the President
- Art. 164 (4) → Non-member of Parliament for 6 consecutive months shall lose his ministerial position

# ROLE OF MINISTERS



# RESPONSIBILITY OF MINISTERS

- Concept of Collective Responsibility → Basic Tenet of Parliamentary Form of Government → Art. 164(2) → COM Collectively Responsible to SLA → All ministers are jointly responsible for their acts of commission and omission →
- “Swim together or sink together” → No confidence motion is successful every member of COM as to resign → including RS Ministers
- Cabinet decisions bind all cabinet ministers and other ministers even if they differed in the cabinet meeting → Duty to stand by all cabinet decisions → if he strongly disagrees → if not so he has to resign

# **RESPONSIBILITY OF MINISTERS**

- Concept of Individual Responsibility → Implicit in the Doctrine of Pleasure under Art. 164
- Any particular minister who has lost the confidence of the CM can be removed by the Governor → particular in case of any form of wrongdoing on his part
- Dissatisfaction with performance or difference of opinion → CM can ask him to resign or get him dismissed by the Governor

# CLASSIFICATION OF MINISTERS

Categories of  
Ministers

Cabinet  
Minister

Minister of  
State

Deputy  
Minister

# CLASSIFICATION OF MINISTERS

- Three Categories → Cabinet Minister, MoS and Dep. Ministers → Difference in ranks, emoluments and political importance → PM as the first among equals
- **Cabinet Ministers** → Important Ministry → Home, Defence, Finance, External Affairs → Members of Cabinet → Attends meetings and Policy making
- **Minister of State** → Independent Charge / Attached to Cabinet Minister → Accordingly Work independently or Work under Cabinet Ministers → Do not attend Cabinet Meetings unless specially invited
- **Deputy Ministers** → No independent charge → attached to Cabinet Ministers or MoS and assist them → Not part of Cabinet and do not attend Cabinet Meetings

# CABINET

- It is a smaller body consisting of 20-30 ministers.
- It includes the cabinet ministers only.
- It is a part and a sub-set of the Council of ministers.
- It meets frequently usually at least once a week to deliberate and take decisions
- Its policy decisions are binding on all ministers
- It has a supervisory role on the Council of Minister

# KITCHEN CABINET

- It is sub-classified into a Kitchen/Inner Cabinet
- It is a super-small body of Cabinet with highest decision making powers
- Informal and Extra-Constitutional System that developed in system with a larger cabinet that may stifle decision making
- The objective is to ensure quick, efficient and robust decision making
- It helps in maintaining secrecy in important political matters
- It can meet more often and expeditiously than the full cabinet
- Decisions are cooked and placed before the full cabinet for formal approval
- Also exists in USA and Britain

# **STATE LEGISLATIVE ASSEMBLY – AN OVERVIEW**

**Prof. Karthik Shiva  
VIT School of Law,  
Vellore Institute of Technology, Chennai**

# INTRODUCTION

- Articles 168 to 212 in Part VI of the Constitution deal with the State Legislature
- It deals with organisation, composition, duration, officers, procedures, privileges, powers, etc.
- There is no uniformity in the organisation of state legislatures
- State Legislatures may be unicameral or bicameral in nature
- Parliament is empowered to create or abolish the Legislative Councils in the States based on a resolution passed by the state concerned
- State Resolution should be passed with special majority – 2/3 of membership of state legislature
- Andhra Pradesh, Maharashtra, Uttar Pradesh, Telangana, Bihar and Karnataka – Bicameral Legislatures
- Rest of the States – Unicameral Legislature
- Critiqued State Level Bicameralism in Constituent Assembly of India → Delay Decision Making and Expensive

# COMPOSITION OF STATE LEGISLATIVE ASSEMBLY

- The legislative assembly consists of representatives **directly elected by the people** on the basis of universal adult franchise.
- Its maximum strength is fixed at 500 and minimum strength at 60.
- Its strength varies from 60 to 500 depending on the population size of the state.
- In case of Arunachal Pradesh, Sikkim and Goa, the minimum number is fixed at 30 and in case of Mizoram and Nagaland, it is 40 and 46 respectively.
- For holding direct elections to the assembly, each state is divided into territorial constituencies.
- Demarcation of constituencies is done in such a manner → Ratio between the population of each constituency and the number of seats allotted to it is the same throughout the state → Parity across constituencies
- It ensures uniformity of representation between different constituencies in the state.
- The Constitution provided for the reservation of seats for scheduled castes and scheduled tribes in the assembly of each state on the basis of population ratios.

## COMPOSITION OF STATE LEGISLATIVE COUNCIL

- The members of the legislative assembly, the members of the legislative council are **indirectly elected**.
- The maximum strength of the council is fixed at one-third of the total strength of the assembly and the **minimum strength is fixed at 40**.
- It means that the size of the council depends on the size of the assembly of the concerned state.
- This is done to ensure the predominance of the directly elected House (assembly) in the legislative affairs of the state.

# **MANNER OF ELECTION OF STATE LEGISLATIVE COUNCIL**

1. 1/3 are elected by the members of local bodies in the state like municipalities, district boards, etc.,
2. 1/12 are elected by graduates of three years standing and residing within the state,
3. 1/12 are elected by teachers of three years standing in the state, not lower in standard than secondary school,
4. 1/3 are elected by the members of the legislative assembly of the state from amongst persons who are not members of the assembly, and
5. the remainder are nominated by the governor from amongst persons who have a special knowledge or practical experience of literature, science, art, cooperative movement and social service.

Thus, 5/6 of the total number of members of a legislative council are indirectly elected and 1/6 are nominated by the governor.

The members are elected in accordance with the system of proportional representation by means of a single transferable vote.

# DURATION OF STATE LEGISLATIVE ASSEMBLY

- Like the Lok Sabha, the legislative assembly is not a continuing chamber.
- Its normal term is five years from the date of its first meeting after the general elections
- The expiration of the period of five years operates as automatic dissolution of the assembly.
- The governor is authorised to dissolve the assembly at any time (i.e., even before the completion of five years) to pave the way for fresh elections.
- The term of the assembly can be extended during the period of national emergency by a law of Parliament for one year at a time (for any length of time).
- This extension cannot continue beyond a period of six months after the emergency has ceased to operate.
- This means that the assembly should be re-elected within six months after the revocation of emergency.

## DURATION OF STATE LEGISLATIVE COUNCIL

- Like the Rajya Sabha, the **legislative council is a continuing chamber**,
- It is a permanent body and is not subject to dissolution.
- But, one-third of its members retire on the expiration of every second year.
- So, a member continues as such for six years.
- The vacant seats are filled up by fresh elections and nominations (by governor) at the beginning of every third year.
- The retiring members are also eligible for re-election and re-nomination any number of times

# QUALIFICATION FOR STATE LEGISLATURE

The Constitution lays down the following qualifications for a person to be chosen a member of the state legislature.

- (a) He must be a citizen of India.
- (b) He must make and subscribe to an oath or affirmation before the person authorised by the Election Commission for this purpose.

In his oath or affirmation, he swears

- (i) To bear true faith and allegiance to the Constitution of India
- (ii) To uphold the sovereignty and integrity of India
- (c) He must be not less than 30 years of age in the case of the legislative council and not less than 25 years of age in the case of the legislative assembly.
- (d) He must possess other qualifications prescribed by Parliament.

Accordingly, the Parliament has laid down the following additional qualifications in the Representation of People Act (1951):

- (a) A person to be elected to the legislative council must be an elector for an assembly constituency in the concerned state and to be qualified for the governor's nomination, he must be a resident in the concerned state.
- (b) A person to be elected to the legislative assembly must be an elector for an assembly constituency in the concerned state. (
- (c) He must be a member of a scheduled caste or scheduled tribe if he wants to contest a seat reserved for them. However, a member of scheduled castes or scheduled tribes can also contest a seat not reserved for them.

# **DISQUALIFICATION FOR STATE LEGISLATURE**

Under the Constitution, a person shall be disqualified for being chosen as and for being a member of the legislative assembly or legislative council of a state:

- (a) if he holds any office of profit under the Union or state government (except that of a minister or any other office exempted by state legislature),
- (b) if he is of unsound mind and stands so declared by a court,
- (c) if he is an undischarged insolvent,
- (d) if he is not a citizen of India or has voluntarily acquired the citizenship of a foreign state or is under any acknowledgement of allegiance to a foreign state, and
- (e) if he is so disqualified under any law made by Parliament

# **DISQUALIFICATIONS UNDER RPA, 1951**

Accordingly, the Parliament has prescribed a number of additional disqualifications in the Representation of People Act (1951):

1. He must not have been found guilty of certain election offences or corrupt practices in the elections.
2. He must not have been convicted for any offence resulting in imprisonment for two or more years. But, the detention of a person under a preventive detention law is not a disqualification.
3. . He must not have failed to lodge an account of his election expenses within the time.
4. He must not have any interest in government contracts, works or services.
5. He must not be a director or managing agent nor hold an office of profit in a corporation in which the government has at least 25 per cent share.
6. He must not have been dismissed from government service for corruption or disloyalty to the state.
7. He must not have been convicted for promoting enmity between different groups or for the offence of bribery.
8. He must not have been punished for preaching and practicing social crimes such as untouchability, dowry and sati.

