

**(20MC1501)**

# **CONSTITUTION OF INDIA**

**III B.Tech / I Sem**

## UNIT

# 1

# INTRODUCTION TO INDIAN CONSTITUTION

Introduction to Indian Constitution: Constitutional history, constituent assembly, salient features of the constitution, significance of preamble, amending process of the constitution.

### Introduction:

A constitution is primarily a set of rules and principles specifying how a country should be governed, how power is distributed and controlled, and what rights citizens possess.

A constitution is a set of fundamental legal-political rules that :

- i. Are binding on everyone in the state, including ordinary, lawmaking institutions;
- ii. Concern the structure and operation of the institutions of government, political principles and the rights of citizens;
- iii. Are based on wide spread public legitimacy;
- iv. Are harder to change than ordinary laws (e.g. a two-thirds majority vote or a referendum is needed);
- v. As a minimum, meet the internationally recognized criteria for a democratic system in terms of representation and human rights

The Constitution of India was drafted by the **Constituent Assembly**.

- Constitution of India is the supreme law of India. It lays down the framework defining fundamental political principles, **establishing the structure**, procedures, powers and duties, of the government and spells out **the fundamental rights, directive principles and duties of citizens**.
- Passed by the Constituent Assembly on 26 November 1949, it came into effect on 26 January, The date 26 January was chosen to commemorate the declaration of independence of 1930 (Purna Swaraj).

## History of Constitution in India

- Before 1947, India was divided into two main entities - **The British India** which consisted of 11 provinces and **the Princely states** ruled by Indian princes under subsidiary alliance policy.
- The two entities merged together to form the Indian Union.

### The timeline History of Constitution of India:

- The timeline of History of Constitution of India is expressed here –

#### 1. Regulating Act of 1773

- The first step was taken by the British Parliament to control and regulate the affairs of the East India Company in India.
- It designated the Governor of Bengal (Fort William) as the Governor of General (of Bengal).
- Warren Hastings became the first governor- General of Bengal

#### 2. Pitt's India Act of 1784

- Distinguished between commercial and political functions of the company. Court of Directors for Commercial functions and Board of Control for political affairs.
- Governor's councils were established in Madras and Bombay.

#### 3. Charter Act of 1813

The Company's monopoly over Indian trade terminated; Trade with India open to all British subjects.

#### 4. Charter Act of 1833

**Laws made before Charter Act of 1833 were called Regulations and those made after are called Acts.**

- Governor-General (of Bengal) became as the Governor- General of India.
- First Governor-General of India was Lord William Bentick.

- This was the final step towards centralization in the British India. Beginning of a Central legislature for India as the act also took away legislative powers of Bombay and Madras provinces.

The act enabled the activities of the East India Company as a commercial body and purely administrative body.

#### **5. Charter Act of 1853:**

- The legislative and executive functions of the Governor-General's Council were separated.
- 6 members in central legislative council. **Four** out of six members were appointed by the provisional governments of Madras, Bombay, Bengal and Agra.
- It introduced a system of open competition as the basis for the recruitment of civil servants of the company (Indian Civil Service opened for all)

#### **6. Government of India Act of 1858:**

- The rule of a company was replaced by the secretary of state for India, assisted by the Council of India, having 15 members.
- The Governor-General was made the Viceroy of India. **Lord Canning** was the first Viceroy of India.

#### **7. Indian Councils Act of 1861**

- It introduced for the first time Indian representation in the institutions like Viceroy's executive + legislative council (non-official). 3 Indians entered Legislative council.
- Legislative councils were established in Center and provinces.

#### **8. India Council Act of 1892**

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

#### **9. Indian Councils Act of 1909**

- This Act is also known as the Morley- Minto Reforms.
- It changed the name of the Central Legislative Council to the Imperial Legislative Council.
- Indians for the first time in Viceroy's executive council. (Satyendra Prasad Sinha, as the law member)

## 10. Government of India Act of 1919

- This Act is also known as the Montague-Chelmsford Reforms.
- The Central subjects were demarcated and separated from those of the Provincial subjects

## 11. Government of India Act of 1935

The Act provided for the establishment of an All-India Federation consisting of the Provinces and the Princely States as units.

## 12. Indian Independence Act of 1947

- It declared India as an Independent and Sovereign State.
- Established responsible Governments at both the Centre and the Provinces.

## The Constituent Assembly of India

- The Constituent Assembly of India was a sovereign body, which was formed to draft a Constitution for India.
- An idea for a Constituent Assembly was proposed in 1934 by M. N. Roy.
- It became an official demand of the Indian National Congress (INC) in 1935 and was accepted by the British in August 1940.
- It held its first sitting on 9 December 1946 and reassembled as Constituent Assembly for divided India on 14 August 1947.
- Its members were chosen by indirect election by the members of the **Provincial Legislative Assemblies** that had been established under the Government of India Act, 1935.
- The Constituent Assembly was composed roughly along the lines suggested by the plan proposed by the committee of the British cabinet, known as the Cabinet Mission.

### The formation of the constituent assembly:

- The Constituent Assembly was formed on the recommendation of the Cabinet Mission which visited India in 1946.
- The total strength of the Constituent Assembly was to be 389. Of these, 296 seats were to be allotted to British India and 93 seats to the Princely States.
- Out of 296 seats allotted to the British India, 292 members were to be drawn from the 11 governors' provinces and 4 from the 4 chief commissioners' provinces.
- Each province and princely state were to be allotted seats in proportion to their respective population. Roughly, 1 seat was to be allotted for every million population.

- Seats allocated to each British province were to be decided among the three principal communities - Muslims, Sikhs and general, in proportion to their population
- The representatives of each community were to be elected by members of that community in the provincial legislative assembly.
- The representatives of princely states were to be nominated by the heads of the princely states.
- After formation of Pakistan the Muslim League members withdrew from the Constituent Assembly for India.
- Consequently, the total strength of the Assembly came down to 299 as against 389.
- The Constituent Assembly met for the first time in New Delhi on 9th December, 1946.
- Dr. Rajendra Prasad became the permanent chairman of the constituent assembly.
- On 13th December, 1946, Pandit Jawaharlal Nehru moved the Objectives Resolution which resolved to proclaim India as an Independent Sovereign Republic and to draw up for her future governance, a Constitution.
- The Constituent Assembly took two years, eleven months and eighteen days to complete its historic task of drafting the Constitution for Independent India.
- The Constituent Assembly held 11 sessions covering a total of 165 days.
- The honorable members appended their signatures to the constitution on 24th January, 1950. The Constitution of India came into force on 26th January, 1950.
- On that day, the Constituent Assembly ceased to exist, transforming itself into the Provisional Parliament of India until a new Parliament was constituted in 1952
- Framing the Constitution.
- Enacting laws and involved in the decision making process.
- It adopted the National flag on July 22, 1947.
- It accepted and approved India's membership of the British Commonwealth in May 1949.
- It elected Dr. Rajendra Prasad as the first President of India on January 24, 1950.
- It adopted the National anthem on January 24, 1950.
- It adopted the National song on January 24, 1950.

## **Committees of the Constituent Assembly**

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The Constituent Assembly appointed a total of 22 committees to deal with different tasks of constitution-making. Out of these, eight were major committees and the others were minor committees.

### **Major Committees**

1. Drafting Committee – B. R. Ambedkar
2. Union Power Committee – Jawaharlal Nehru
3. Union Constitution Committee – Jawaharlal Nehru
4. Provincial Constitution Committee – Vallabhbhai Patel
5. Advisory Committee on Fundamental Rights, Minorities and Tribal and Excluded Areas – Vallabhbhai Patel. This committee had the following subcommittees:
  1. Fundamental Rights Sub-Committee – J. B. Kripalani
  2. Minorities Sub-Committee – Harendra Coomar Mookerjee,
  3. North-East Frontier Tribal Areas and Assam Excluded & Partially Excluded Areas Sub-Committee – Gopinath Bordoloi
  4. Excluded and Partially Excluded Areas (Other than those in Assam) Sub-Committee – A V Thakkar
6. Rules of Procedure Committee – Rajendra Prasad
7. States Committee (Committee for Negotiating with States) – Sardar Vallabhbhai Patel
8. States Committee - Jawaharlal Nehru
9. Steering Committee – Rajendra Prasad
10. National Flag and HOC Committee – Rajendra Prasad
11. Committee for the function of the Constitution Assembly - G V Mavlankar
12. House Committee - B Pattabhi Sitaramayya
13. Language Committee - Moturi Satyanarayana
14. Order of Business Committee - K M Munshi

## **Salient Features of the Constitution**

### **1. Written, longest and Detailed Constitution:**

- Constitution can be classified into written constitution such as that of America or unwritten constitution such as that UK.
- The constitution of India is a written constitution which happens to be the longest written constitution in the world.
- It is comprehensive, elaborate and a detailed document

- The factors that have contributed to this phenomenon are: geographical factors (vastness of country and diversity), Historical factors (Influence of GoI, 1935), Single constitution for both centre and state and dominance of legal luminaries-

## **2. Drawn from various sources:**

- It has borrowed most of its provisions from the constitution of various other countries as well as from the Government of India act, 1935. Ex: structural part from GoI, 1935, independence of judiciary from USA, Fundamental Rights from USA etc
- Though it is borrowed, the Indian constitution-makers made sure the borrowed features were made suitable to Indian conditions. Ex: Though we borrowed cabinet form of governance from UK, the cabinet is not all-supreme as in the case of UK.

## **3. Preamble of the constitution:**

- The Preamble consists of the ideals, objectives and basic principles of the Constitution.
- The salient features of the Constitution have developed directly and indirectly from these objectives which flow from the Preamble
- It asserts India to be a Sovereign Socialist Secular Democratic Republic and a welfare state committed to secure justice, liberty and equality for the people and for promoting fraternity, dignity the individual, and unity and integrity of the nation.
- The Preamble is the nature of Indian state and the objectives it is committed to secure for the people.

## **4. Democratic system**

- The authority of the government rests upon the sovereignty of the people. The people enjoy equal political rights.
- Free fair and regular elections are held for electing governments

## **5. India is a republic**

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

## **6. Union of states**

Article I of the Constitution declares, that “India that is Bharat is a Union of States.”

## **7. Fundamental Rights and duties:**



- The Constitution of India grants and guarantees Fundamental Rights to its citizens.
- The constitution of India confirms the basic principle that every individual is permitted to enjoy certain basic rights and part III of the Constitution deals with those rights which are known as fundamental right.
- The Six FR include- Right to Equality; Right to Freedom; Right Against Exploitation; Right to Freedom of Religion; Cultural and Educational Rights and Right to Constitutional Remedies (Art. 32).
- The fundamental rights are justiciable and are not absolute. Reasonable constraints can be imposed keeping in view the security-requirements of the state.
- A new part IV (A) after the Directive Principles of State Policy was combined in the constitution by the 42nd Amendment, 1976 for fundamental duties.

### **8. Directive Principles of State Policy:**

- A unique aspect of the Constitution is that it comprises of a chapter in the Directive Principles of State Policy.
- These principles are in the nature of directives to the government to implement them to maintain social and economic democracy in the country.

### **9. Parliamentary System:**

- The Constituent Assembly decided to espouse Parliamentary form of government both for the Centre and the states.
- In Indian parliamentary system, distinction is made between nominal and real executive head.
- The Council of Ministers is responsible before the Lok Sabha, The lower house of union parliament. There are close relations between executive and legislature.

### **10. Federal structure of government:**

- A federal state is a state where a country is divided into smaller regions and the government is functioning at two levels
- The Indian Constitution has envisaged a federal structure for India considering the geographical vastness and the diversity of languages, region, religions, castes, etc.
- Written Constitution, supremacy of the Constitution, division of powers between Union and States, bicameral Legislature, independent Judiciary, etc. are the features of Indian federation.
- Scholars describe India as a ‘Quasi-Federation’ (K.C. Wheare) or as ‘a federation with a unitary bias, or even as ‘a Unitarian federation.’

### **11. Universal adult franchise**

- All men and women enjoy an equal right to vote. Each adult man and woman above the age of 18 years has the right to vote.
- All registered voters get the opportunity to vote in elections.

#### **12. Single integrated State with Single Citizenship:**

- India is the single Independent and Sovereign integrated state.
- All citizens enjoy a common uniform citizenship.
- They are entitled to equal rights and freedoms, and equal protection of the state.

#### **13. Integrated Judicial system:**

- The Constitution provides for a single integrated judicial system common for the Union and the states.
- The Supreme Court of India works at the apex level, High Courts at the state level and other courts work under the High Courts.

#### **14. Independent Judiciary:**

- It is necessary to secure the philosophical foundations of the rule of law and democracy
- Firstly, the Constitution makers created a separate Judiciary independent of Legislature and Executive.
- Secondly, the Constitution has ensured complete independence of Judiciary in the matters of administration and finances.

#### **15. Amending the Constitution of India:**

- Amending the Constitution of India is the procedure of making modifications to the nation's fundamental law or supreme law.
- The procedure of amendment in the constitution is laid down in Part XX (Article 368) of the Constitution of India.
- This procedure guarantees the sanctity of the Constitution of India and keeps a check on uninformed power of the Parliament of India.

#### **16. Judicial Review:**

- The judiciary has significant position in Indian Constitution and it is also made independent of the legislature and the executive.
- The Supreme Court of India stands at the peak of single integrated judicial system
- It operates as defender of fundamental rights of Indian citizens and guardian of the Constitution.

#### **17. Basic Structure doctrine:**

- The basic structure doctrine is an Indian judicial norm that the Constitution of India has certain basic features that cannot be changed or destroyed through amendments by the parliament.

- The basic features of the Constitution have not been openly defined by the Judiciary.
- At least, 20 features have been described as “basic” or “essential” by the Courts in numerous cases, and have been incorporated in the basic structure.
- In Indira Gandhi v. Raj Narayan case and also in the Minerva Mills case, it was witnessed that the claim of any particular feature of the Constitution to be a “basic” feature would be determined by the Court in each case that comes before it.

#### **18. Secularism:**

- In no other country of the world so many religions co-exist as in India. In view of such diversity the Constitution guarantees complete freedom of religion to all.
- The citizens of our country are free to follow any religion and they enjoy equal rights without any distinction of caste, creed, religion or sex.
- The State does not discriminate against anyone on the ground of his religion, nor can the State compel anybody to pay taxes for the support of any particular religion.
- Everybody is equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion.
- The Constitution regards religion as a private affair of individuals and prohibits the State from interfering with it. The Constitution also grants various cultural rights to minorities.

#### **19. Independent bodies:**

- Constitution has setup various independent bodies and vested them with powers to ensure the constitutional provisions. Ex: Election Commission, CAG, Finance Commission
- These institutions have been provided with security of tenure, fixed service conditions etc to ensure that they are not susceptible to the whims of either the legislature or the executive.