## **DISQUALIFICATIONS UNDER ANTI-DEFLECTION LAW**

The Constitution also lays down that a person shall be disqualified for being a member of either House of state legislature if he is so disqualified on the ground of defection under the provisions of the Tenth Schedule.

The question of disqualification under the Tenth Schedule is decided by the Chairman, in the case of legislative council and, Speaker, in the case of legislative assembly

Kihota Hollohan v. Zachilhu (1992) – Decision of the Speaker subject to Judicial Review

## **VACATION OF SEATS**

The Member of the State Legislature vacates his seat in the following cases;

1. Double Membership
2. Disqualification
3. Resignation → Writing to Chairperson / Speaker as case may be
4. Absence → 60 Days Absence without permission → Seat is vacated
5. Other Cases → Election held void by Court → Expelled by the House →  
Elected as President / Vice President → Appointed as Governor of a State

1. <https://main.sci.gov.in/history>
2. <https://main.sci.gov.in/jurisdiction>
3. <https://www.scobserver.in/about/supreme-court-of-india/supreme-court-of-india-overview/>
4. <https://upgovernor.gov.in/en/page/constitutional-role-of-the-governor>
5. <https://knowindia.india.gov.in/profile/the-states.php>

# Local Administration

# Unit 1

- **Definition:**
  - Self – Government
    - Citizens of a country rule themselves and control their own affairs
    - Free from political control

- Local self-government means **that residents in towns, villages and rural settlements** are the hosts in their own home.
- People elect local councils and their heads authorizing them to solve the most important issues.
- Local self-government bodies are responsible for **school and pre-school education, primary healthcare** (outpatient clinics, rural health posts), cultural institutions, amenities – street lighting, roads, cleaning, public order and many other important day-to-day issues.
- The essence of the reform is to empower residents of towns, villages, rural settlements – to **independently solve all these issues.**

# **Constitutional Provisions on Rural Governance**

- **After Independence :**
  - Community Development Programme – 2<sup>nd</sup> Oct, 1952
  - To study the functioning of Panchayat Raj System
  - Suggested to appoint committees
  - Failure of 5 year plans

# COMMITTEES

- Balwant Rai Mehta Committee, 1957
- V T Krishnamachari Committee, 1960
- Takhatmal Jain Study Group, 1966
- Ashok Mehta Committee, 1977
- G.V.K. Rao Committee, 1985
- Dr. L.M. Singhvi Committee:, 1986

# Significance of 73<sup>rd</sup> amendment:

- 1. Added new Part IX
- 2. Created new 11<sup>th</sup> Schedule – 29 entries
- 3. Practical shape to Article 40 –DPSP
- 4. Constitutional status to village panchayat – (Art 243 A –O)
- 5. Compulsory and Voluntary Provisions

# History

- Entry 5 of List II – State subject
- Rajasthan – 1<sup>st</sup> state – Oct 2, 1959 – Panchayat Samitis and Zila Parishad Act, 1959
- Andhra Pradesh – 1959
- Mysore – Mysore Village Panchayats and Local Board Act, 1959
- Assam Panchayat Act, 1959
- Madras Panchayat Act, 1960
- Orissa Zilla Parishad Act, 1959
- Punjab Panchayat Samitis and Zila Parishad Act, 1960
- Jammu and Kashmir

# Article 40

- Village Panchayat
- Welfare State
- Socio-Economic development
- Failure :
  1. Inadequacy of financial resources
  2. Non – Participation of people in village panchayat

Constitutional Provisions – Article 243 -243 O

## **73<sup>rd</sup> Amendment Act, 1992 :**

### **Objective:**

- Democratic decentralization of power and resources
- Execute Art 40
- Gandhian Principle of DPSP
- People should decide matters on their own

# **SALIENT FEATURES**

- 1. Gram Sabha
- 2. Three tier system
- 3. Election of members and chairperson
- 4. Reservation of seats
- 5. Duration of Panchayat
- 6. Disqualification
- 7. State Election Commission
- 8. Powers and Functions
- 9. Finances
- 10. Audit of accounts

- **Article 243 :**
  - Gram Sabha
  - Intermediate level
  - Panchayat
  - Village
- **Article 243 A – Gram Sabha**

## **Article 243 – (A –O) - Panchayat**

- Article 243 B – Three tier system
- Article 243 C – Composition of Panchayats
  - Territorial Constituency
  - Delimitation
  - Right to Vote
- Article 243 D – Reservation of seats
  - Scheduled Caste
  - Scheduled Tribe
- Article 243 E – Duration of Panchayat
- Article 243 F – Disqualification for membership

- Article 243 G – Powers, authority and responsibilities of panchayat
  - (i) Preparation of plans for economic development and social justice
  - (ii) Implementation of schemes

# State Finance Commission

Three Institutions:

- a) State Election Commission
- b) State Finance Commission
- c) District Planning Committee

- Review the Financial position
- Every fifth year
- Make recommendation to the governor on
  - (i) Net proceeds of the taxes, duties, tolls and fees – distribution between state and panchayat
  - (ii) Grant in aid to the panchayat

- Composition and procedure – State by law

### Functions:

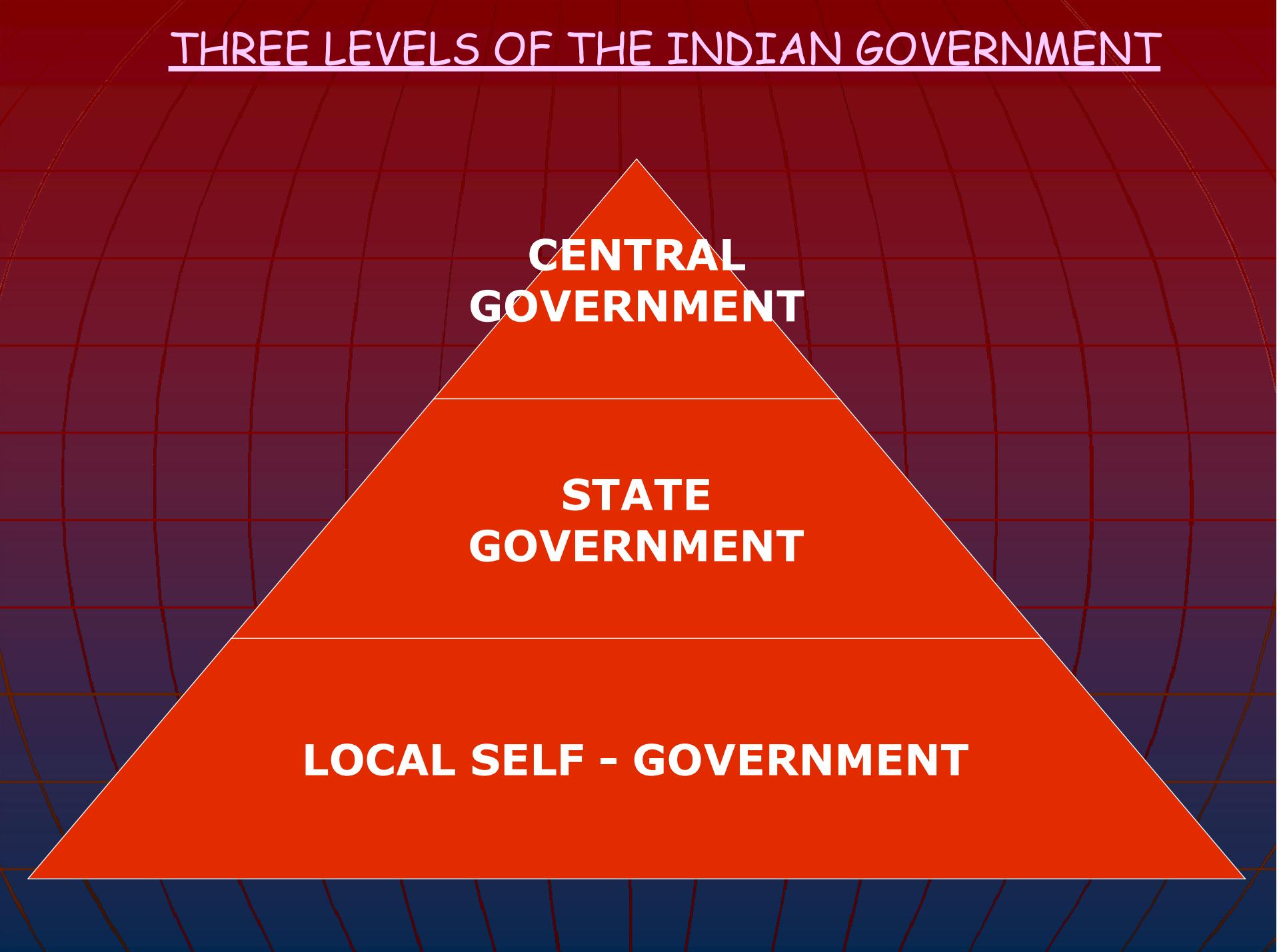
- Reviewing the economic condition of the various Panchayati raj institutions and municipal bodies
- Take steps in boosting the financial condition of the various municipal bodies and Panchayati raj institutions in the state