#### **20. Emergency provisions**

Indian constitution contains elaborate provisions to deal with those challenges that pose a threat to the country’s security and unity.

#### **21. Three-tier government**

- Through 73rd and 74th amendment act, we have rural and urban local bodies as an additional constitutional tier of the government structure.
- This section fulfills the dream of Gandhi ji to see self-functioning villages in India

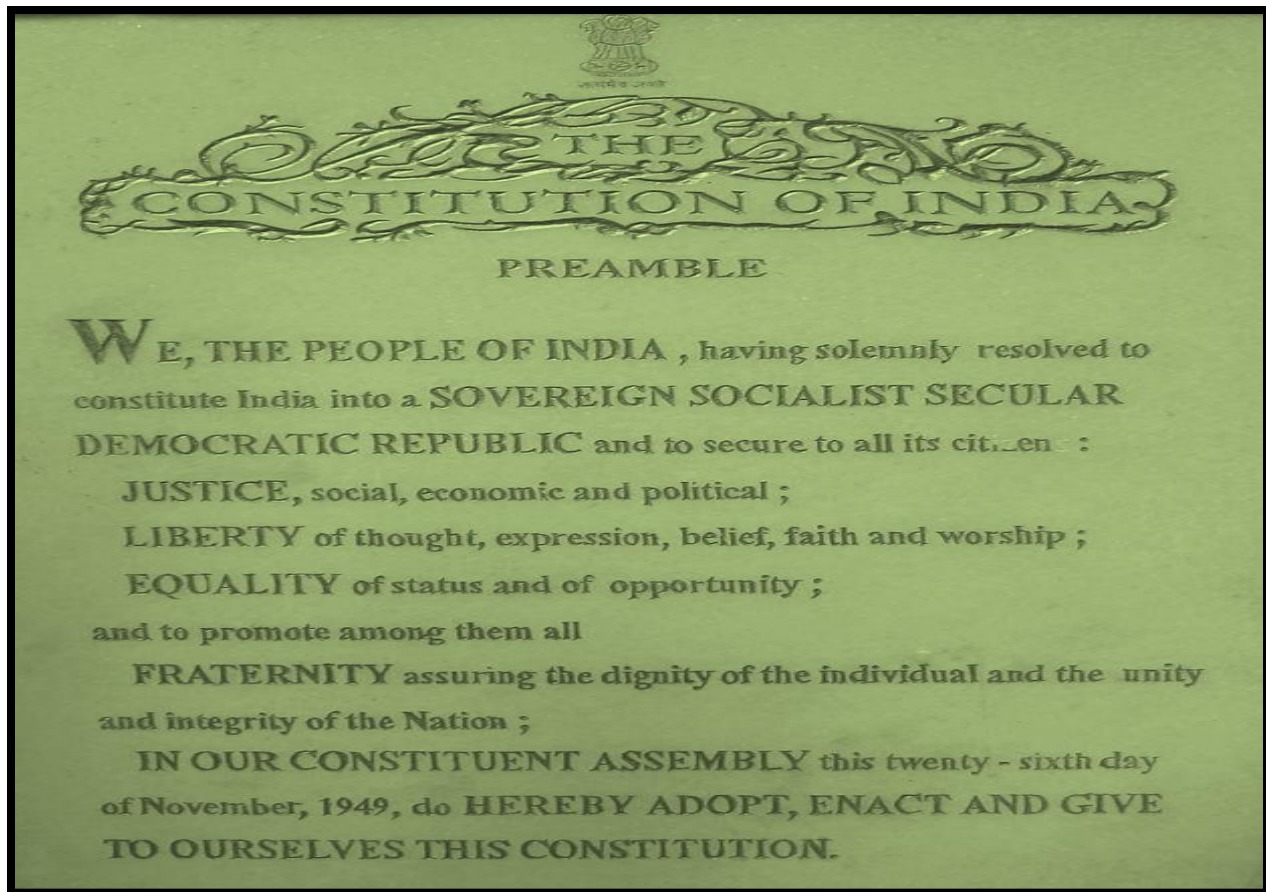
# Significance of preamble to the Indian Constitution

## Meaning of Preamble:

1. The document's philosophy and objectives.
2. In a Constitution, it presents the intention of its framers, the history behind its creation, and the core values and principles of the nation.
3. The preamble basically gives idea of the following:
  - a. Source of the Constitution
  - b. Nature of Nation's State
  - c. Statement of its objectives
  - d. Date of its adoption

## Components of Preamble:

- 1. It is indicated by the Preamble that the source of authority of the Constitution lies with the people of India.
- 2. Preamble declares India to be a sovereign, socialist, secular and democratic republic.
- 3. The objectives stated by the Preamble are to secure justice, liberty, equality to all citizens and promote fraternity to maintain unity and integrity of the nation.
- 4. The date is mentioned in the preamble when it was adopted i.e. November 26, 1949



### Key words in the Preamble:

- **1. We, the people of India:** It indicates the ultimate sovereignty of the people of India. Sovereignty means the independent authority of the State, not being subject to the control of any other State or external power.
- **2. Sovereign:** The term means that India has its own independent authority and it is not a dominion of any other external power. In the country, the legislature has the power to make laws which are subject to certain limitations.
- **3. Socialist:** The term means the achievement of socialist ends through democratic means. It holds faith in a mixed economy where both private and public sectors co-exist side by side. It was added in the Preamble by 42nd Amendment, 1976.
- **4. Secular:** The term means that all the religions in India get equal respect, protection and support from the state. It was incorporated in the Preamble by 42nd Constitutional Amendment, 1976.
- **5. Democratic:** The term implies that the Constitution of India has an established form of Constitution which gets its authority from the will of the people expressed in an election.

- **6. Republic:** The term indicates that the head of the state is elected by the people. In India, the President of India is the elected head of the state.
  - **Justice:** The term 'justice' in the Preamble embraces three distinct forms– social, economic and political
  - **Liberty:** The term 'liberty' means the absence of restraints on the activities of individuals, and at the same time, providing opportunities for the development of individual personalities.
  - **Equality:** The term 'equality' means the absence of special privileges to any section of the society, and the provision of adequate opportunities for all individuals without any discrimination.
  - **Fraternity:** Fraternity means a sense of brotherhood. The Constitution promotes this feeling of fraternity by the system of single citizenship.

### Significance of the Preamble:

- The Preamble of Indian Constitution reflects the basic structure and the spirit of the Constitution.
- The Preamble acts as the preface of the constitution of India and lays down the fundamental value and philosophical ideas. It represents the entire Constitution in its written words.
- It contains the basic features of the Constitution and thus considered to be a vital part.
- The Preamble doesn't contain laws enforceable in a court but no law can be enacted or amended in a manner that violates the spirit of the Preamble.

## Amendment of Constitution

### Meaning of Amendment:

- The Process of Constitutional Amendment allows our lawmaker to bring new provisions to the Constitution.
- The process is very similar to passing a bill in Lok Sabha or Rajya Sabha, but with few differences. Let's find out how constitutional Amendment can be brought and what the actual process is.
  - What is Amendment?
  - The Process of CA

- Types of CA
- Article 368 deals with the amendment procedure of the constitution.
- In order to incorporate changes in accordance with the changing lives and lifestyles of the people.
- The amendment bill will be introduced in parliament either Rajyasabha or Lokshaba
- There is no scope for introducing the bill in state legislature.
- Minister or private member (other than ministers but members of L or R) can also introduce the amendment bill
- There is no need of prior permission from president to introduce.

### **What is Amendment?**

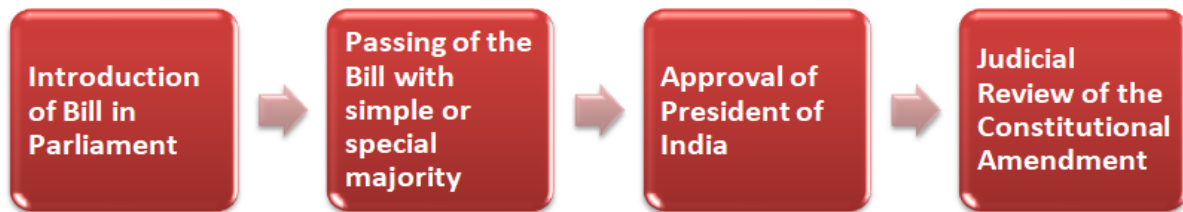
- The Amendment means to add something new or to repeal something which already exists. So when we talk about Amendment of the Constitution, it means we are talking about adding some new provisions to the structure or removing a rule which is not suitable anymore.
- In India, the Constitution is the supreme law, and no other law or provisions are above it.
- Its year 2022 and most of the laws present on our Constitution are still relevant. It shows that our constitution maker was visionary. The constitution-makers tried hard to make a law that stays rigid for a very long period.

### **Provisions in the Constitution:**

- The Part 20th of the Constitution is wholly dedicated to the Amendment. It talks about the process and the Types of Constitutional Amendment in details. Part 20 comprises of only one article, i.e. Article 368.
- This article is one of the fundamental features of the Indian Constitution. Which means the government cannot amend any provision of article 368 under any circumstances.
- Even if the government tries to change Article 368, this step can be challenged in the Supreme Court or through judicial review.

### **The Process of Amendment:**

The Process of constitutional Amendment consists of various stages. It is very similar to the process of passing an ordinary bill, but it has some differences.



### **Types of constitutional Amendment:**

- There are mainly three types of constitutional Amendment, but article 368 mentions only two of those. Let us see all three one by one and how one is different from the other two
  - 1. **Amendment with a simple majority**
  - 2. **Amendment did by the special majority**
  - 3. **Amendment with special majority and approval of the state.**

#### **1. Amendment with a simple majority:**

- Amending any part with a simple majority is out of the context of article 368. Provisions which can be changed by the simple majority in the house are a bit less relevant to the fundamental structure of constitution and federal structure of India.
  - Formation of new states
  - Changing the name and geographical boundaries of existing states
  - Formation of legislative councils in a state
  - The second schedule of Constitution – The benefits and allowance given to the President, Vice President, Governors, Lok Sabha speaker, etc.
  - Salaries and allowance of Members of Parliament
  - General Procedure of Parliament
  - The Parliamentary committee and its privilege
  - Number of judges of Supreme Court



- Adding and removing new Union territories
- Election of the Parliament and states assemblies
- Sixth schedule – Administration in tribal areas

## **2. Amendment did by the special majority:**

Special majority means, a majority of two-thirds votes of the total members. It is challenging to achieve in the house. The government alone cannot make two-third numbers; that's why they seek support from all the major parties of the Parliament. Most of the articles of Constitution requires the special majority to be amended, Provisions which requires a special majority are as follows.

- The Fundamental rights are given to citizens
- Directive principles of state policy
- And all the articles which are not related to 1st and 3rd type.

## **3. Amendment with special majority and approval of the state:**

- Special majority with approval of states is even harder to achieve. Because the ruling party of the state government may be different from the union government. And they don't need to agree upon the changes made by the central government.
- Again special majority means a two-third majority of both the houses plus approval from 50% states legislative assemblies.

**List of change that can be made from special majority and approval of states are as follows.**

- The federal structure of India
- Election Procedure of President of India
- High Court and Supreme Court
- Division of power between central and state government
- Any subject related to the seventh schedule
- Representation of states in the Parliament
- Authority of Parliament to amend the Constitution, i.e. Article

## **Some Major Constitutional Amendments:**

- Till now more the 100 amendments have been done. Here are some of the essential changes.
- 13th CA – Formed Nagaland state.
- 22nd CA – Formed Meghalaya state.
- 36th, CA – Formed a new state called Sikkim.
- **42nd Constitutional Amendment** – Brought extensive changes in the Constitution and also called a mini Constitution.
- 53rd CA – Formed a new state Mizoram
- 54th CA – Formation of new state Arunachal Pradesh
- 56th CA – Formed a new state Goa
- 61st CA – Age of participating in election is decreased from 21 to 18
- 73rd and 74th – Panchayati raj act and Municipality Act
- 86th CA – Free and compulsory education for the children under age of 6 to 14.

Questions:

S. NO.	QUESTIONS
1	Illustrate the salient features of our constitution.
2	Discuss about the working committee of our constituent assembly
3	Briefly explain the contents in the preamble of Indian Constitution
4	Elaborate the Indian constitutional history
5	Elucidate the amending process of the Indian Constitution.
6	Explain in detail the procedure to introduce the amendments in our constitution

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## UNIT-2

## RIGHTS AND DUTIES

Rights and Duties: Citizenship, fundamental rights and directive principles, Fundamental duties.

### Citizenship Part-II (Articles 5 to 11)

- **Like any other modern state, India has two kinds of people:**
- **Citizen:** He is a permanent resident of a state and enjoys certain political rights and civil rights.
- **Alien:** Alien is a temporary resident who comes for a specific duration of time for any assignment (Citizen of another country), they do not have political rights. Aliens are 2 types (friendly or enemy)
- Friendly Aliens are the subject of those countries that have cordial relations with India
- Enemy Aliens, on the other hand, are the subject of the countries that are at war with India. They enjoy lesser rights than the friendly aliens. Ex: they do not enjoy protection against arrest and detention.
- India → Single Citizenship → No state Citizenship

**Citizenship: It is the status of being a citizen.**

- If you have citizenship in a country, you have the right to live there, work, vote and pay taxes and the duties and responsibilities that it brings.
  - If you have a citizenship of country you are legally accepted as belonging to that country
  - The constitution confers the following rights and privileges on the citizens of the India. (and denies the same to aliens)
1. Right against discrimination on grounds of religion, race, caste, gender or place of birth. (Article 15)
  2. Right to equality of Opportunity in the matter of Public employment. (Article 16)
  3. Right to freedom of speech and expression, assembly, association, movement, residence and profession (Article 19)
  4. Cultural and educational Rights (Article 29 & 30)
  5. Right to Vote in elections to the Lok Sabha and State Legislative Assembly (SLA)

6. Right to Contest For the membership of Parliament and State Legislative Assembly (SLA)

7. Eligibility to hold certain public offices, that is, President of India, Vice-President of India, Judges of the supreme court and High Court, Governor of States, Attorney General of India and Advocate General of States

- Along with the above rights, the citizens also **Owe Certain Duties** towards the Indian State, as for example, paying taxes, respecting the National Flag and National Anthem, defending the country and so on..
- In India both citizen by Birth as well as a naturalized citizen are eligible for the office of President while in USA, only citizen by birth and not a naturalized citizen is eligible for the office of the president.

## CONSTITUTIONAL PROVISIONS

- The constitution deals with the citizenship from Article 5 to 11 under Part II
- However, **it contains neither any permanent nor any elaborate provisions** in this regard.
- It only identifies the persons who became citizens of India at its commencement ( 26-01-1950)
- It does not deal with the **problem of acquisition or loss of citizenship** subsequent to its commencement
- It **empowers the parliament** to enact a law to provide for such matters and other matter relating to citizenship
- Accordingly, the parliament has enacted Citizenship Act 1955, which has been amended for time to time

According to the constitution following **Four Categories** of Persons became the citizens of India at its commencement.