- Allotting the funds between Panchayat and Municipalities
- Role of an arbitrator between centre and state

# **UNIT 4**

**Local Administration**

## THREE LEVELS OF THE INDIAN GOVERNMENT



**CENTRAL  
GOVERNMENT**

**STATE  
GOVERNMENT**

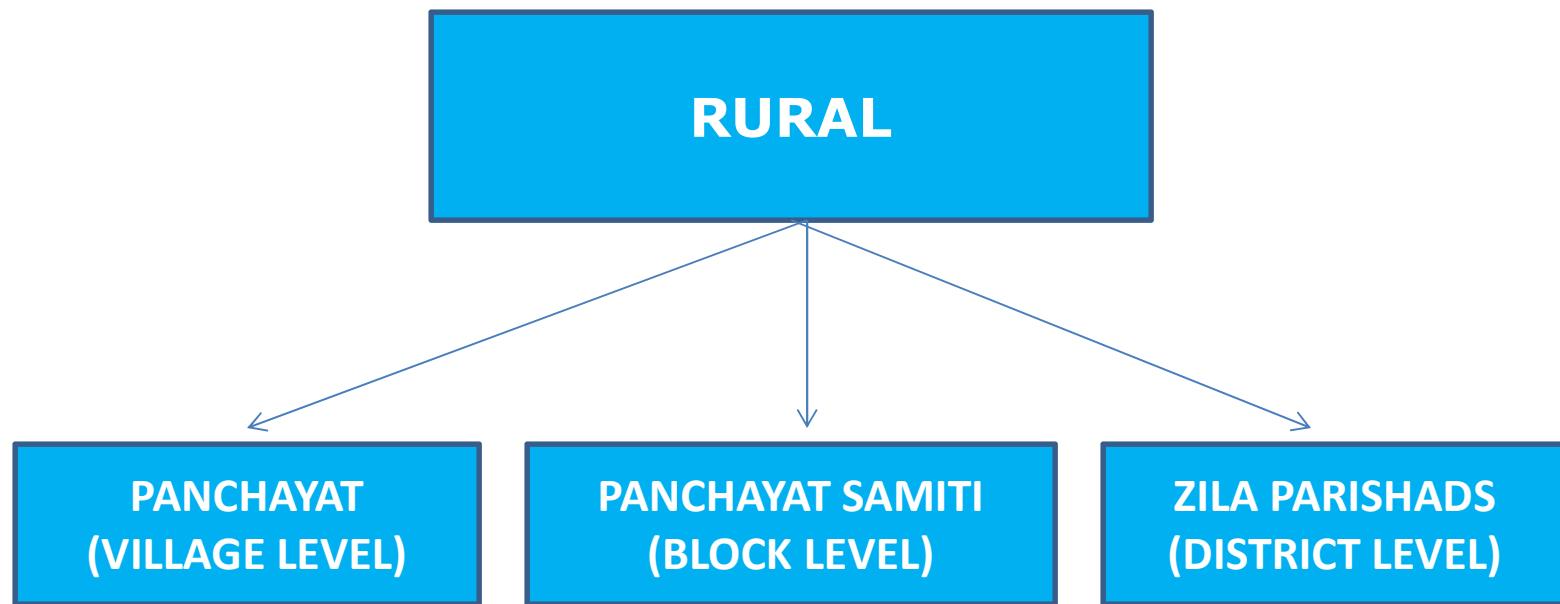
**LOCAL SELF - GOVERNMENT**

**LOCAL SELF GOVERNMENT**

**RURAL**

**URBAN**

# RURAL



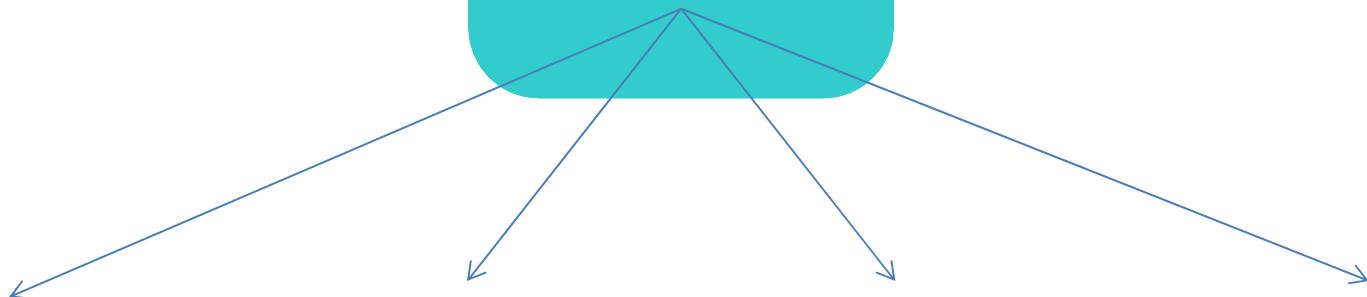
# **URBAN LOCAL SELF- GOVERNMENT**

**MUNICIPAL  
CORPORATIONS**

**MUNICIPALITIES**

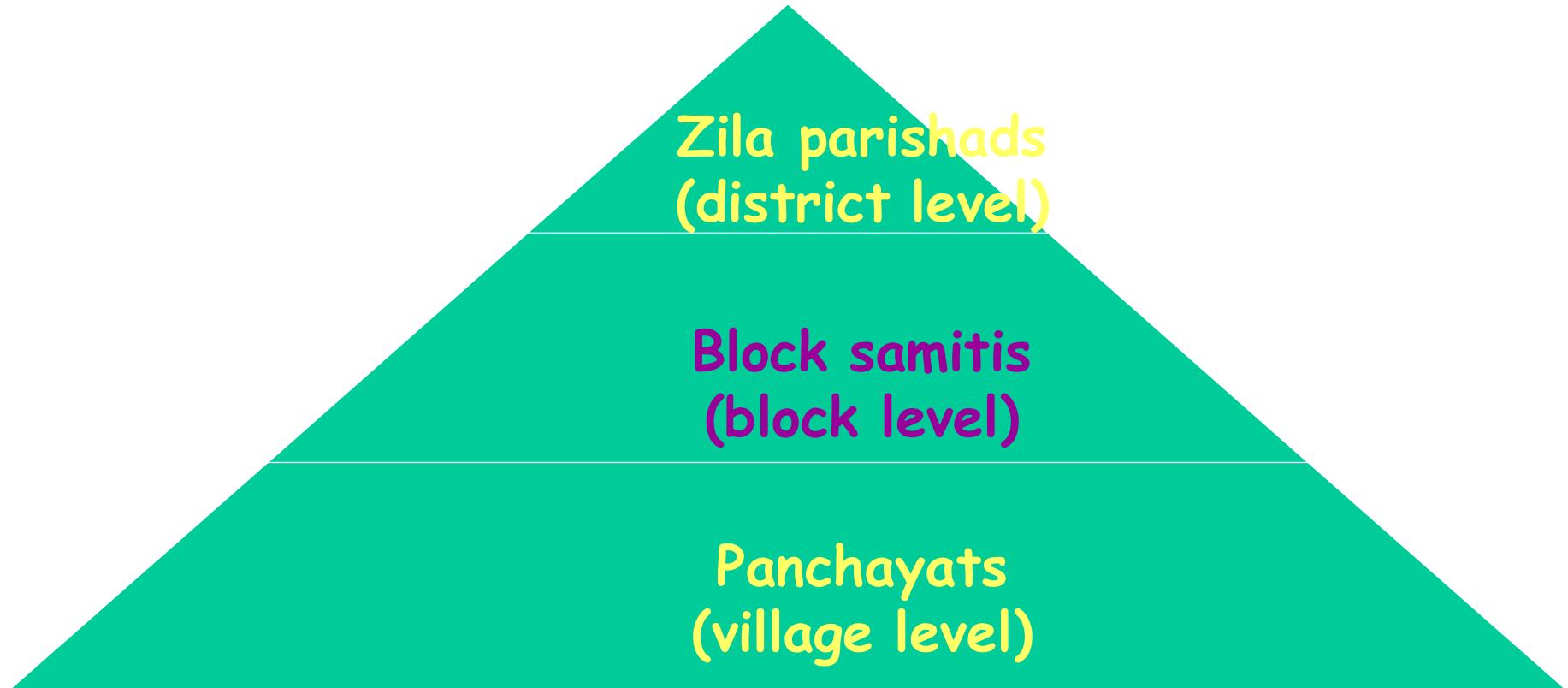
**CANTONMENT  
BOARDS**

**PORT  
TRUSTS**



# Rural Local Self - Government

- Functions under the 'panchayati raj system'
- panchayati raj system – three – tiered system



# Panchayats

- ancient tradition in villages
- ‘panchayat’ - group of five people/ elders/ panchas
- deal with local problems, solve disputes among villagers
- decision – binding upon all the people
- functioned well till the Mughal period
- British sent their own officials to look after rural problems – not much effective during British rule.
- revived by the democratic government after independence
- Main purpose : involve villagers in managing their own affairs

# Panchayati system – three parts

**PANCHAYATI  
SYSTEM**

**GRAM SABHA**

**GRAM  
PANCHAYAT**

**NYAYA  
PANCHAYAT**

## **Gram Sabha or Village Assembly**

- Villages - population of 500 or more
- Members - all adult members of the village
- Meetings - twice a year
- Discusses important matters and problems regarding the villages.
- Elected representatives of this assembly form the 'Gram Panchayat'

## **Gram Panchayat**

- Elected senior members of Gram Sabha form the Gram Panchayat
- Seats reserved for Scheduled Castes or Scheduled Tribes
- One - third of seats reserved for women

# **functions**

- 1. Maintenance of roads, water sources**
- 2. Health facilities**
- 3. Drinking water**
- 4. Cleanliness**
- 5. Check spread of diseases – vaccination**
- 6. Construction – buldings, burial grounds**
- 7. Primary education**
- 8. Record of birth and death**
- 9. Improvement , development of farmers**
- 10. Looking after weaker sections**

# Optional Functions:

1. Construction of playgrounds, rest houses
2. Installation of television, radio sets in community centres
3. Organisation of educational programmes
4. Cattle fairs, village markets
5. Plantation of trees
6. Running the library.

# **Sources of Income - Panchayat**

- Taxes on property, land, goods, and cattle;
- Rent collected for facilities like Barat Ghar or any other property of panchayat;
- Various types of fines collected from the offenders;
- Grants-in- aid from the State government and Union government;
- A part of the land revenue collected by the State government given to the Panchayats; and

# **Importance of Gram Panchayat**

- Helping in daily problems**
- Administrative, social, economic, judicial functions**
- Community development**
- Training for future leaders**
- Mutual help, cooperation, responsibility, self – sufficiency**

## **Sarpanch:**

- A **sarpanch**, is an elected head of a village level statutory institution of local self-government called the panchayat.
- The **sarpanch**, together with other elected panchas (members), constitute the gram panchayat.
- Sarpanch is also called as Panchayat President.

- **Responsibility as a sarpanch of gram panchayat**
  1. Develop inclusive plans to address the **water supply and sanitation** needs of the households in the villages/GP.
  2. Make provision for prioritization on of water and sanitation on facilities in the **Gram Panchayat Development Plan (GPDP)** and **mobilize resources** to fulfil the water and sanitation on demands.
  3. Encourage the VWSC/village team to participate in training and **capacity building programmes**.
  4. **Strengthen capacity of village-level functionaries**, such as swachhagrahis/ barefoot technicians and review their performances
  5. Coordinate village-level information on, **education and communication on (IEC)** activities for all concerned stakeholders.

- Participate in shramdaan (voluntary work).
- Develop soak pits, composting , biogas plants for SLWM (managing greywater).
- Practise se waste segregation on at source and the 4R(s): Reduce, Reuse, Recycle, Recover, for managing solid waste.
- Encourage use of toilets by every person, every time
- Encourage judicious use of water and avoid wastage of water.

## BLOCK SAMITIS (block level)

- Handles problems which are too difficult for panchayats to solve –  
Eg: pooling resources for a large hospital
- Many village panchayats (usually a hundred) = one block samiti / panchayat samiti

# Composition of Block Samiti

- Sarpanches of all village panchayats under it
- Town Area Committee (if any in the block) – Chairperson
- Chairperson, Vice – chairperson – elected by its members
- Block development officer – carrying out its plans

## **Members of Block Samiti?**

- Members of LokSabha and RajyaSabha.
- Members of VidhanSabha and VidhanParishad from the block.
- Representatives of women, Scheduled Castes, Schedules Tribes, and Other Backward classes from the block.
- One – third for women

# **Block Samiti - Functions**

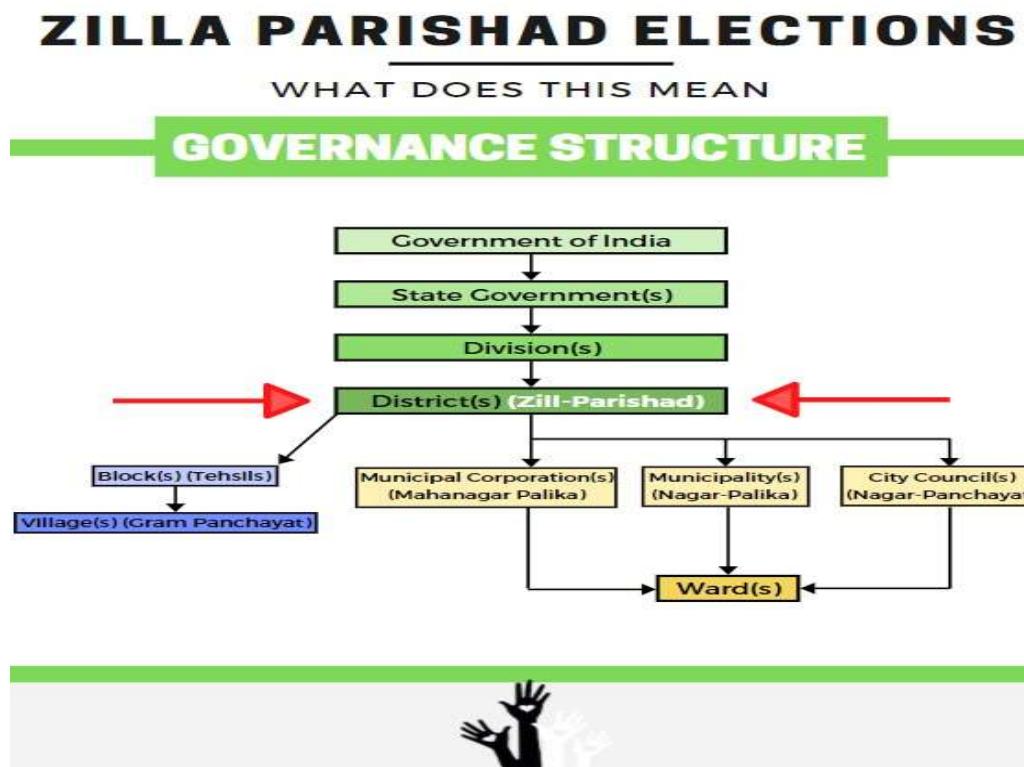
1. Supervises the **working of the village** panchayats under it
2. It engages many **experts to help the villagers**. The experts in the field of agriculture also help the villagers in obtaining better quality seeds fertilisers insecticides and in improving the breed of cattle.
3. The other experts bring about a change in the outlook of the people through education and literacy.
4. Arranges government funds for its development

4. Community Development Programmes – financial assistance, irrigation, seeds, fertilizers, education, health facilities, drinking water, sanitation, financial
5. It arranges for expert advice service to the panchayats for their development in agriculture  
**construction of roads and buildings health and education etc.**

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# Zila Parishad

- District board (district level)
- Head of the panchayati raj system



# Zila Parishad - Composition

- Chairpersons of block samitis
- The Chairman of the Zilla Parishad should be the District Collector and Magistrate
- All the presidents of the Panchayat Samiti are the members of the Zilla Parishad.
- Members of the state legislature (vidhan sabha and vidhan parishad)
- Members of the Parliament (MPs)
- District collector, district judges, district police officers
- Reservation of STs, backward classes
- One – third for women