**1. (Article-5)** A person who had his **domicile** in India and also fulfilled any one of the three conditions viz.,

- If he was **born in India**, or
- If either of his **parents was born in India** or
- If he has been ordinarily **resident in India for 5 years** immediately before the commencement of Constitution , became a **citizen of India**

**2. (Article-6)** A person who **migrated 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 fulfilled any **one of the two conditions** viz.
- In case he migrated to **India before July 19, 1948**, he had been ordinary resident in India since the date of his migration, or
- In case he migrated to India on or before July 19, 1948, he had been registered as a citizen of India.
- But, a person could be so registered only if he had been resident in India for Six months preceding the date of his application for registration.

**3. (Article-7)** a person who **migrated to Pakistan** from India after March 1, 1947, but later returned to India for resettlement could become an Indian Citizen.

- For this, he had to be resident in India for six months preceding the date of his application for registration.

**4. (Article-8)** A person who or any of whose parents or grandparents, was born in undivided India, but who is ordinarily residing outside India shall become an Indian Citizen if he has been registered as a citizen of India by the diplomatic or consular representative of India in the country of his residence, whether before or after the commencement of the constitution.

- Thus, this provision covers the overseas Indians who may want to acquire Indian Citizenship
- Continue...
- To sum up, these provisions deals with the citizenship of
  - a) Persons domiciled in India
  - b) Persons migrated from Pakistan
  - c) Persons migrated to Pakistan but later returned, and
  - d) persons of Indian origins residing outside India

The other constitutional provisions with respect to the citizenship are as follows:

- 1. (Article 9) No person shall be a citizen of India or deemed to be a citizen of India, if he has voluntarily acquired the citizenship of any foreign state.
- 2. (Article 10) Every person who is or is deemed to be a citizen of India shall continue to be such citizen, subject to the provisions of any law made by parliament

- 3. (Article 11) Parliament shall have the power to make any provision with respect to the acquisition and termination of citizenship and all other matters relating to citizenship.

### **Citizenship Act 1955**

- The Citizenship Act 1955 provides for **acquisition and loss of citizenship** after the commencement of the constitution.
- Originally, the Citizenship Act also provided for the Common **Wealth Citizenship**.
- But, this provision was repealed by the **Citizenship(amendment) Act, 2003**

### **Acquisition of Citizenship**

The Act prescribes five ways of acquisition of citizenship.

- Birth
- Descent
- Registration
- Naturalization and
- Incorporation of territory

#### **1. By Birth**

- **A Person born in India** on or after **January 26, 1950** but before **July 1, 1987** is citizen of India by birth irrespective of the nationality of his parents.
- A person born in India on or after July 1, 1987 is considered as a citizen of India **only if either or his parents is a citizen of India at the time of his birth.**
- Further, those born in India on or after December 3, 2004 are considered citizens of India **only if both of their parents** are citizens of India or one of whose parents is a citizen of India and the other is **not an illegal migrant** at the time of their birth.
- The **children of foreign diplomats posted in India and enemy aliens** cannot acquire Indian citizenship by birth.

#### **2. By Descent**

- A person **born outside India** on or after 26 January 1950 but before December 10, 1992 is a citizen of India by descent, **if his father was citizen of India at the time of his birth.**

- A person **born outside India** on or after **December 10, 1992** is considered as a citizen of India if **either of his parents is a citizen of India** at the time of his birth.
- **December 3, 2004** onwards, a person **born outside India** shall **not be a citizen of India** by descent, unless his birth is registered at an Indian consulate within one year of the date of birth or with **the permission of the central Government**, after the expiry of the said period.

### **3. By Registration**

The **central Government** may on an application, registered as a citizen of India any person (**not being an illegal migrant**) if he belongs to any of the following categories, namely:

- a) **a person of Indian origin** who is ordinarily resident in India for 7 years before making an application for registration,
- b) a person of Indian origin who is ordinarily resident in **any country or place outside undivided India**,
- c) a person who **married to a citizen of India** and is **ordinarily resident in India for seven years** before making an application for registration,
- d) **minor children of persons** who are citizen of India
- e) a person of **full age and capacity** whose parents are registered as citizens of India,
- f) A person of full **age and capacity** who, or **either of his parents**, was **earlier citizens of independent India**, and is ordinarily resident in India for **12 months** immediately before making an application for registration,
- g) A person of full age and capacity who has been registered as an **overseas citizen of India cardholder for five years**, and who is ordinarily resident in India for **twelve months before making an application** for registration.

A person shall be deemed **to be of Indian origin** if he, or **either of his parents**, was **born in undivided India or in such other territory** which became part of India after the August 15, 1947.

All the above categories of persons must take an oath of allegiance before they are registered as citizens of India.

### **4. By Naturalization**

The central government may, on an application, **grant a certificate of naturalisation** to any person (not being an illegal migrant) if he possesses the following qualifications:

- a) that he is **not a subject or citizen of any country** where citizen of India are **prevented from being subjects or citizens** of that country by naturalisation.

b) that, if he is a citizen of any country, **he undertakes to renounce the citizenship of that country** in the event of his application for Indian citizenship being accepted,

c) that he has either **resided in India** or been in the service of a government of India or partly the one and partly the other, throughout the period of **12 months immediately** preceding the date of application.

d) that during the **14 years** immediately preceding the said period of 12 months, he has either resided in India or been in the service of a government of India, or partly the one and the partly the other, for periods amounting in the aggregate to not less than **eleven years**.

e) that he is of **good character**.

f) That he has an adequate knowledge of a language specified in the **English Schedule to the Constitution**, and

g) That in the event of a certificate of naturalisation being granted to him, he intends to reside in India, or to enter into or continue in, service under a government in India or under an international organisation of which India is a member or under a society, company or body of persons established in India.

However, the government of India may waive all or any of the above conditions for naturalisation in the case of a person who has rendered distinguished service to the **science, philosophy, art, literature, world peace or human progress**.

Every naturalised citizen must take an **oath of allegiance to the constitution of India**

### **5. By Incorporation of Territory**

- If any foreign country becomes **the part of India**, the government of India specifies the persons who among the people of the territory shall be citizen of India.
- Such persons become the citizen of India from the **notified date**.
- For example, when Pondicherry became a part of India, the government of India issued a citizenship (Pondicherry) order (1962), under the citizenship Act (1955),

### **Loss of Citizenship**

The Citizenship Act (1955) prescribes three ways of losing citizenship whether acquired under the Act or prior to it under the constitution, Viz.,

- Renunciation
- Termination and
- Deprivation



### 1. By Renunciation

- Any citizen of India of full age and capacity can make a declaration renouncing his citizenship.
- Upon the **registration of that declaration**, that person ceases to be a citizen of India
- However, if such a **declaration is made during a war** in which India is engaged, its registration shall be **withheld by Central Government**.
- Further, when a person renounces his Indian citizenship, every **minor child of that person also loses** Indian citizenship.
- However, when such a child attains the **age of 18 Years**, he may resume Indian citizenship.

### 2. By Termination

- When an Indian Citizen voluntarily (consciously, knowingly and without duress, undue influence or compulsion) **acquires the citizenship of another country**, his Indian citizenship **automatically terminates**.
- This provision, however, **does not apply during a war** in which India is engaged.

### 3. By Deprivation

- It is a compulsory termination of Indian Citizenship by the central government, if:
  - a) The citizen has obtained the **citizenship by fraud**
  - b) The citizen has shown disloyalty to the **Constitution of India**
  - c) The citizen has **unlawfully traded or communicated with the enemy during the war**,
  - d) The citizen has **within five years** after registration or naturalisation, been **imprisoned in any country for two years**, and
  - e) The citizen has been ordinarily resident **out of India for seven years** continuously.

This will not apply if

- He is a **student abroad**, or
- Is in the **service of a government in India** or
- An **international organisation** of which India is a member, or
- Has **registered annually at an Indian consulate** his intention to retain his Indian Citizenship.

## **Citizenship Amendment Act- 2019**

- Recently, the Parliament passed the Citizenship (Amendment) Bill 2019 which received the President's assent to become an Act.
- The Citizenship (Amendment) Act, 2019 seeks **to amend the Citizenship Act, 1955**.
- The Citizenship Act, 1955 provides various ways in which citizenship may be acquired. It provides for citizenship by birth, descent, registration, naturalization and by incorporation of the territory into India.

- **Key Provisions of the Amendment Act**

- The Bill amends the Act to provide that the Hindus, Sikhs, Buddhists, Jains, Parsis and Christians from Afghanistan, Bangladesh and Pakistan, who entered India on or before December 31, 2014, will not be treated as illegal migrants.
- In order to get this benefit, they must have also been exempted from the Foreigners Act, 1946 and the Passport (Entry into India) Act, 1920 by the central government.
- The 1920 Act mandates foreigners to carry passport, while the 1946 Act regulates the entry and departure of foreigners in India.
- Citizenship by registration or naturalization: The Act allows a person to apply for citizenship by registration or naturalization if the person meets certain qualifications.
- For instance, if a person resides in India for a year and if one of his parents is a former Indian citizen, he may apply for citizenship by registration.
- To obtain citizenship by naturalization, one of the qualifications is that the person must have resided in India or have been in the service of the central government for at least 11 years before applying for citizenship.
- The Bill creates an exception for Hindus, Sikhs, Buddhists, Jains, Parsis and Christians from Afghanistan, Bangladesh and Pakistan, with regard to this qualification. For these groups of persons, the 11 years' requirement will be reduced to five years.
- **On acquiring citizenship:**

(i) Such persons will be deemed to be citizens of India from the date of their entry into India, and

(ii) All legal proceedings against them in respect of their illegal migration or citizenship will be closed.

## **Fundamental Rights of Indian Constitution**

There are six fundamental rights of Indian Constitution which are mentioned below :

- Right to Equality (Art. 14 to 18)
- Right to freedom (Art. 19 to 22)
- Right against exploitation (Art. 23 and 24)
- Right to freedom of a religion (Art. 25 to 28)
- Right to cultural and educational rights (Art. 29 to 30)
- Right to constitutional remedies (Art. 32)

### **1. Right to Equality**

- Right to Equality consist the following rights

√ Equality before law – equal protection of laws

√ Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth – equal access to shops, hotels, wells, tanks, bathing ghats, roads etc.

√ Equality of opportunity in public employment

√ Abolition of Untouchability

√ Abolition of titles

**Article 14: Right to Equality :** The State (the State'' includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India. ) shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

- Article 14 represents the idea of equality, which states that the state shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. The equality before the law is guaranteed to all without regard to race, colour, or nationality.
- 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 17: Abolition of Untouchability
- Article 18: Abolition of titles (No citizen of India shall accept any title from any foreign State)
-

## **2. Right to freedom**

- **Right to Freedom includes the following rights**

- √ Protection of Right to

- freedom of speech and expression;
    - assemble peacefully;
    - form associations/unions;
    - move freely throughout the territory of India;
    - reside and settle in any part of India;
    - practice any profession, or to carry on any occupation, trade or business.

- √ Protection in respect of conviction for offences

- √ Right to life and personal liberty

- √ Right to education

- √ Protection against arrest and detention in certain cases

- Article 19: Certain rights to citizens of India
- Article 20: Protection in respect of conviction for offences
- Article 21: Protection of life and personal liberty
- Article 21A: Right to education (added by 86<sup>th</sup> amendment in the year 2002)
- Article 22: Protection against arrest and detention in certain cases

## **3. Right against exploitation**

- Article 23: Prohibition of traffic in human beings and forced labour.
- Article 24: Prohibition of employment of children in factories, etc.

## **4. Right to Freedom of Religion**

- **Article 25:** Freedom of conscience and free profession, practice and propagation of religion.
- **Article 26:** Freedom to manage religious affairs.
- **Article 27:** Freedom as to payment of taxes for promotion of any particular religion:

- **Article 28:** Freedom as to attendance at religious instruction or religious worship in certain educational institutions.

## 5. Cultural and Educational Rights

√ Protection of language, culture of minorities

√ Right of minorities to establish educational institutions

- **Article 29:** Protection of interests of minorities.
- **Article 30:** Right of minorities to establish and administer educational institutions.

## 6. Right to Constitutional Remedies

- √ Right to move the courts to issue directions/orders/writs for enforcement of rights
- **Article 32:** Remedies for enforcement of rights conferred by this Part.
- The government cannot infringe upon or curb anyone's rights.
- When these rights are violated, the aggrieved party can approach the court

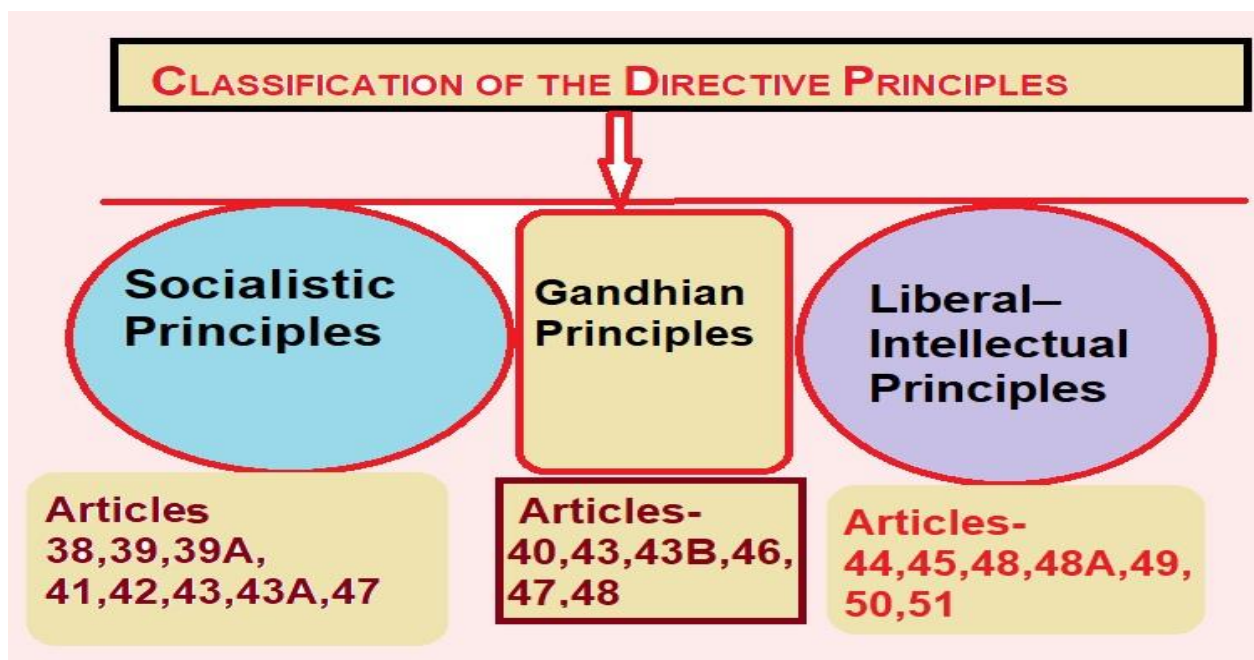
## Importance of Fundamental Rights

- Fundamental rights are very important because they form the backbone of the country. They are essential for safeguarding the people's interests.
- According to Article 13, all laws, ordinances, orders, regulations, notifications, etc; that are violative of fundamental rights shall be void.
- The Supreme Court and the High Courts can declare any law unconstitutional on the grounds that it is violative of the fundamental rights.

## Directive Principles of State Policy

- The *Directive Principles of State Policy* are guidelines for the framing of laws by the government.
- These provisions, set out in Part IV of the Constitution, are not enforceable by the courts, but the principles on which they are based are fundamental guidelines for governance that the State is expected to apply in framing policies and passing laws.
- DPSP are ideals which are meant to be kept in mind by the state when it formulates policies and enacts laws. There are various definitions to Directive Principles of State which are given below:

- They are an ‘instrument of instructions’ which are enumerated in the Government of India Act, 1935.
- They seek to establish economic and social democracy in the country.
- DPSPs are ideals which are not legally enforceable by the courts for their violation.
- DPSPs are ideals which aimed to establish welfare State.
- DPSP concept inspired by the makers from Ireland Constitution.
- Directive Principles of State Policy – Classification
- Indian Constitution has not originally classified DPSPs but on the basis of their content and direction, they are usually classified into three types-
  - **Socialistic Principles,**
  - **Gandhian Principles and,**
  - **Liberal-Intellectual Principles.**



## **Socialistic Principles:**

**Definition:** They are the principles that aim at providing social and economic justice and set the path towards the welfare state.

Under various articles, they direct the state to:

**Article 38:** Promote the welfare of the people by securing a social order through justice—social, economic and political—and to minimize inequalities in income, status, facilities opportunities

**Article 39** Secure citizens:

- Right to adequate means of livelihood for all citizens.
- Equitable distribution of material resources of the community for the common good.
- Prevention of concentration of wealth and means of production.
- Equal pay for equal work for men and women.
- Preservation of the health and strength of workers and children against forcible abuse.
- Opportunities for the healthy development of children.

**Article 39A:** Promote equal justice and free legal aid to the poor

**Article 41:** In cases of unemployment, old age, sickness and disablement, secure citizens:

- Right to work
- Right to education
- Right to public assistance

**Article 42:** Make provision for just and humane conditions of work and maternity relief

**Article 43:** Secure a living wage, a decent standard of living and social and cultural opportunities for all workers

**Article 43A:** Take steps to secure the participation of workers in the management of industries

**Article 47:** Raise the level of nutrition and the standard of living of people and to improve public health

## **Gandhian Principles:**

**Definition:** These principles are based on Gandhian ideology used to represent the program of reconstruction enunciated by Gandhi during the national movement.

**Under various articles, they direct the state to:**

- ✓ **Article 40:** Organize village panchayats and endow them with necessary powers and authority to enable them to function as units of self-government
- ✓ **Article 43:** Promote cottage industries on an individual or co-operation basis in rural areas
- ✓ **Article 43B:** Promote voluntary formation, autonomous functioning, democratic control and professional management of co-operative societies
- ✓ **Article 46:** Promote the educational and economic interests of SCs, STs, and other weaker sections of the society and to protect them from social injustice and exploitation
- ✓ **Article 47:** Prohibit the consumption of intoxicating drinks and drugs which are injurious to health
- ✓ **Article 48:** Prohibit the slaughter of cows, calves and other milch(Domestic mammals) and draught cattle and to improve their breeds

## **Liberal-Intellectual Principles:**

**Definition:** These principles reflect the ideology of liberalism.

Under various articles, they direct the state to:

- **Article 44 :** Secure for all citizens a uniform civil code throughout the country
- **Article 45 :**Provide early childhood care and education for all children until they complete the age of six years
- **Article 48:** Organize agriculture and animal husbandry on modern and scientific lines
- **Article 49:** Protect monuments, places and objects of artistic or historic interest which are declared to be of national importance
- **Article 50:** Separate the judiciary from the executive in the public services of the State
- **Article 51**
  - Promote international peace and security and maintain just and honorable relations between nations
  - Foster respect for international law and treaty obligations
  - Encourage settlement of international disputes by arbitration



**42nd Amendment Act, 1976 added four  
New Directive Principles in the list**

<b>S. No</b>	<b>Article</b>	<b>New DPSPs</b>
1	<b>Article 39</b>	To secure opportunities for the healthy development of children
2	<b>Article 39A</b>	To promote equal justice and to provide free legal aid to the poor
3	<b>Article 43A</b>	To take steps to secure the participation of workers in the management of industries
4	<b>Article 48A</b>	To protect and improve the environment and to safeguard forests and wildlife

**Fundamental Duties**

- The *Fundamental Duties* are defined as the moral obligations of all citizens to help promote a spirit of patriotism and to uphold the unity of India.
- The necessities of fundamental duties were felt during the internal emergency of 1975-77.
- These duties, set out in Part IV–A of the Constitution, concern individuals and the nation. Like the Directive Principles, they are not enforceable by courts unless otherwise made enforceable by a parliamentary law.
- The Fundamental Duties of citizens were added to the Constitution by the 42nd Amendment in 1976, upon the recommendations of the Swaran Singh Committee that was constituted by the government earlier that year.
- Originally ten in number, the Fundamental Duties were increased to eleven by the 86th Amendment in 2002, which added a duty on every parent or guardian to ensure that their child or ward was provided opportunities for education between the ages of six and fourteen years.

S. No	11 Fundamental Duties
1.	Abide by the Indian Constitution and respect its ideals and institutions, the National Flag and the National Anthem
2.	Cherish and follow the noble ideals that inspired the national struggle for freedom
3.	Uphold and protect the sovereignty, unity, and integrity of India
4.	Defend the country and render national service when called upon to do so
5.	Promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic, and regional or sectional diversities and renounce practices derogatory to the dignity of women
6.	Value and preserve the rich heritage of the country's composite culture
7.	Protect and improve the natural environment including forests, lakes, rivers, and wildlife, and to have compassion for living creatures
8.	Develop scientific temper, humanism, and the spirit of inquiry and reform
9.	Safeguard public property and abjure violence
10.	Strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavor and achievement
11.	Provide opportunities for education to his child or ward between the age of six and fourteen years. <b>This duty was added by the 86<sup>th</sup> Constitutional Amendment Act, 2002</b>

S. NO	QUESTIONS
1	Explain in detail the fundamental rights of an Indian citizen
2	Enumerate the Fundamental Duties incorporated in the Constitution after the 42nd Amendment.
3	Write a note on Citizenship Act 1955
4	Discuss the Directive principles of State policy
5	State the importance of Directive Principles of State Policy? Mention which Directive Principles of State Policy have got primacy over the Fundamental Rights
6	Classify the Directive Principles of State Policy
7	Enumerate in detail about Gandhian and Liberal-Intellectual Principles

# UNIT-3 Union Government

Union Government: President and vice president, election, removal and powers, prime minister and council of ministers, parliament, supreme court, union, state relations, emergency provisions.

## Introduction

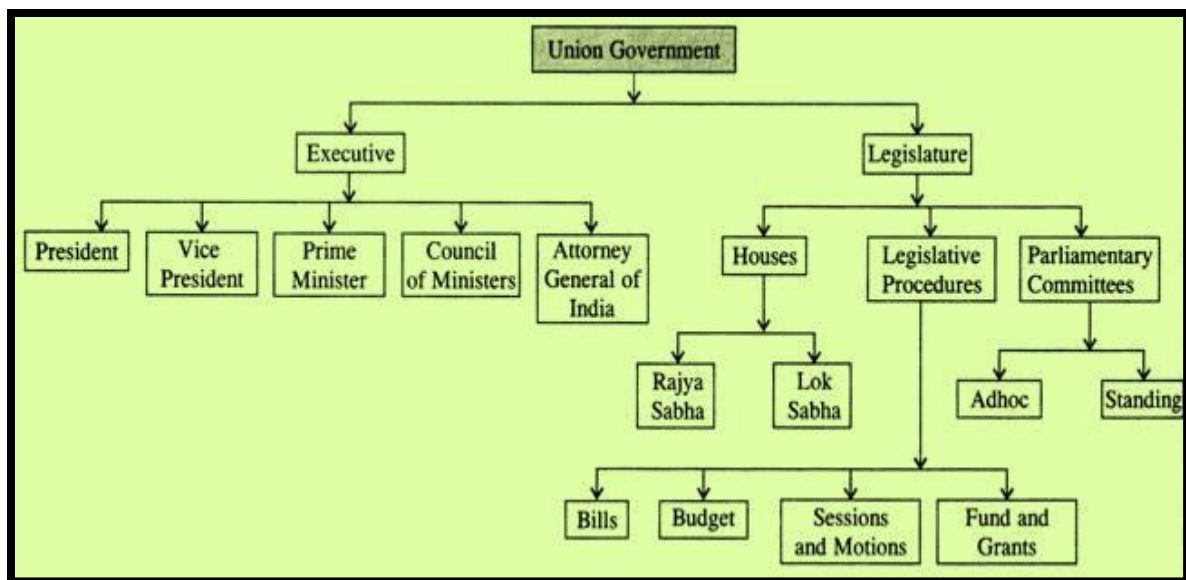
The Government of India or the Central or the Union Government is divided into three main sections, namely the executive, Legislature and the judiciary.

### The union Government

**PART V (ARTICLES 52 TO 151)** deals with the Executive, Parliament (Legislature), Union Judiciary and the comptroller and Auditor General of India.

**Union Executive:** Articles 52 to 78 (Part V).

Union Executive in India consists, of the President, Vice-President, Prime minister and his/her Council of ministers and the Attorney General of India.



## I. UNION EXECUTIVE

### The President

- The Indian President is the head of the state and he is also called the first citizen of India.
- He is a part of Union Executive, provisions of which are dealt with Article 52-78 including articles related to President (Article 52-62).
- The Indian President is the head of the state. He is the first citizen of India and is a symbol of solidarity, unity, and integrity of the nation. **He is a part of Union Executive along with**

**the Vice-President, Prime Minister, Council of Ministers, and Attorney-General of India.**

**How is President elected?**

- There is no direct election for the Indian President. An electoral college elects him. The electoral college responsible for President's elections comprises **elected members of:**
- Lok Sabha and Rajya Sabha
- Legislative Assemblies of the states (Legislative Councils have no role)
- Legislative Assemblies of the Union Territories of Delhi and Puducherry

**Note:**

- The value of the vote of an MLA is given below:

$$\begin{array}{l} \text{Value of the vote of an MLA} \\ = \frac{\text{Total population of state}}{\text{Total number of elected members in the state legislative assembly}} \times \frac{1}{1000} \end{array}$$

- The value of the vote of an MP is given below:

$$\begin{array}{l} \text{Value of the vote of an MP} = \\ \frac{\text{Total value of votes of all MLAs of all states}}{\text{Total number of elected members of Parliament}} \end{array}$$

**Who does not take part in the President's elections?**

- The following group of people is not involved in electing the President of India:
- Nominated Members of Lok Sabha (2) and Rajya Sabha (12)
- Nominated Members of State Legislative Assemblies
- Members of Legislative Councils (Both elected and nominated) in bicameral legislatures
- Nominated Members of union territories of Delhi and Puducherry

### **President's office**

- What is the term of the President's office?
- Once President is elected, he holds office for five years. He sits in the office even after the completion of five years given no new election has taken place or no new President has been elected till then. He can also be re-elected and there is no cap on his re-election.

### **Conditions of the President's office**

- **There are a few conditions for the candidate running for the President's elections:**
- He cannot be a member of Lok Sabha and Rajya Sabha. If he has been a member of either of the house, he should vacate the seat on his first day as President in the office
- He should not hold any office of profit
- For his residence, Rashtrapati Bhavan is provided to him without the payment of rent
- Parliament decides his emoluments, allowances and privileges
- Parliament cannot diminish his emoluments and allowances during his term of office
- He is given immunity from any criminal proceedings, even in respect of his personal acts
- Arrest or imprisonment of the President cannot take place. Only civil proceedings can be initiated for his personal acts that too after giving two months' of prior notice.

### **Qualifications of the President**

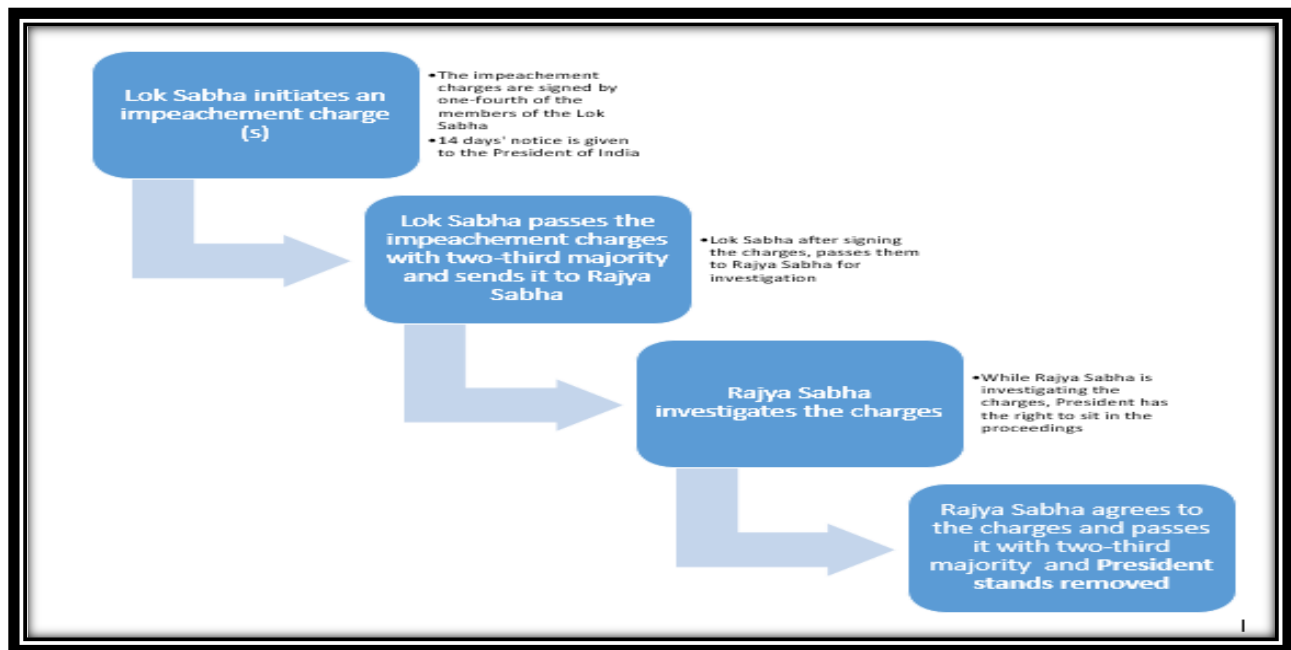
- A candidate has to meet some qualifications to be elected as the president. Those qualifications of the President are:
- He should be an Indian Citizen
- His age should be a minimum of 35 years
- He should qualify the conditions to be elected as a member of the Lok Sabha
- He should not hold any office of profit under the central government, state government, or any public authority

### **Procedure for impeachment of a President**

- The only condition for the initiation of impeachment of the Indian president is the '**violation of the constitution.**'
- **14** days of prior notice is required for the impeachment of the President of India

- **Note:** Indian Constitution contains no definition of ‘violation of the constitution.’