## Zila Parishads - Functions

- Supervises block samitis, panchayats
- It has to approve the budgets of samitis in the district.
- **Advises the state government** on working of panchayati raj system
- Supervises working of **community development projects** of block samities and five – year plan projects
- Monitors agricultural production, undertakes irrigation projects
- Builds, maintains, inspects primary, secondary schools, hospitals, dispensaries, primary health centres
- **Establishes and maintains cooperatives** – promotion of industries and arts
- **Link** between panchayat samiti and state government

## **Sources of Income – Block samiti and Zila Parishad**

- **Grants and aids from state governments, central government**
- **Land tax, house tax, water tax, electricity tax, tax on fairs and cattle**

# **74<sup>TH</sup> CONSTITUTION AMENDMENT ACT, 1992**

**Prof. Karthik Shiva  
VIT School of Law,  
Vellore Institute of Technology, Chennai**

# INTRODUCTION

- Local Self-Government – Classified into RLB (Rural Local Bodies) and ULB (Urban Local Bodies)
- Rural Local Bodies – Panchayat Raj Institutions
- Urban Local Bodies – Municipalities and Municipal Corporations
- Given Constitutional Sanction → 74<sup>th</sup> Constitution Amendment Act 1992
- Eight types of Urban Local Government in India
  - Municipal Corporations
  - Municipality
  - Notified Area Committee
  - Town Area Committee
  - Cantonment Board
  - Township
  - Port Trust
  - Special Purpose Agency

## **74<sup>TH</sup> CONSTITUTION AMENDMENT ACT, 1992**

- Part IX-A to the Constitution of India → Municipalities
- Art. 243P to 243 ZG
- 12<sup>th</sup> Schedule to the Constitution of India
- 74<sup>th</sup> Constitution Amendment Act – gave constitutional status to the municipalities
- State Government are under obligation to adopt the new system of municipalities
- Objective is strengthening and revitalising urban local government

## **THREE TYPES OF MUNICIPALITIES**

The act provides for the constitution of the following three types of municipalities in every state.

1. A Nagar panchayat (by whatever name called) for a transitional area
2. A municipal council for a smaller urban area.
3. A municipal corporation for a larger urban area

## **74<sup>TH</sup> CONSTITUTION AMENDMENT ACT, 1992**

The governor has to specify a transitional area, a smaller urban area or a larger urban area, keeping in view the following factors:

- (a) Population of the area.
- (b) Density of the population therein
- (c) Revenue generated for local administration.
- (d) Percentage of employment in non-agricultural activities.
- (e) Economic importance.
- (f) Such other factors as he may deem fit.

## **74<sup>TH</sup> CONSTITUTION AMENDMENT ACT, 1992**

All the members of a municipality shall be elected directly by the people of the municipal area.

For this purpose, each municipal area shall be divided into territorial constituencies to be known as wards.

The state legislature may provide the manner of election of the chairperson of a municipality.

It may also provide for the representation of the following persons in a municipality.

1. Persons having **special knowledge or experience in municipal administration** without the right to vote in the meetings of municipality.
2. The **members of the Lok Sabha and the state legislative assembly** representing constituencies that comprise wholly or partly the municipal area.
3. The **members of the Rajya Sabha and the state legislative council** registered as electors within the municipal area.
4. The **chairpersons of committees (other than wards committees)**.

# **WARD COMMITTEES AND OTHER COMMITTEES**

## **Ward Committees**

There shall be constituted a wards committee, consisting of one or more wards, within the territorial area of a municipality having population of three lakh or more. The state legislature may make provision with respect to the composition and the territorial area of a wards committee and the manner in which the seats in a wards committee shall be filled.

## **Other Committees**

In addition to the wards committees, the state legislature is also allowed to make any provision for the constitution of other committees. The chairpersons of such committees may be made members of the municipality.

## **RESERVATION OF SEATS**

**The act provides for the reservation of seats for the scheduled castes and the scheduled tribes in every municipality in proportion of their population to the total population in the municipal area.**

**It provides for the reservation of not less than one-third of the total number of seats for women (including the number of seats reserved for woman belonging to the SCs and the STs).**

**The state legislature may provide for the manner of reservation of offices of chairpersons in the municipalities for SCs, STs and women.**

**It may also make any provision for the reservation of seats in any municipality or offices of chairpersons in municipalities in favour of backward classes.**

**The reservation of seats as well as the reservation of offices of chairpersons in the municipalities for the scheduled castes and scheduled tribes shall cease to have effect after the expiration of the period specified in Article 334 (which is presently seventy years, that is, till 2030).**

# **DISQUALIFICATION**

**A person shall be disqualified for being chosen as or for being a member of a municipality if he is so disqualified**

- (a) under any law for the time being in force for the purposes of elections to the legislature of the state concerned; or**
- (b) under any law made by the state legislature.**

**However, no person shall be disqualified on the ground that he is less than 25 years of age if he has attained the age of 21 years.**

**Further, all questions of disqualifications shall be referred to such authority as the state legislature determines.**

## **POWERS AND FUNCTIONS**

**The state legislature may endow the municipalities with such powers and authority as may be necessary to enable them to function as institutions of self-government.**

**Such a scheme may contain provisions for the devolution of powers and responsibilities upon municipalities at the appropriate level with respect to**

- (a) the preparation of plans for economic development and social justice;**
- (b) the implementation of schemes for economic development and social justice as may be entrusted to them, including those in relation to the eighteen matters listed in the Twelfth Schedule**

## **FINANCES AND AUDIT**

**The state legislature may**

- (a) authorise a municipality to levy, collect and appropriate taxes, duties, tolls and fees;**
- (b) assign to a municipality taxes, duties, tolls and fees levied and collected by state government;**
- (c) provide for making grants-in-aid to the municipalities from the consolidated fund of the state; and**
- (d) provide for constitution of funds for crediting all moneys of the municipalities**

**The state legislature may make provisions with respect to the maintenance of accounts by municipalities and the auditing of such accounts.**

## **APPLICATION TO UNION TERRITORIES AND EXEMPTED AREAS**

**The provisions of this part are applicable to the Union territories. But, the President may direct that they would apply to a Union territory subject to such exceptions and modifications as he may specify.**

**The act does not apply to the scheduled areas and tribal areas in the states. It shall also not affect the functions and powers of the Darjeeling Gorkha Hill Council of the West Bengal.**

**However, the Parliament may extend the provisions of this part to the scheduled areas and tribal areas subject to such exceptions and modifications as it may specify**

# **TWELFTH SCHEDULE**

**It contains the following 18 functional items placed within the purview of municipalities:**

- 1. Urban planning including town planning;**
- 2. Regulation of land use and construction of buildings;**
- 3. Planning for economic and social development;**
- 4. Roads and bridges;**
- 5. Water supply for domestic, industrial and commercial purposes;**
- 6. Public health, sanitation, conservancy and solid waste management;**
- 7. Fire services;**
- 8. Urban forestry, protection of the environment and promotion of ecological aspects;**
- 9. Safeguarding the interests of weaker sections of society, including the handicapped and mentally retarded;**

## **TWELFTH SCHEDULE**

- I 0. Slum improvement and upgradation;**
- I 1. Urban poverty alleviation;**
- I 2. Provision of urban amenities and facilities such as parks, gardens, playgrounds;**
- I 3. Promotion of cultural, educational and aesthetic aspects;**
- I 4. Burials and burial grounds, cremations and cremation grounds and electric crematoriums;**
- I 5. Cattle ponds, prevention of cruelty to animals;**
- I 6. Vital statistics including registration of births and deaths;**
- I 7. Public amenities including street lighting, parking lots, bus stops and public conveniences; and**
- I 8. Regulation of slaughter houses and tanneries.**

# Elections and the Constitution of India: An Introduction

Karthik Shiva B

Asst. Professor of Law,

VIT School of Law

Email: [karthikshiva.law@gmail.com](mailto:karthikshiva.law@gmail.com)

# Introduction

- ◆ Elections play a vital role in democratic countries around the modern world.
- ◆ Elections may be; a). Direct b). Indirect; based on the level be; a). National b). State/ Provincial c). Local Level
- ◆ Elections are held for filling vacancies generally in the Legislature and Executive wing and in some cases even in Judiciary - United States of America and Germany - Judicial Election
- ◆ Elections does not equal Democracy
- ◆ Democracies without Elections and Elections without Democracy
- ◆ People's Republic of North Korea - Arab Spring (2011) - Sham/Show Elections - Elections in Non-democracies
- ◆ Athenian Democracy and Swiss Federation - Direct Democracy - Democracy without Elections - Sortition / Rotation
- ◆ Election (Tool) as means to an end i.e., Democracy (Result)
- ◆ Requirement of Free and Fair Election - Facet of Rule of Law, Democracy and Constitutionalism