The impeachment process of President is given below. (We have taken Lok Sabha as the first house to initiate the impeachment charges, however, Rajya Sabha too can initiate the impeachment charges against President and in that case, it will pass the resolution and send the charges to Lok Sabha which will investigate and pass it if it finds those charges valid.)



### Vacant of President's office

- **Can the President's office be vacant?**
- Yes, his office can be vacant in the following ways:
- When the President of India completes his term of five years in the office
- If the President resigns by putting forward his resignation to the Vice-President of India
- If Lok Sabha/Rajya Sabha initiates an impeachment charge and they stand valid, he is removed
- If he dies in the office
- If the Supreme Court declares his election invalid
-

### Privileges of the President (Article 361)

(a) He is not answerable to any court for the exercise of powers and duties of his office. However during, investigations to the charges of impeachment, conduct of the President may be reviewed by any court, tribunal or body appointed by either house of Parliament.

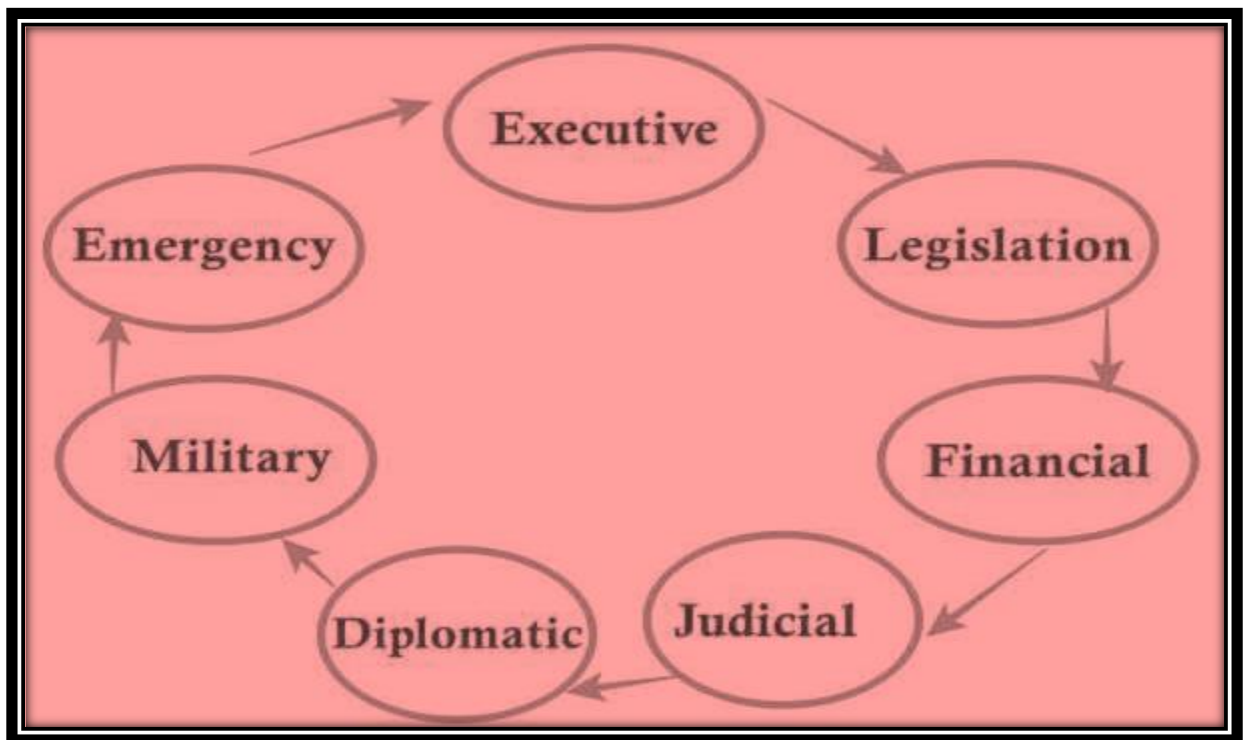
(b) During his term of office, no criminal proceedings, no process for arrest or imprisonment can be undertaken.

(c) No civil proceeding until:-

(a) A notice in writing has been given to the President 2 months in advance.

(b) The notice states the nature of proceeding, cause of action, name, residence and description of the party taking the proceedings and the relief claimed.

### Powers and functions of the President of India



#### 1. Executive Powers of President

1. For every executive action that the Indian government takes, is to be taken in his name
2. He may/may not make rules to simplify the transaction of business of the central government
3. He appoints the attorney general of India and determines his remuneration
4. He appoints the following people:

- Comptroller and Auditor General of India (CAG)
  - Chief Election Commissioner and other Election Commissioners
  - Chairman and members of the Union Public Service Commission
  - State Governors
  - Finance Commission of India chairman and members
5. He seeks administrative information from the Union government
  6. He requires PM to submit, for 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
  7. He appoints National Commissions of:
    - Scheduled Castes
    - Scheduled Tribes
    - Other Backward Classes
  8. He appoints inter-state council
  9. He appoints administrators of union territories
  10. He can declare any area as a scheduled area and has powers with respect to the administration of scheduled areas and tribal areas

## **2. Legislative Powers of President**

1. He summons or prorogues Parliament and dissolve the Lok Sabha
2. He summons a joint sitting of Lok Sabha and Rajya Sabha in case of deadlock
3. He addresses the Indian Parliament at the commencement of the first session after every general election
4. He appoints speaker, deputy speaker of Lok Sabha, and chairman/deputy chairman of Rajya Sabha when the seats fall vacant.
5. He nominates 12 members of the Rajya Sabha
6. He can nominate two members to the Lok Sabha from the Anglo-Indian Community
7. He consults the Election Commission of India on questions of disqualifications of MPs.
8. He recommends/ permits the introduction of certain types of bills



9. He promulgates ordinances
10. He lays the following reports before the Parliament:
  - Comptroller and Auditor General
  - Union Public Service Commission
  - Finance Commission, etc.

### **3. Financial Powers of President**

- To introduce the money bill, his prior recommendation is a must
- He causes Union Budget to be laid before the Parliament
- To make a demand for grants, his recommendation is a pre-requisite
- Contingency Fund of India is under his control
- He constitutes the Finance Commission every five years

### **4. Judicial Powers of President**

- Appointment of Chief Justice and Supreme Court/High Court Judges are on him
- He takes advice from the Supreme Court, however, the advice is not binding on him
- He has **pardoning power**: Under article 72, he has been conferred with power to grant pardon against punishment for an offense against union law, punishment by a martial court, or death sentence

### **5. Diplomatic Powers of President**

- International Treaties and agreements that are approved by the Parliament are negotiated and concluded in his name
- He is the representative of India in international forums and affairs

### **6. Military Powers of President**

- He is the commander of the defense forces of India.

#### **He appoints:**

- Chief of the Army
- Chief of the Navy

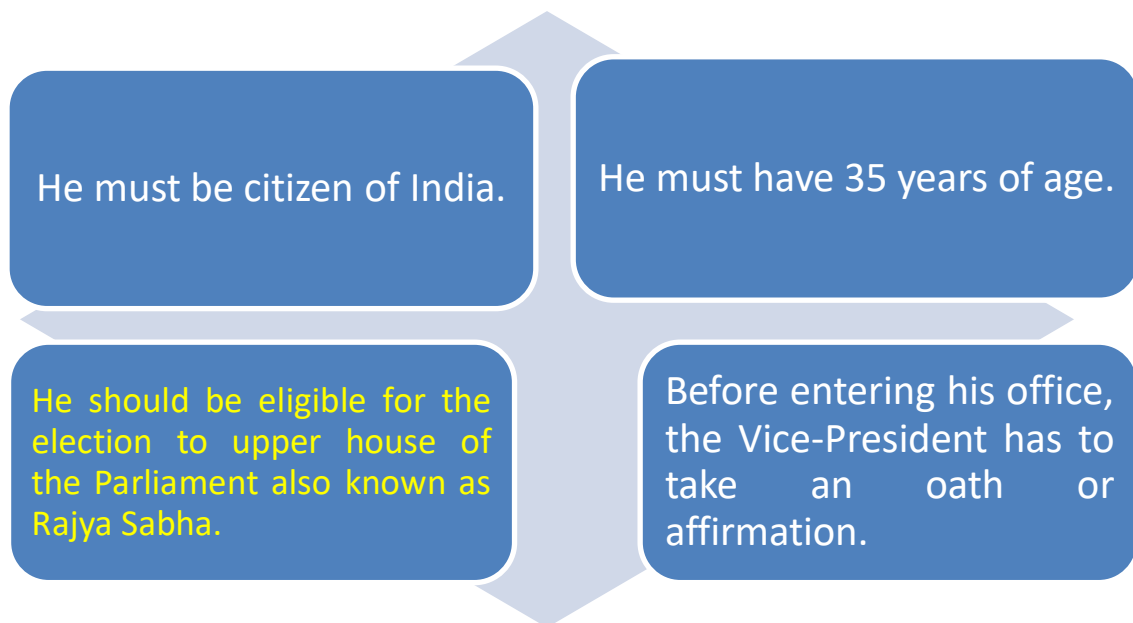
- Chief of the Air Force

## 7. Emergency Powers of President

- He deals with three types of emergencies given in the Indian Constitution:
- National Emergency (Article 352)
- President's Rule (Article 356 & 365)
- Financial Emergency (Article 360)

## VICE-PRESIDENT

- The post of Vice-President of India is modeled on the lines of American Vice-President.
- In India, Vice-President has the second-highest office in the country.
- **Article 63** of the Indian Constitution mentions the post of Vice-President.



### Election of Vice-President

- There is no direct election for the Vice-President of India however, he/she is indirectly elected by an Electoral College.

- The election process is quite similar to that of the President of India but the electoral college that elects President is different from the electoral college responsible for the election of Vice-President of India.
- The difference between the electoral college that elects President and the one electing Vice-President of India is given below:
- In electoral college for Vice President, both elected and nominated members of both the Houses of Parliament take part. In presidential elections, nominated members are not a part of the electoral college.
- For Vice President's elections, states have no role to play unlike in President's elections where state legislative assemblies' elected members are a part of the electoral college.
- An electoral college comprising below-given categories of people elect the Vice President. The mode of election hence is termed as 'indirect election'.
- The principle of election used is Proportional Representation by means of Single Transferrable Vote.
- Elected members of both Lok Sabha and Rajya Sabha.
- Nominated members of both Lok Sabha and Rajya Sabha.

### **Office of Vice-President**

- From the date, he enters his office, Vice President holds the position for **five** years. However, he can resign before five years by handing over his resignation to the President.
- The other ways where a vacancy is created in the office of Vice President are given below:
- When he completes his term of five years
- When he resigns
- When he is removed
- On his death
- When his election is declared void

## **Powers and Functions of Vice-President**

### **Ex-officio Chairman of Rajya Sabha:**

- In this capacity, his powers and functions are similar to those of the Speaker of Lok Sabha.
- In this respect, it is similar to the American vice-president, who also acts as the Chairman of the Senate (the Upper House of the American legislature).
- While acting as President or discharging the functions of the President, the Vice-President does not perform the duties of the office of the chairman of Rajya Sabha.
- During this period, those duties are performed by the Deputy Chairman of Rajya Sabha.

### **Acts as President in case of Vacancy:**

- Vice-President acts as President when a vacancy occurs in the office of the President due to his-
  - Resignation,
  - Removal,
  - Death or otherwise.

### **Maximum period for which Vice-President can act as President:**

- He can act as President only for a maximum period of six months, within which a new President has to be elected.

### **Discharges Functions of President:**

When the sitting President is unable to discharge his functions due to absence, illness or any other cause, the Vice-President discharges his functions until the President resumes his office.

### **Removal of Vice-President**

In case of removal of Vice President, a formal impeachment is not required like President.

Vice President can be removed from his office by a resolution passed only in Rajya Sabha and agreed upon by Lok Sabha.

A 14 days' notice should be served to Vice President of India, prior to passing the resolution in Rajya Sabha.

### Prime Minister and Council of Ministers

- Article 75 of the Indian Constitution mentions that a Prime Minister is one who is appointed by the President.
- There is no specific procedure for his election or appointment.
- Article 74(1) states that there shall be a Council of Ministers with a Prime Minister at the head to aid and advise the President. Thus, the Indian Constitution itself recognizes a Council of Ministers.

#### Prime Minister and Council of Ministers

- President of India appoints a person as the Prime Minister who is either the leader of the party which holds a majority of seats in the Lok Sabha or is a person who is able to win the confidence of the Lok Sabha by gaining the support of other political parties.
- All other ministers are appointed by the President on the advice of the Prime Minister.
- **Note:** President can also appoint Prime Minister on his own discretion but only when no party has a clear majority in the Lok Sabha.

#### Power and Function of the Prime Minister

- Prime Minister of India serves the country by following various functions. He performs his functions taking responsibilities as:
- **The leader of Country:** The Prime Minister of India is the Head of the Government of India.
- **Portfolio allocation:** The Prime Minister has the authority to assign portfolios to the Ministers.