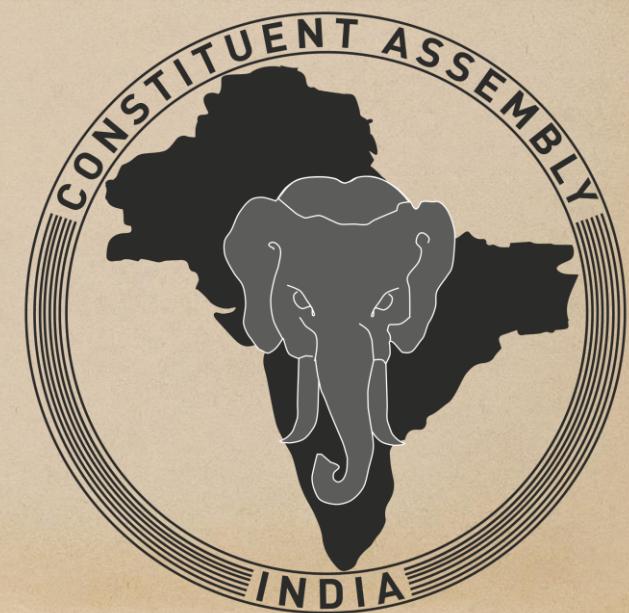
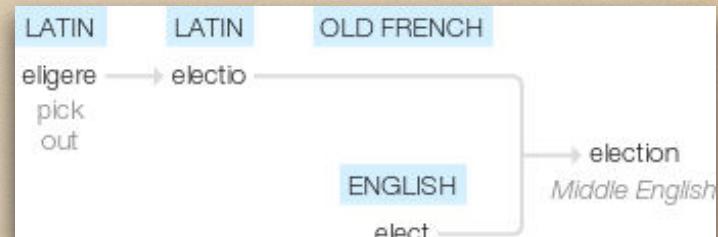
# Elections and Democracy: The Past

- ◆ Traced to Democracy in Rome and Greece
- ◆ Kshudrak-Malla Sangha - Republican Federation - Chanda (vote) - Shalaka (Pins)- Voting Tokens - Shalaka Grahak (Pin Collector) - Open/Secret - 4th Century BC
- ◆ Sabha and Samiti System in Ancient India
- ◆ Kudavolai System in Tamil Nadu (700 AD onwards)



# Elections and Indian Constitution: The Past

- ◆ Medieval period - Trade and Village level - Popular Assemblies Continued
- ◆ British rule - centralised administration - local assemblies faded away
- ◆ Indian Councils Act, 1892 - Limited Local Representation
- ◆ Indian Councils Act, 1901 - Elective Elements
- ◆ Indian Councils Act, 1909 - Separate Electorate on Communal Lines  
-Dyarchy in Provinces
- ◆ Government of India Act, 1915- Amended in 1919- Bicameral Legislature -  
Sikh seats - Electorate limited on property, education, tax payment, etc.
- ◆ Government of India Act, 1935 - Increased communal reservations
- ◆ Constituent Assembly of India - Indirectly elected by Provincial  
Legislative Assemblies - Interim Parliament



# Elections and the Constitution: The Present

- ◆ Elections occupy a vital segment of the Constitution of India
- ◆ Factors determining electoral democracy - Colonial regime, oppression of the marginalised groups, linguistic, cultural, economic and religious factors, level of education, state of the nation, etc.
- ◆ Principle of Universal Adult Suffrage - Common Electorate
- ◆ House of the People & State Legislative Assemblies - First Past the Post System - Single-member constituencies
- ◆ Council of States, State Legislative Councils, Presidential & Vice-Presidential Elections - Proportional Representation through Single Transferable Vote

# Elections and the Constitution: The Law

- ◆ The notion of Election is scattered throughout the Constitution of India
- ◆ References to Election are made explicitly and implicitly throughout the Constitution of India
- ◆ Preamble of the Constitution (Democratic Republic)
- ◆ Fundamental Rights (Art. 14, 19, 21)- Electoral Democracy
- ◆ Other Provisions (Art. 40 - Village Panchayat, Art. 243A-ZB - PRI (ULB &RLB), Art. 323B - Election Tribunals, Reservation - Art. 330, 332, etc.)

# Elections and the Constitution: Provisions

- ◆ Part XV - Provisions relating to Elections - Art. 324-329A
- ◆ Art. 324 - Election Commission of India
- ◆ Art. 325 - Concept of Common Electoral Roll
- ◆ Art. 326 - Election on the basis of Adult Suffrage
- ◆ Art. 327 - Power of the Parliament to make election law
- ◆ Art. 328 - Power of the state legislature to make election law
- ◆ Art. 329 - Bar on interference by Courts in electoral matters



Women in First General Election 1952



# Elections Commission of India (Art. 324)

- ◆ Art. 324 (1) - Election Commission of India - It is a high-powered, independent, permanent, constitutional body entrusted with the Superintendence, direction and control of

A. Conduct of elections to Houses of Parliament, State Legislatures and Offices of President and Vice President (Union and State Level)

B. Preparation of Electoral Rolls

- ◆ Established - 25th January, 1950
- ◆ Objective - Free and Fair Elections in India
- ◆ Members - Chief Election Commissioner and Other Election Commissioners



First General Election 1952



# Elections Commission of India (Art. 324)

- ◆ Started as a single-member body with Shri Sukumar Sen as the first Election Commissioner of India in 1950
- ◆ It became briefly a multi-member body for brief period in 1989 and permanently multi-member from 1993 - till date.
- ◆ Presently, it is headed by a Chief Election Commissioner and two other Election Commissioners



Shri Sukumar Sen - First CEC



Mr. Rajiv Kumar - Incumbent CEC

# Elections Commission of India (Art. 324)

- Office of Chief Election Commissioner and Other Election Commissioners [Art. 324(2)]
- CEC - Chairman if there are Other Election Commissioners [Art. 324(3)]
- Regional Election Commissioners - Ad-hoc in nature - Assistance [324 (4)]
- Conditions of Service, Tenure and Removal [324 (5)]
- Staff of the Election Commission of India [324 (6)]

## Election Commissioners of India: Service, Tenure and Removal

- Conditions of Service, Tenure and Removal [324 (5)] - Appointment by President subject to Law made by Parliament - The Election Commission (Conditions of Service of Election Commissioners and Transaction of Business) Act, 1991
- Qualifications - Not specified - Retired Civil Servants
- Tenure - Six years / 65 years of age - Sec. 4 of EC (CSTB) Act, 1991
- Removal of CEC - By Parliament - akin to Judge of SC - Proved Misbehaviour/Incapacity - Service Conditions not to be varied to disadvantage
- Removal of Other Election Commissioners / Regional Commissioners - By President - On the recommendation of CEC

# Election Commissioners: Position

- SS Dhanno v. Union of India AIR 1991SC 1745 - Multi-member to Single Members (1989-90) - Removal of SS Dhanno by the Presidential Notification challenged as arbitrary - Abolition of post v. Premature termination of Service - CEC not on par with Other Election Commissioners
- TN Seshan v. Union of India 1995 (4) SCC 611 - Single Member to Multi-member conversion challenged (1993) - Ordinance - SC reversed the decision in SS Dhanno holding that CEC is on par with other election commissioners

# Election Commission of India - Functions

It exercises functions of administrative, advisory and quasi-judicial nature;

- ◆ Superintendence, direction & control
- ◆ Preparation of electoral rolls
- ◆ Conduct of all elections to Parliament and to legislature of every State
- ◆ Conduct of all elections to the office of President & VP
- ◆ Decision as to disqualification - President and Governor to consult - Art. 103 and 192

# Conducts of Elections in India

Election Commission of India



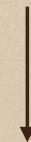
Art. 324

Lok Sabha & Raj Sabha

State Legislature

President and Vice President

State Election Commission



Art. 243K & 243ZA

Panchayat

Municipalities

# Concept of Common Electoral Roll (Art. 325)

- ◆ Traced to communal electorate in British India - Poona Pact (1932) - Religious and Class segregation eschewed under the Constitution
- ◆ Single, Unified, Common and General Electorate for every territorial constituency in India
- ◆ It provides that only on the basis of religion, race, caste or sex;
  - ◆ No inclusion in a special electoral roll (No Privilege)
  - ◆ No ineligibility in common electoral roll (No Disqualification)