- **Chairman of the Cabinet:** The Prime Minister is the chairman of the cabinet and presides the meetings of the Cabinet. He can impose his decision if there is a crucial opinion difference among the members.
- **Official Representative of the country:** Prime minister represents the country for high-level international meetings
- **The link between the President and the Cabinet:** The Prime Minister acts as the link between President and cabinet. He communicates all decisions of the Cabinet to the President which is related to the administration of the affairs of the Union and proposals for legislation.
- **Head:** The Prime Minister is the head of      Nuclear Command Authority, NITI Aayog, Appointments Committee of the Cabinet,      Department of Atomic Energy, Department of Space and Ministry of Personnel, Public Grievances and Pensions.
- **Chief Advisor:** He acts as the chief advisor to the President

### **Qualifications of the Prime Minister**

- To become an Indian prime minister one has to be
- A citizen of India.
- A member of either Rajya Sabha or Lok Sabha
- He should have completed his 30 years if he is a member of the Rajya Sabha or can be 25 years of age if he is a member of the Lok Sabha

### **Position of the Prime Minister**

- Right from the days of the first Prime Minister Pandit Jawaharlal Nehru, the Prime Minister is treated at a much higher pedestal. His preeminence rests on his commanding position in the Cabinet, coupled with fact that he is the leader of the majority party.
- All these positions of power when combined in one person make him rank much above an ordinary Minister.
- The death or resignation of the Prime Minister automatically brings about the dissolution of the Council of Ministers.
- It generates a vacuum.
- The demise, resignation or dismissal of a Minister creates only a vacancy which the Prime Minister may or may not like to fill.

- The Government cannot function without a Prime Minister but the absence of a Minister can be easily compensated.

### **Relationship between the Prime Minister and the President of India**

- There are a few articles in the Indian Constitution that deal with the relationship both Prime Minister and the President share with each other. The articles are:

Article 74

Article 75

Article 78

- **Relationship between the Prime Minister and the President of India**
- **Articles 74**
- Mentions how the Prime Minister and President are both connected with the council of ministers. The Council with PM as head advise President on various issues.
- **Articles 75**
- **Mentions three things:**
- President appoints PM and other ministers are appointed by the President on the advice of the PM.
- Ministers hold their office during the pleasure of the President.
- Council of Ministers is collectively responsible to the Lok Sabha.
- **Articles 78**
- PM communicates all decisions made by the council of members to the President. President can also refer issues for the consideration of the council of members.

### **Union Council of Ministers**

- Two articles – Article 74 and Article 75 of the Indian Constitution deal with the Council of Ministers.
- Where article 74 mentions that the council will be headed by the Prime Minister of India and will aid and advise the President.
- **Article 75 mentions the following things:**
- They are appointed by the President on the advice of Prime Minister
- They along with the Prime Minister of India form 15% of the total strength of the lower house i.e. Lok Sabha. (The number cannot exceed 15%)

- 91<sup>st</sup> Amendment Act provided for the disqualification of the minister when he stands disqualified as a member of Parliament.
- A Minister ceased to exist as one if he is not a member of either house of Parliament for six consecutive months.
- Parliament decides the salary and allowances of the council of ministers.

### **Powers**

The Council of Ministers formulates and implements the policy of the country. It introduces most of the important bills and resolutions in the Parliament and steers them through.

It prepares and presents the budget to the Parliament for its approval; and generally it is passed in the form in which it is presented.

The foreign policy of the Government is determined by the Council of Ministers. It plays a vital role in recognition of new states and advises the President with regard to appointments of diplomats.

### **Collective Responsibility**

Council of Ministers are collectively responsible to the Lok Sabha [Article 75(3)]. The ministry resigns if it loses the confidence of the Lok Sabha.

Vote of no confidence passed against any minister leads to the resignation of the entire Council of Ministers.

They work as a team and swim and sink together.

### **Individual Responsibility**

The principle embodied in Article 75(2) is that of individual responsibility. It says that the minister shall hold office during the pleasure of the President.

Hence a minister can be dismissed even if the ministry has the confidence of legislature.

### **Legal Responsibility**

The system of legal responsibility of a minister is not prescribed in the Indian Constitution. The Indian Constitution does not say the President can act only through Minister, it is left to the President to make rules as to how his orders are to be authenticated. Further the courts are barred from inquiring into the nature of advice rendered by the ministers. As such, if the President's act is authenticated by a secretary to the government of India no minister can be hold legally responsible for it even though he may have advised it.



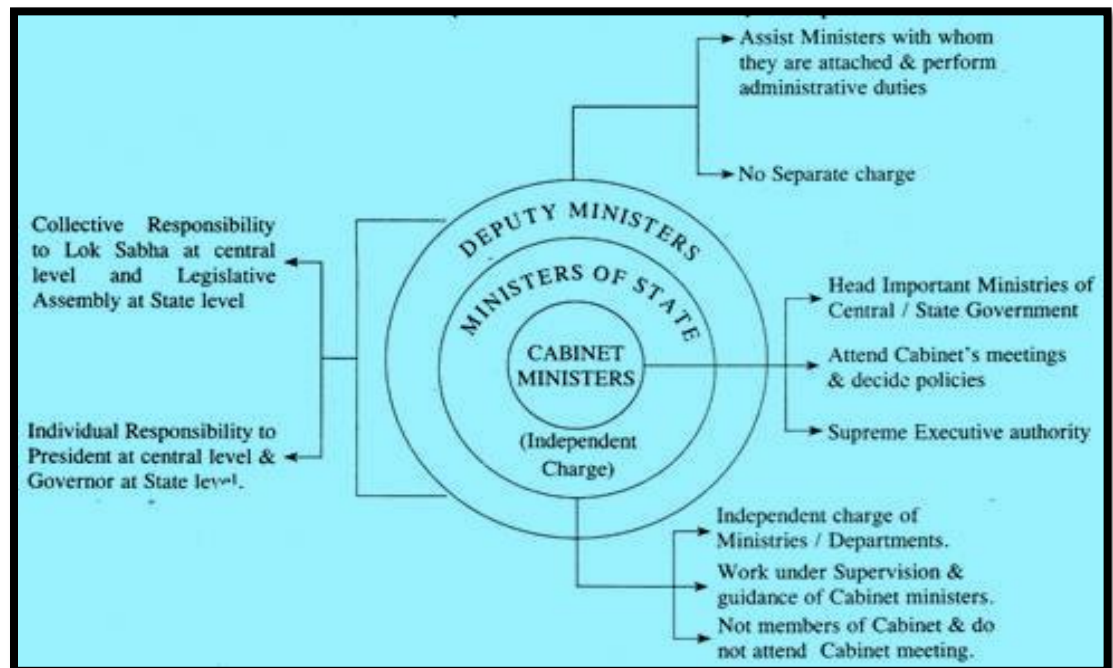
## Composition of Council of Ministers

There are 3 categories of Ministers:

1. Cabinet ministers
2. Minister of state
3. Deputy Ministers

**Cabinet ministers** head ministries in the Government. They are members of the Cabinet, attend its meetings and decide policies.

- **Ministers of state** can have an independent charge or can be attached to cabinet ministers. They are not members of the cabinet nor do they attend its meetings unless invited.
- **Deputy Ministers** have no separate charges. They assist the ministers with whom they are attached and perform administrative duties.
- There are also parliamentary secretaries with no department under their control. They assist senior ministers in discharging parliamentary duties. Since 1967, no parliamentary secretaries have been appointed.
- **Cabinet is an extra-constitutional body based upon conventions. It is the supreme policy making body.**
- Kitchen cabinet is an extra-constitutional body consisting of the Prime Minister and a few influential colleagues in whom he has faith and with whom he can discuss issues. It may include outsiders.



Council of Ministers (As Centre and State level): Composition

## Attorney General of India

**Attorney General is the highest legal officer of the Union Government and renders legal assistance to it. He is appointed by the President** and holds office during his pleasure. To be eligible for appointment as Attorney General of India, a person must possess the qualifications prescribed for a judge of the Supreme Court. He is entitled to such salary and allowances as may be determined by the President. The Attorney General is entitled to **audience in all courts** in the country and **can take part in the proceedings of the Parliament** and its committees. However, **he is not given the right to vote.**

### Functions

He is the chief legal adviser of the Government of India and gives it advice on all such legal matters which may be referred or assigned to him by the President. He also performs such other legal duties as are assigned to him by the President from time to time. The Attorney General appears before the Supreme Court and various High Courts in cases involving the Government of India.

## II. UNION LEGISLATURE

### The Parliament

The Parliament is the **Union Legislature of India**. It consists of the President and two houses the Lok Sabha (house of people) and Rajya Sabha (council of states). Article 79 to 123 in Part-V deals with the provisions of the Parliament.

### Functions of Parliament

The functions of the Parliament are mentioned in the Indian Constitution in Chapter II of Part V. The functions of the Parliament can be classified under several heads. They are discussed below:

#### 1. Legislative Functions:

- The Parliament legislates on all matters mentioned in the Union List and the Concurrent List.
- In the case of the Concurrent List, where the state legislatures and the Parliament have joint jurisdiction, the union law will prevail over the states unless the state law had received the earlier presidential assent. However, the Parliament can any time, enact a law adding to, amending, varying or repealing a law made by a state legislature.
- The Parliament can also pass laws on items in the **State List** under the following circumstances:
  - If Emergency is in operation, or any state is placed under President's Rule (Article 356), the Parliament can enact laws on items in the State List as well.
  - As per **Article 249**, the Parliament can make laws on items in the State List if the Rajya Sabha passes a resolution by  $\frac{2}{3}$  majority of its members present and voting, that it is necessary for the Parliament to make laws on any item enumerated in the State List, in the national interest.
  - As per **Article 253**, it can pass laws on the State List items if it is required for the implementation of international agreements or treaties with foreign powers.

- According to **Article 252**, if the legislatures of two or more states pass a resolution to the effect that it is desirable to have a parliamentary law on any item listed in the State List, the Parliament can make laws for those states.

## 2. Executive Functions (Control over the Executive)

In the parliamentary form of government, the executive is responsible to the legislature. Hence, the Parliament exercises control over the executive by several measures.

- By a **vote of no-confidence**, the Parliament can remove the Cabinet (executive) out of power. It can reject a budget proposal or any other bill brought by the Cabinet. A motion of no-confidence is passed to remove a government from office.
- The MPs (Members of Parliament) can ask questions to the ministers on their omissions and commissions. Any lapses on the part of the government can be exposed in the Parliament.
- **Adjournment Motion:** Allowed only in the Lok Sabha, the chief objective of the adjournment motion is to draw the attention of the Parliament to any recent issue of urgent public interest. It is considered an extraordinary tool in Parliament as the normal business is affected.
- The Parliament appoints a **Committee on Ministerial Assurances** that sees whether the promises made by the ministers to the Parliament are fulfilled or not.
- **Censure Motion:** A censure motion is moved by the opposition party members in the House to strongly disapprove any policy of the government. It can be moved only in the Lok Sabha. Immediately after a censure motion is passed, the government has to seek the confidence of the House. Unlike in the case of the no-confidence motion, the Council of Ministers need not resign if the censure motion is passed.
- **Cut Motion:** A cut motion is used to oppose any demand in the financial bill brought by the government.

## 3. Financial Functions

Parliament is the ultimate authority when it comes to finances. The Executive cannot spend a single pie without parliamentary approval.

- The Union Budget prepared by the Cabinet is submitted for approval by the Parliament. All proposals to impose taxes should also be approved by the Parliament.
- There are two standing committees (Public Accounts Committee and Estimates Committee) of the Parliament to keep a check on how the executive spends the money granted to it by the legislature. You can also read on parliamentary committees.

### Amending Powers

The Parliament has the power to amend the Constitution of India. Both Houses of the Parliament have equal powers as far as amending the Constitution is concerned. Amendments will have to be passed in both the Lok Sabha and the Rajya Sabha for them to be effective.

## 4. Electoral Functions

The Parliament takes part in the election of the President and the Vice President. The electoral college that elects the President comprises of, among others, the elected members of both Houses. The President can be removed by a resolution passed by the Rajya Sabha agreed to by the Lok Sabha.

## 5. Judicial Functions

In case of breach of privilege by members of the House, the Parliament has punitive powers to punish them. A breach of privilege is when there is an infringement of any of the privileges enjoyed by the MPs.

- A privilege motion is moved by a member when he feels that a minister or any member has committed a breach of privilege of the House or one or more of its members by withholding facts of a case or by giving wrong or distorted facts. Read more on privilege motion.
- In the parliamentary system, legislative privileges are immune to judicial control.
- The power of the Parliament to punish its members is also generally not subject to judicial review.
- Other judicial functions of the Parliament include the power to impeach the President, the Vice President, the judges of the Supreme Court, High Courts, Auditor-General, etc.

## 6. Other powers/functions of the Parliament

- Issues of national and international importance are discussed in the Parliament. The opposition plays an important role in this regard and ensures that the country is aware of alternate viewpoints.
- A Parliament is sometimes talked of as a 'nation in miniature'.
- In a democracy, the Parliament plays the vital function of deliberating matters of importance before laws or resolutions are passed.
- The Parliament has the power to alter, decrease or increase the boundaries of states/UTs.
- The Parliament also functions as an organ of information. The ministers are bound to provide information in the Houses when demanded by the members.

## Supreme Court of India

- The **Supreme Court of India** is the **highest judicial court** and the **final court of appeal** under the Constitution of India, the **highest constitutional court**, with the power of **judicial review**.
- India is a federal State and has a **single and unified judicial system** with **three tier structure**, i.e. Supreme Court, High Courts and Subordinate Courts.

## Brief History of the Supreme Court of India

- The promulgation of **Regulating Act of 1773** established the **Supreme Court of Judicature at Calcutta** as a **Court of Record, with full power & authority**.
- **It was established** to hear and determine all complaints for any crimes and also to entertain, hear and determine any suits or actions in **Bengal, Bihar and Orissa**.
- The **Supreme Courts at Madras and Bombay** were established by **King George – III** in **1800 and 1823 respectively**.

- The **India High Courts Act 1861** created High Courts for various provinces and **abolished Supreme Courts at Calcutta, Madras and Bombay** and also the **Sadar Adalats in Presidency towns**.
- These High Courts had the distinction of being the highest Courts for all cases till the creation of **Federal Court of India** under the **Government of India Act 1935**.
- The **Federal Court** had jurisdiction to solve disputes between provinces and federal states and hear appeal against Judgements from High Courts.
- After India attained independence in 1947, the Constitution of India came into being on **26 January 1950**. The **Supreme Court of India** also came into existence and its first sitting was held on 28 January 1950.
- The law declared by the Supreme Court is **binding on all Courts** within the territory of India.
- It has the power of **judicial review** – to strike down the legislative and executive action contrary to the provisions and the scheme of the constitution, the distribution of power between Union and States or inimical to the fundamental rights guaranteed by the Constitution.

### **Constitutional Provisions**

- The Indian constitution provides for a provision of Supreme Court under **Part V (The Union)** and **Chapter 6 (The Union Judiciary)**.
- **Articles 124 to 147 in Part V** of the Constitution deal with the organisation, independence, jurisdiction, powers and procedures of the Supreme Court.
- The Indian constitution under **Article 124(1)** states that there shall be a Supreme Court of India constituting of a Chief Justice of India (CJI) and, until Parliament by law prescribes a larger number, of not more than seven other Judges.
- The Jurisdiction of the Supreme Court of India can broadly be categorised into **original jurisdiction, appellate jurisdiction and advisory jurisdiction**. However, there are other multiple powers of the Supreme Court.

### **Organization of Supreme Court**

- At present, the Supreme Court consists of thirty-one judges (one chief justice and thirty other judges).
  - **Supreme Court (Number of Judges) Bill of 2019** has added four judges to strength. It increased the judicial strength from 31 to 34, including the CJI.
- Originally, the strength of the Supreme Court was fixed at eight (one chief justice and seven other judges).
- The Parliament is authorized to regulate them.

### **Seat of Supreme Court**

- The **Constitution declares Delhi as the seat of the Supreme Court**. It also authorizes the **CJI** to appoint other place or places as seat of the Supreme Court.

- He can take decision in this regard only with the approval of the President. **This provision is only optional and not compulsory.** This means that no court can give any direction either to the President or to the Chief Justice to appoint any other place as the seat of the Supreme Court.

### **Appointment of Judges**

- The **judges of the Supreme Court** are appointed by the **President**. The CJI is appointed by the President after **consultation with such judges of the Supreme Court** and high courts as he deems necessary.
- The other judges are appointed by the President after **consultation** with the CJI and such other judges of the Supreme Court and the high courts as he deems necessary. The consultation with the chief justice is **obligatory** in the case of appointment of a judge other than Chief justice.
- **Appointment of Chief Justice From 1950 to 1973:** The practice has been to appoint the senior most judge of the Supreme Court as the chief justice of India. This established convention was violated in 1973 when **A N Ray** was appointed as the **Chief Justice of India by superseding three senior judges**. Again in 1977, M U Beg was appointed as the chief justice of India by superseding the then senior-most judge.
  - This discretion of the government was curtailed by the Supreme Court in the **Second Judges Case (1993)**, in which the Supreme Court ruled that **the senior most judge of the Supreme Court should alone be appointed to the office of the Chief Justice of India**.

### **Controversy over Consultation and Evolution of Collegium system**

- The Supreme Court has given different interpretations of the word ‘consultation’ in the above mentioned provisions.
  - In the **First Judges case (1982)**, the Court held that consultation does not mean concurrence and it only implies exchange of views.
  - In the **Second Judges case (1993)**, the Court reversed its earlier ruling and changed the meaning of the word consultation to **concurrence**.
  - In the **Third Judges case (1998)**, the Court opined that the consultation process to be adopted by the **Chief Justice of India** requires ‘**consultation of plurality judges**’.
    - The sole opinion of the CJI does not constitute the consultation process. He should consult a **collegium of four senior most judges of the Supreme Court** and even if two judges give an adverse opinion, he should not send the recommendation to the government.
    - The court held that **the recommendation made by the chief justice of India** without complying with the norms and requirements of the consultation process are not binding on the government.

### **Collegium System**

- Collegium system was born through “**three judges case**” and it is in practice since 1998. It is used for appointments and transfers of judges in High courts and Supreme Courts.

- There is no mention of the Collegium either in the original Constitution of India or in successive amendments

### **Working of Collegiums System and NJAC**

- The collegium recommends of the names of lawyers or judges to the Central Government. Similarly, the Central Government also sends some of its proposed names to the Collegium.
- Collegium considers the names or suggestions made by the Central Government and resends the file to the government for final approval.
  - If the **Collegium resends** the same name again then the government has to give its assent to the names. But **time limit is not fixed** to reply. This is the reason that appointment of judges takes a long time.
- Through the **99<sup>th</sup> Constitutional Amendment Act, 2014 the National Judicial Commission Act (NJAC)** was established to replace the collegium system for the appointment of judges.
- However, the Supreme Court **upheld the collegium system and struck down the NJAC as unconstitutional** on the grounds that the involvement of **Political Executive** in judicial appointment was **against the “Principles of Basic Structure”**. I.e. the **“Independence of Judiciary”**.

### **Qualifications of Judges**

- A person to be appointed as a judge of the Supreme Court should have the following qualifications:
  - He should be a **citizen of India**.
  - He should have been a **judge of a High Court** (or high courts in succession) **for five years**; or
  - He should have been an advocate of a High Court (or High Courts in succession) for ten years; or
  - He should be a **distinguished jurist in the opinion of the president**.
- The Constitution **has not prescribed a minimum age** for appointment as a judge of the Supreme Court.

### **Oath or Affirmation**

- A person appointed as a judge of the Supreme Court, before entering upon his office, has to make and subscribe to an **oath or affirmation before the President**, or some other person appointed by him for this purpose. In his oath, a judge of the Supreme Court swears:
  - to bear true faith and allegiance to the Constitution of India;
  - to uphold the sovereignty and integrity of India;



- to duly and faithfully and to the best of his ability, knowledge and judgment to perform the duties of the Office without fear or favor, affection or ill-will; and to uphold the Constitution and the laws.

### **Tenure of Judges**

- The Constitution has not fixed the tenure of a judge of the Supreme Court. However, it makes the following three provisions in this regard:
  - He holds office until he attains the age of 65 years. Any question regarding his age is to be determined by such authority and in such manner as provided by Parliament.
  - He can resign his office by writing to the President.
  - He can be removed from his office by the President on the recommendation of the Parliament.

### **Removal of Judges**

- A judge of the Supreme Court can be removed from his office by an **order of the President**. The President can issue the removal order only after an address by Parliament has been presented to him in the same session for such removal.
- The address must be supported by a **special majority** of each House of Parliament (ie, a majority of the total membership of that House and a majority of not less than **two-thirds of the members** of that House present and voting). The grounds of removal are two—**proved misbehavior or incapacity**.
- **The Judges Enquiry Act (1968)** regulates the procedure relating to the removal of a judge of the Supreme Court by the process of impeachment:
  - **No judge of the Supreme Court has been impeached** so far. Impeachment motions of Justice V Ramaswami (1991–1993) and the Justice Dipak Misra (2017-18) were defeated in the Parliament.

### **Salaries and Allowances**

- The salaries, allowances, privileges, leave and pension of the judges of the Supreme Court are **determined from time to time by the Parliament**. They cannot be varied to their disadvantage after their appointment except during a financial emergency.

### **Acting Chief Justice**

- The President can appoint a judge of the Supreme Court as an acting Chief Justice of India when:
  - The office of Chief Justice of India is vacant; or
  - The Chief Justice of India is temporarily absent; or
  - The Chief Justice of India is unable to perform the duties of his office.

### **Ad hoc Judge**



- When there is a **lack of quorum** of the permanent judges to hold or continue any session of the Supreme Court, **the Chief Justice of India** can **appoint a judge of a High Court as an ad hoc judge of the Supreme Court** for a temporary period. He can do so only after consultation with the Chief Justice of the High Court concerned and with the previous consent of the president.
- The judge so appointed should be **qualified for appointment as a judge of the Supreme Court**. It is the duty of the judge so appointed to attend the sittings of the Supreme Court, in priority to other duties of his office. While so attending, he enjoys all the jurisdiction, powers and privileges (and discharges the duties) of a judge of the Supreme Court.

### **Retired Judges**

- At any time, the **CJI can request a retired judge** of the Supreme Court or a retired judge of a high court (who is duly qualified for appointment as a judge of the Supreme Court) to act as a judge of the Supreme Court for a temporary period.
- He can do so only with the **previous consent of the President** and also of the person to be so appointed.
  - Such a judge is entitled to such allowances as the president may determine. He will also enjoy all the jurisdiction, powers and privileges of a judge of the Supreme Court. But, he will not otherwise be deemed to be a judge of the Supreme Court.

### **Procedure of Court**

- The Supreme Court can, with the approval of the President, make rules for regulating generally the practice and procedure of the court.
- The **Constitutional cases or references** made by the President under **Article 143** are decided by a **Bench consisting of at least five judges**. All other cases are usually decided by a bench consisting of not less than three judges. The judgments are delivered by the open court. All judgments are by majority vote but if differing, then judges can give dissenting judgments or opinions.

### **Independence of Supreme Court**

- The Supreme Court is a **Federal court, the highest court of appeal, the guarantor of the fundamental rights of the citizens and guardian of the Constitution**.
  - Therefore, its independence becomes very essential for the effective discharge of the duties assigned to it. It should be free from the encroachments, pressures and interferences of the executive (council of ministers) and the Legislature (Parliament). It should be allowed to do justice without fear or favour.
- The Constitution has made the following provisions to **safeguard and ensure the independent and impartial** functioning of the Supreme Court:
  - Mode of appointment
  - Security of tenure

- Fixed service conditions
- Expenses charged on the consolidated fund
- Conduct of judges cannot be discussed
- Ban on practice after retirement
- Power to punish for its contempt
- Freedom to appoint its staff
- Its jurisdiction cannot be curtailed
- Separation from Executive

### **Jurisdiction and Powers of Supreme Court**

#### **Original Jurisdiction**

- As a Federal court, the Supreme Court decides disputes between different units of the Indian Federation. More elaborately, any dispute between:
  - The Centre and one or more states; or
  - The Centre and any state or states on one side and one or more states on the other; or between two or more states.
- In the above federal disputes, the Supreme Court has **exclusive original jurisdiction**.
- Further, this jurisdiction of the Supreme Court **does not extend** to the following:
  - A dispute arising out of any pre-Constitution treaty, agreement, covenant,
  - Engagement, sanad or other similar instrument.
  - A dispute arising out of any treaty, agreement, etc., which specifically provides that the said jurisdiction does not extend to such a dispute.
  - Inter-state water disputes.
  - Matters referred to the Finance Commission.
  - Adjustment of certain expenses and pensions between the Centre and the states.
  - Ordinary dispute of Commercial nature between the Centre and the states.
  - Recovery of damages by a state against the Centre.

#### **Writ Jurisdiction**

- The Supreme Court is empowered to issue writs, including **habeas corpus, mandamus, prohibition, quo-warranto and certiorari** for the enforcement of the fundamental rights of an aggrieved citizen.
- In this regard, the Supreme Court has **original jurisdiction** in the sense that an aggrieved citizen can go directly to the Supreme Court, not necessarily by way of appeal.
- However, the writ jurisdiction of the Supreme Court is not exclusive. The High Courts are also empowered to issue writs for the enforcement of the Fundamental Rights.

## Appellate Jurisdiction

The Supreme Court is primarily a court of appeal and hears appeals against the judgments of the lower courts. It enjoys a wide appellate jurisdiction which can be classified under four heads:

- Appeals in constitutional matters
- Appeals in civil matters
- Appeals in criminal matters
- Appeals by special leave

## Advisory Jurisdiction

- The Constitution **under Article 143** authorizes the President to seek the opinion of the Supreme Court in the two categories of matters:
  - On any question of law or fact of public importance which has arisen or which is likely to arise.
  - On any dispute arising out of any pre-constitution treaty, agreement, covenant, engagement, sanad or other similar instruments.

## A Court of Record

- As a Court of Record, the Supreme Court has two powers:
  - The judgments, proceedings and acts of the Supreme Court are recorded for perpetual memory and testimony. These records are admitted to be of evidentiary value and cannot be questioned when produced before any court.
  - They are **recognized as legal precedents and legal references**.
  - It has power to **punish for contempt of court**, either with simple imprisonment for a term up to six months or with fine up to 2,000 or with both.

## Power of Judicial Review

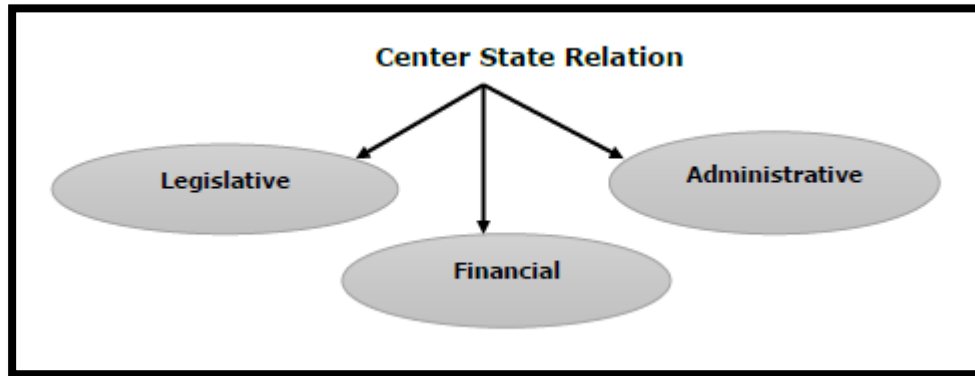
- Judicial review is the power of the Supreme Court to examine the constitutionality of legislative enactments and executive orders of both the Central and state governments.
  - On examination, if they are found to be **volatile of the Constitution (ultra-vires)**, they can be declared as **illegal, unconstitutional and invalid (null and void)** by the Supreme Court. Consequently, they cannot be enforced by the Government.

## Union- State Relations

**The Constitution provides a federal system of government in the country even though it describes India as ‘a Union of States’. The term implies that firstly, the Indian federation is not the result of an agreement between independent units and secondly, the units of Indian federation cannot leave the federation.**

India is a union of states. The constitution of India has divided the legislative, executive and financial powers between the centre and the states, which gives the constitution a federal character whereas judiciary is integrated in a hierarchical structure.