# Concept of Adult Suffrage(Art. 326)

- ◆ Electoral Democracy in India is based on the principle of (universal) adult suffrage - Importance of Adult Suffrage in 1950 - Special Relevance vis-a-vis other world nations
- ◆ All citizens above the age of 18 years, and not disqualified by law on grounds of
  - ◆ Non-residence
  - ◆ Unsoundness of mind
  - ◆ Crime
  - ◆ Corrupt / Illegal Practice

are eligible to be registered as voters under Art. 326

- ◆ 61st Constitution (Amendment) Act, 1988 - w.e.f. 1989 - age of voting reduced to 18years

# Constitutional Status of Vote (Art. 326)

- ◆ What is the status of the Right to Vote?
- ◆ Fundamental Right, Constitutional Right or Statutory Right?
- ◆ Case of Andaman and Nicobar Islands - First vote in 1971
- ◆ Arunachal Pradesh - First vote in 1977
- ◆ Voting withheld on the ground of backwardness
- ◆ Kuldip Nayar v. Union of India (2007) - Voting - Statutory Right
- ◆ Reiterated in PUCL v. Union of India (2013) - Right to vote is a statutory rights (sec. 62 of RPA, 1951)- Right to be registered as a voter is a Constitutional right (Art. 326)
  - Right to free and fair election is a Fundamental Right (Art. 21)

# Power to make law (Art. 327 & 328)

- ◆ Art. 327 - Power of the Parliament to make law relating to election to
  - ◆ the Houses of Parliament;
  - ◆ the State Legislature;
  - ◆ Preparation of Electoral Rolls;
  - ◆ Delimitation of Constituencies; and
  - ◆ Other related necessary matters

## Power to make law (Art. 327 & 328)

- ◆ Art. 328 - Power of the state legislature to make law relating to election to state legislature in particular
- ◆ It is subject to law made by the Parliament in this regard
- ◆ It is supplementary and complementary to the power of the Parliament i.e. to extent that provisions are not already made by the Parliament
- ◆ Parliamentary law to have overriding effect

# Elections and the Constitution: The Law

- ◆ Constitution of India
- ◆ Representation of People Act, 1950
- ◆ Representation of the People Act, 1951
- ◆ Presidential and Vice-Presidential Election Act, 1952
- ◆ Delimitation Act, 2002
- ◆ Allied Rules and Regulations [Conduct of Election Rules, 1961 and  
Election Symbols (Allotment) Order, 1968]

# Elections and the Constitution: Landmark Decisions

- ◆ Union of India v. Association for Democratic Reforms (2002)- Right to information of electors - Assets, Liabilities, criminal records, etc.
- ◆ People's Union for Civil Liberties v. Union of India (2003) - Right to know criminal antecedents protected u/art. 19(1)(a) of the Constitution
- ◆ People's Union v. Union of India (2013) - NOTA Judgement - Rule 49-0 - Secrecy of Voting
- ◆ Lily Thomas v. Union of India (2013)- Right to free and fair elections - Immediate Disqualification on Conviction for 2 years or more
- ◆ Raj Bala v. State of Haryana (2014) - Educational Qualifications for Local body elections upheld
- ◆ Common Cause v. Union of India (2015) - Government Spending on political advertisements

# Judicial Review in Electoral Matters

- ◆ Art. 329 - It creates certain on bars on interference of the Courts in matters relating to election.
- ◆ It excludes from the purview of judicial review
  - ◆ Law relating to Delimitation u/art. 327 &328
  - ◆ Disputes relating to election other than by way of Election petition

# Elections and the Constitution of India - The Future

- ◆ Simultaneous Elections
- ◆ Social Media Control / Influence
- ◆ NRI Voting Rights (ETPBS)
- ◆ Online / Remote Voting (Blockchain Technology)
- ◆ Electoral Recall
- ◆ Evolution of NOTA (Annulling elections)
- ◆ Strengthening State Election Commissions

# Conclusion

“Man’s capacity for justice makes Democracy possible,  
Man’s capacity for injustice make Democracy necessary.”

- Reinhold Niebuhr

‘A democracy must be progressive or it will cease to be great or a democracy’.

- Theodore Roosevelt

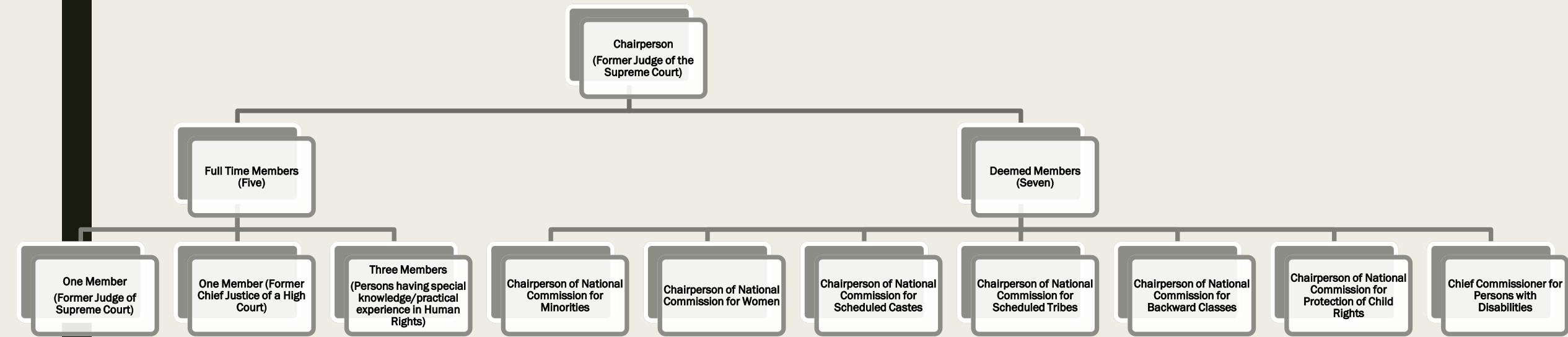
# **NHRI AND OTHER COMMISSIONS: AN INTRODUCTION**

**Karthik Shiva  
Assistant Professor of Law  
VIT School of Law, Chennai**

# NATIONAL HUMAN RIGHTS COMMISSION

- National Human Rights Commission established under the Protection of Human Rights Act, 1993 – Apex human rights institution in India
- India's NHRC is fully complaint with the Paris Principles and is accredited with 'A' Status by the ICC (International Coordinating Committee) of National Human Rights Institutions (NHRIs)
- NHRC – Apex Statutory Human Rights Body
- NCSC, NCST, NSBC - Constitutional Bodies
- NCPCR, NCW, etc. – Statutory Bodies
- National Commission for Safai Karamcharis – Non Statutory Bodies

# COMPOSITION OF NATIONAL HUMAN RIGHTS COMMISSION

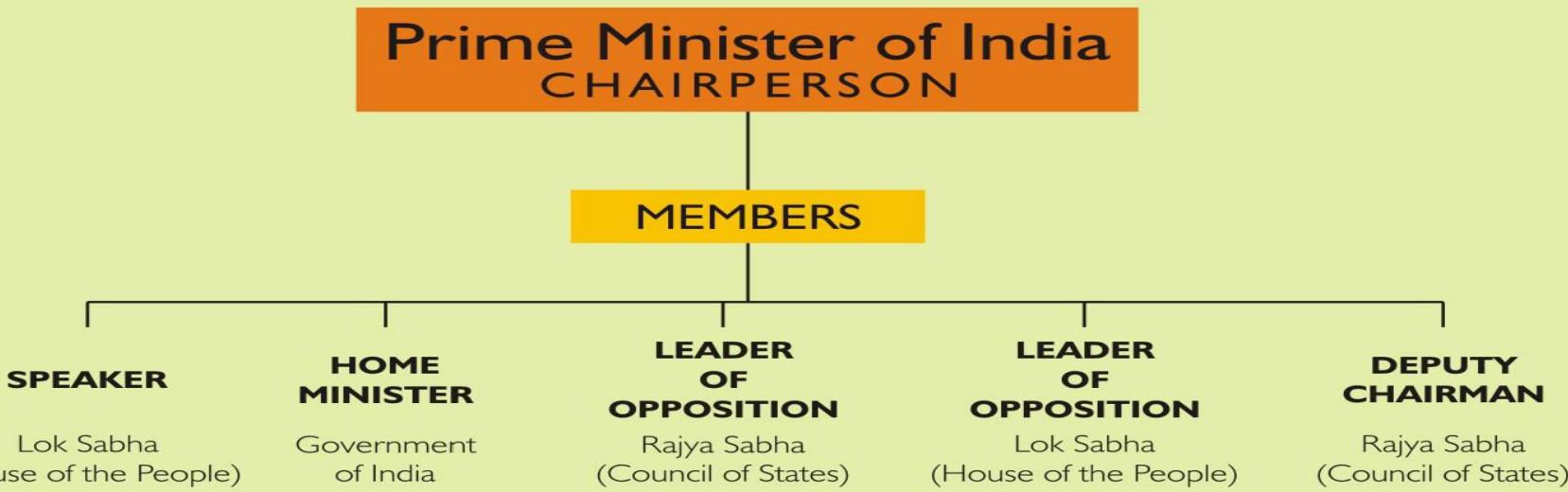


**The Commission consists of a Chairperson, five full-time Members and seven deemed Members.**

**The statute lays down qualifications for the appointment of the Chairperson and Members of the Commission.**

# Appointment of Chairperson and Members

The Chairperson and the Members of NHRC are appointed by the President of India, on the recommendations of a committee consisting of :



**The Commission has a wide mandate. Its functions, listed in Section 12 of the PHRA, are to:**

- inquire, suo motu or on a petition presented to it by a victim or any person on his behalf or on a direction or order of any court, into complaint of
  - (i) violation of human rights or abetment thereof; or
  - (ii) negligence in the prevention of such violation,  
by a public servant.
- intervene in any proceeding involving any allegation of violation of human rights pending before a court with the approval of such court.
- visit, notwithstanding anything contained in any other law for the time being in force, any jail or other institution under the control of the State Government, where persons are detained or lodged for purposes of treatment, reformation or protection, for the study of the living conditions of the inmates thereof and make recommendations thereon to the Government.
- review the safeguards provided by or under the Constitution or any law for the time being in force for the protection of human rights and recommend measures for their effective implementation.
- review the factors, including acts of terrorism that inhibit the enjoyment of human rights and recommend appropriate remedial measures.
- study treaties and other international instruments on human rights and make recommendations for their effective implementation.
- undertake and promote research in the field of human rights.
- spread human rights literacy among various sections of society and promote awareness of the safeguards available for the protection of these rights through publications, the media, seminars and other available means.
- encourage the efforts of non-governmental organizations and institutions working in the field of human rights.
- such other functions as it may consider necessary for the protection of human rights.

# LANDMARK CASES OF THE NHRC

- Gujarat Riots case – Approached the SC on behalf of minorities
- Punjab Mass Cremation Case – 1.75 lakh compensation for mass cremation of 1051 unidentified bodies by the state
- Starvation Death in Orrisa – Special Rapporteur for Relief and Rehabilitation
- Encounter Deaths in Andhra Pradesh – 1997 formulated guidelines for encounter deaths and APCLC – extra judicial killings
- Death Due to Silicosis – Tribes working Quartz crushing factories

# NATIONAL COMMISSION FOR WOMEN (NCW)

- *NCW – A statutory body established on the 31<sup>st</sup> January, 1992 under the National Commission for Women Act, 1990*
- *Traced to the recommendations of the Committee on the Status of Women in India (CSWI) in 1971 suggesting the setting up of a National Commission for Women to fulfill the surveillance functions to facilitate redressal of grievances and to accelerate the socio-economic development of women.*
- The First Commission was constituted on 31st January 1992 with Mrs. Jayanti Patnaik as the Chairperson.
- Present chairperson of NCW is Ms. Rekha Sharma – Inevitably a member of the present dispensation (govt.)

# MISSION AND VISION OF NCW

- Mission - To strive towards enabling women to achieve equality and equal participation in all spheres of life by securing her due rights and entitlements through
  - *suitable policy formulation,*
  - *legislative measures,*
  - *effective enforcement of laws,*
  - *implementation of schemes/policies and*
  - *devising strategies for solution of specific problems/situations arising out of discrimination and atrocities against women.*
- Vision – To ensure that the Indian Woman, secure in her home and outside, fully empowered to access all her rights and entitlements, with opportunity to contribute equally in all walks of life.

## **COMPOSITION OF NCW (Sec. 3) –**

*The National Commission for Women as per section 3(2) shall consist of;*

*a). A Chairperson, committed to the cause of women*

*b). Five members nominated by the central government from amongst persons of*

*i). Ability, integrity and standing*

*ii). experienced in law, trade unionism, management of an industry or organization committed to increasing the employment potential of women, women's voluntary organizations (including women activists), administration, economic development, health, education or social welfare;*

*At least one member each shall be a member of the Scheduled Caste and Scheduled Tribes respectively*

*c). A Member Secretary nominate by the Central Govt.*

*i). An expert in management, organization structure or sociological movement*

*ii). Officer of Central Civil Service or All India Service or holding Civil post under the Union*

# **ROLE, POWERS AND FUNCTIONS OF THE NATIONAL COMMISSION FOR WOMEN**

- **Section 8** – Power to appoint committee to deal with specific issue concerning women
- **Section 9** – Power to regulate its own procedure
- **Section 10** – Functions of the Commission
- **Section 12** – Central Government to provide Grant to the NCW for the executing the functions under this Act- Power of NCW to spend the grants as it thinks fit
- **Section 16** – The Central Government shall consult the NCW on all major policy matters affecting women – Right of the NCW to be consulted

## ■ FUNCTIONS OF THE NATIONAL COMMISSION FOR WOMEN (NCW) – Sec. 10

- (1) The commission shall perform all or any of the following functions, namely:-
  - a. Investigate and examine all matters relating to the safeguards provided for women under the Constitution and other laws; (**Investigation and Examination of Laws**)
  - b. present to the Central Government, annually and at such other times as the Commission may deem fit, reports upon the working of those safeguard; (**Presentation of Reports**)
  - c. make in such reports recommendations for the effective implementation of those safeguards for the improving the conditions of women by the Union or any state; (**Recommending function**)
  - d. review, from time to time, the existing provisions of the Constitution and other laws affecting women and recommend amendments thereto so as to suggest remedial legislative measures to meet any lacunae, inadequacies or shortcomings in such legislations; (**Review of Laws**)

## ■ FUNCTIONS OF THE NATIONAL COMMISSION FOR WOMEN (NCW) – Sec. 10 (contd.)

- e. take up cases of violation of the provisions of the Constitution and of other laws relating to women with the appropriate authorities; (**Taking up of Cases of Violation**)
- f. look into complaints and take *suo-moto* notice of matters relating to:- (**Look into complaints and suo-moto notice**)
  - i. deprivation of women's rights;
  - ii. non-implementation of laws enacted to provide protection to women and also to achieve the objective of equality and development;
  - iii. non-compliance of policy decisions, guidelines or instructions aimed at mitigating hardships and ensuring welfare and providing relief to women, and take up the issues arising out of such matters with appropriate authorities;

- **FUNCTIONS OF THE NATIONAL COMMISSION FOR WOMEN (NCW) – Sec. 10 (contd.)**

- g. call for special studies or investigations into specific problems or situations arising out of discrimination and atrocities against women and identify the constraints so as to recommend strategies for their removal; **(Special Studies on special problems)**
- h. undertake promotional and educational research so as to suggest ways of ensuring due representation of women in all spheres and identify factors responsible for impeding their advancement, such as, lack of access to housing and basic services, inadequate support services and technologies for reducing drudgery and occupational health hazards and for increasing their productivity; **(Educational Research)**
- i. participate and advice on the planning process of socio-economic development of women; **(Role in Planning)**
- j. evaluate the progress of the development of women under the Union and any State; **(Role in Evaluation of Progress in Union and States)**

## FUNCTIONS OF THE NATIONAL COMMISSION FOR WOMEN (NCW) – Sec. 10

- k. inspect or cause to inspect a jail, remand home, women's institution or other place of custody where women are kept as prisoners or otherwise and take up with the concerned authorities for remedial action, if found necessary; (**Inspection and supervision**)
  - l. fund litigation involving issues affecting a large body of women; m. make periodical reports to the Government on any matter pertaining to women and in particular various difficulties under which women toil; (**Fund Litigation**)
  - n. any other matter which may be referred to it by Central Government (**Miscellaneous functions**)
2. The Central Govt to place reports under section 10(1)(b) before the both houses of the Parliament along with memorandum explaining action taken or proposed to be taken on the recommendations and reason for non-acceptance (**Duty of the CG**)
3. The State Government to place reports in the state legislature in matters concerned with state in a similar manner – Parallel provision for the state government (**Duty of SG**)

## FUNCTIONS OF THE NATIONAL COMMISSION FOR WOMEN (NCW) – Sec. 10

- 4. The Commission shall, while investigating any matter referred to in clause (a) or sub-clause (i) of clause (f) of sub-section (1), have all the **powers of a civil court trying a suit** and, in particular in respect of the following matters, namely :-
  - a. summoning and enforcing the attendance of any person from any part of India and examining him on oath;
  - b. requiring the discovery and production of any document;
  - c. receiving evidence on affidavits;
  - d. requisitioning any public record or copy thereof from any court or office;
  - e. issuing commissions for the examination of witnesses and documents; and
  - f. any other matter which may be prescribed