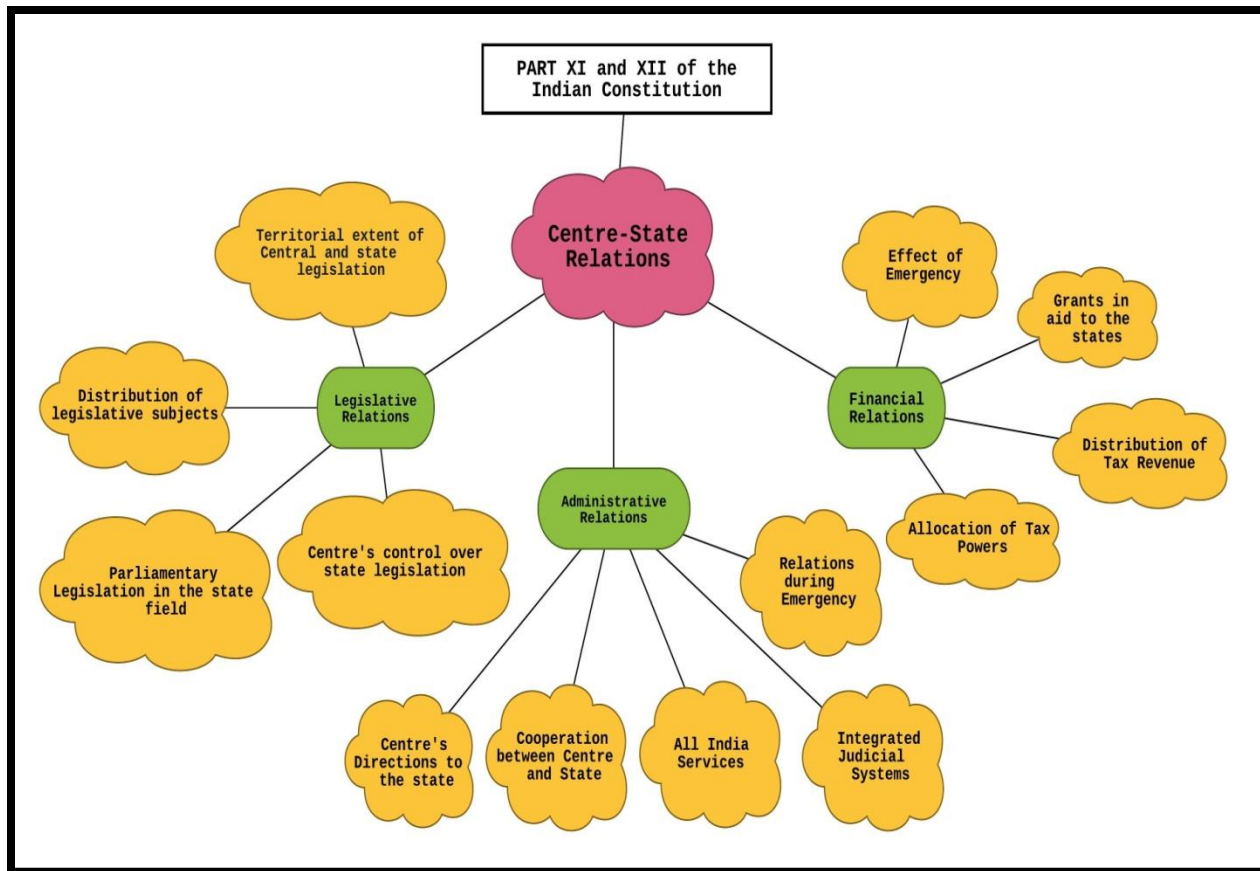
The centre-state relations are divided into three parts, which are mentioned below:



(A) Legislative Relations (Article 245-255)

(B) Administrative Relations (Article 256-263)

(C) Financial Relations (Article 268-293)



### Legislative Relations

Articles 245 to 255 in Part XI deals with different aspects of legislative relations between centre and states. These include:

- (1) Territorial jurisdiction of laws made by the Parliament and by the Legislatures of States.
- (2) Distribution of legislative subjects
- (3) Power of parliament to legislate with respect to a matter in the State List
- (4) Centre's control state legislation

However, Seventh Schedule of the Constitution provides for the distribution of legislative powers between the centre and the states. The legislative subjects are divided into List I (the Union List), List II (the Concurrent List) and List III (the State List).

- At present, there are 100 subjects in the Union list which includes subjects such as foreign affairs, defence, railway, postal services, banking, atomic energy, communication, currency etc.
- At present, there are 61 subjects in the State list. The list includes subjects such as police, public order, roadways, health, agriculture, local government, drinking water facilities, sanitation etc.
- At present, there are 52 subjects in the concurrent list. The list includes subjects such as education, forests, protection of wild animals and birds, electricity, labour welfare, criminal law and procedure, civil procedure, population control and family planning, drugs etc.

Article 245 empowers the centre to give directions to the states in certain cases in regards to the exercise of their executive powers.

Article 249 empowers the parliament to legislate with respect to a matter in the State List in the national interest.

Under Article 250, the parliament becomes empowered to make laws on the matters related to state list when national emergency (under Article 352) is in operation.

Under Article 252, the parliament is empowered to legislate for two or more States by their consent.

### **Administrative Relations**

Article 256 to 263 deals with the administrative relations between the centre and the states. Article 256 states that "the executive power of every State shall be so exercised as to ensure compliance with the laws made by the parliament and any existing laws which apply in that State, and the executive power of the Union shall extend to the giving of such directions to a State as may appear to the Government of India to be necessary for that purpose".

### **Cooperation between the Centre and the States**

The constitution lays down various provisions to secure cooperation and coordination between the centre and the states. These include:

- (i) Article 261 states that "Full faith and credit shall be given throughout the territory of India to public acts, records and judicial proceedings of the Union and of every State".
- (ii) According to Article 262, the parliament may by law provide for the adjudication of any dispute or complaint with respect to the use, distribution or control of the waters of, or in, any inter-State river or river valley.
- (iii) Article 263 empowers the President to establish an inter-State Council to inquire into and advise upon disputes between states, to investigate and discuss subjects in which some or all of the States, or the Union and one or more of the States, have a common interest.
- (iv) As per Article 307, Parliament may by law appoint such authority as it considers appropriate for carrying out the purposes of the constitutional provisions related to the inter-state freedom of trade and commerce.

### **Centre-State Relations during Emergency**

- (i) During a national emergency (under Article 352), the state government become subordinate to the central government. All the executive functions of the state come under the control of the union government.
- (ii) During a state emergency (under Article 356), the president can assume to himself all or any of the functions of the Government of the State and all or any of the powers vested in or exercisable by the Governor or authority in the State other than the Legislature of the State.
- (iii) During the operation of financial emergency (under Article 360), the Union may give directions to any State to observe such canons of financial propriety as may be specified in the

directions, and to the giving of such other directions as the President may deem necessary and adequate for the purpose.

### **Financial Relations**

The Constitution deals with the centre-state financial relations in Article 268-293 of Part XII.

#### Allocation of taxing powers

The Constitution has provided the union government and the state governments with the independent sources of revenue. It allocates the powers to centre and the states in the following way:

(i) The parliament has exclusive power to levy taxes on the subjects mentioned in the Union List.

(ii) The state legislatures has exclusive power to levy taxes on the subjects mentioned in the

#### State List

(iii) Both the parliament and the state legislature are empowered to levy taxes on the subjects mentioned in the Concurrent List.

(iv) The parliament has exclusive power to levy taxes on the matters related to the residuary subjects.

#### **However, in case of tax revenue distribution,**

- article 268 states that duties are levied by the Union but are collected and appropriated by the States;
- Service tax levied by Union and collected and appropriated by the Union and the States (Article 268-A);
- Taxes levied and collected by the Union but assigned to the States (Article 269);
- Taxes levied and collected by the Union but distributed between the Union and the States (Article 270).
- Surcharge on certain duties and taxes for purposes of the Union (Article 271)

Under Article 275, the parliament is authorized to provide grants-in-aid to any state as parliament may determine to be in need of assistance, and different sums may be fixed for different States.

Under Article 282, the union or a state may make any grants for any public purpose, notwithstanding that the purpose is not one with respect to which Parliament or the Legislature of the State, as the case may be, may make laws.

Under Article 352, during the operation of national emergency, the distribution of revenues between the centre and the states can be altered by the president.

Under Article 360, during the financial emergency, the executive authority of the Union shall give directions to any State to observe such canons of financial propriety as may be specified in the directions and to the give the directions as the President may deem necessary and adequate for the purpose.

The important recommendations of the first administrative reforms commission related to the centre-state relations are:

### **Establishment of an Inter-state council under Article 263**

1. Decentralization of powers to the states as much as possible
2. More transfer of financial resources to the states
3. Arrangements for devolution in such a way that the states can fulfil their obligations
4. Advancement of loans to states should be related to as 'the productive principle'.
5. Deployment of central armed forces in the states either on their request or otherwise

During state emergency, under Article 356, President's Rule can be imposed in event of the failure of constitutional machinery in a state.

### **Emergency Provisions**

A state of emergency in India refers to a period of governance that can be proclaimed by the **President of India** during certain crisis situations. Under the advice of the cabinet of ministers, the President can overrule many provisions of the Constitution, which guarantees **Fundamental Rights** to the citizens of India.

- The emergency provisions are contained in **Part XVIII** of the Constitution of India, from **Article 352 to 360**. These provisions enable the Central government to meet any abnormal situation effectively.
- The rationality behind the incorporation is to safeguard the sovereignty, unity, integrity and security of the country, the democratic political system and the Constitution.
- The Constitution stipulates three types of emergencies-
  1. National Emergency
  2. Constitutional Emergency
  3. Financial Emergency

### **NATIONAL EMERGENCY**

- National emergency can be declared on the basis of war, external aggression or armed rebellion. The Constitution employs the expression 'proclamation of emergency' to denote an emergency of this type.
- **Grounds of declaration:**
  - Under Article 352, the president can declare a national emergency when the security of India or a part of it is threatened by war or external aggression or armed rebellion.
  - The President can declare a national emergency even before the actual occurrence of war or armed rebellion or external aggression
  - When a national emergency is declared on the grounds of 'war' or 'external aggression', it is known as '**External Emergency**'. On the other hand, when it is declared



on the grounds of ‘**armed rebellion**’, it is known as ‘**Internal Emergency**’.

- This term ‘armed rebellion’ is inserted from the **44<sup>th</sup> amendment**. Before this term it was known as internal disturbance.

▪ **Example:**

- If India and Pakistan openly accept that they will use armed forces against each other is simply war.
- If there is no formal declaration that there will be armed forces used against a country is External aggression.
- And if because of these two grounds an emergency is proclaimed as an **external emergency**.

**Facts**

- The **38<sup>th</sup> Amendment Act** of 1975 made the declaration of National Emergency immune to judicial review. But, this provision was subsequently deleted by the 44<sup>th</sup> Amendment Act of 1978.
- In Minerva Mills case (1980), the Supreme Court held that National Emergency can be challenged in the court on the ground of malafide or that the declaration was based on wholly extraneous and irrelevant facts.

▪ **Parliamentary approval and duration**

- The proclamation of emergency must be approved by both the houses of parliament within one month from the date of its issue.
- However, if the proclamation of emergency is issued at a time when the Lok Sabha has been dissolved or the dissolution takes place during the period of one month without approving the proclamation, then the proclamation survives until 30 days from the first sitting of Lok Sabha after its reconstitution, provided the Rajya Sabha has in the meantime approved it.
- If approved by both the houses, the Emergency continues for 6 months and can be extended to an indefinite period with an approval of the Parliament for every six months.
- Every resolution approving the proclamation of emergency or its continuance must be passed by either House of Parliament by a special majority.

▪ **Revocation of proclamation**

- A proclamation of Emergency may be revoked by the President at any time by a subsequent proclamation. Such proclamation does not require parliamentary approval.
- The emergency must be revoked if the Lok Sabha passes a resolution by a simple majority disapproving its continuation.

▪ **Effects of national emergency**

- A proclamation of Emergency has drastic and wide-ranging effects on the political system. These consequences can be grouped into 3 categories:
  - **Effects on the centre-state relations:** While a proclamation of Emergency is in force, the normal fabric of the Centre-State relations undergoes a basic change. this can be studied under three heads:
    - **Executive:** Centre becomes entitled to give executive directions to a state on ‘any’ matter
    - **Legislative:** The parliament becomes empowered to make laws on any subject mentioned in the state list, the president can issue ordinances on State subjects also, if the parliament is not in session. The laws made on state subjects by the parliament become inoperative six months after the emergency has ceased to be in operation.
    - **Financial:** the president can modify the constitutional distribution of revenues between the centre and the states.
  - **Effect on the life of the Lok Sabha and State Assembly:**
    - While a proclamation of National Emergency is in operation, the life of the Lok Sabha may be extended beyond the normal term for one year at a time. However, this extension cannot continue beyond a period of six months after the emergency has ceased to operate.
    - Similarly, the Parliament may extend the normal tenure of a state Legislative Assembly by one year each time during a national emergency, subject to a maximum period of six months after the emergency has ceased to operate.
  - **Effect on fundamental rights:** Articles 358 and 359 describes the effect of a National Emergency on the Fundamental Rights. These two provisions are explained below:
    - **Suspension of Fundamental rights under Article 19:** According to Article 358, when a proclamation of National Emergency is made, the six fundamental rights under article 19 are automatically suspended. Article 19 is automatically revived after the expiry of the emergency.
    - The 44<sup>th</sup> Amendment Act laid out that Article 19 can only be suspended when the National Emergency is laid on the grounds of war or external aggression and not in the case of armed rebellion.
    - **Suspension of other Fundamental Rights:** Under Article 359, the President is authorised to suspend, by order, the right to move any court for the enforcement of Fundamental Rights during a National Emergency. Thus, **remedial measures are suspended and not the Fundamental Rights.**

- The suspension of enforcement relates to only those Fundamental Rights that are specified in the Presidential Order.
  - The suspension could be for the period during the operation of emergency or for a shorter period.
  - The Order should be laid before each House of Parliament for approval.
  - The 44 Amendment Act mandates that the President cannot suspend the right to move the court for the enforcement of Fundamental Rights guaranteed by Article 20 and 21.
- **Declarations made so far:** This type of emergency has been proclaimed three times so far- in 1962, 1971 and 1975
    - The first proclamation of National Emergency was issued in October 1962 on account of Chinese aggression in the NEFA and was in force till January 1968.
    - The second proclamation of National Emergency was made in December 1971 in the wake of the attack by Pakistan.
    - Even when the emergency was in operation, the third proclamation of National Emergency was made in June 1975. Both the second and the third proclamations were revoked in March 1977

### **Constitutional Emergency/ State Emergency/ President's Rule**

- Article 355 imposes a duty on the centre to ensure that the government of every state is carried on in accordance with the provisions of the constitution.
- It is this duty in the performance of which the centre takes over the government of a state under Article 356 in case of failure of constitutional machinery in a state.
- This is popularly known as 'President's Rule'.
- **Grounds of imposition:** the president's ruler can be proclaimed under Article 356 on two grounds:
  1. Article 356 empowers the President to issue a proclamation if he is satisfied that a situation has arisen in which the government of a state cannot be carried on in accordance with the provisions of the constitution.
  2. Article 365 says that whenever a state fails to comply with or to give effect to any direction from the centre, it will be lawful for the President to hold that a situation has arisen in which the government of the state cannot be carried on in accordance with the provisions of the constitution.
- **Parliamentary approval and duration:** A proclamation imposing president's rule must be approved by both the houses of parliament within two months from the date of its issue.
  - However, if the proclamation of President's rule is issued at a time when the Lok Sabha has been dissolved or the dissolution of the Lok Sabha takes place during the period of two months without approving the proclamation, then the proclamation survives until 30 days

from the first sitting of the Lok Sabha after its reconstitution, provided that the Rajya Sabha approves it in the meantime

- **Consequences of the President's rule:** The President acquires the following extraordinary powers when the President's rule is imposed in a state:
  - He can take up the functions of the state government and powers vested in the governor or any other executive authority in the state.
  - He can declare that the powers of the state legislature are to be exercised by the parliament.
  - He can take all other necessary steps including the suspension of the constitutional provisions relating to any body or authority in the state.
- **Scope of judicial review:** The 38<sup>th</sup> Amendment act of 1975 made the satisfaction of the President in invoking Article 356 final and conclusive which would not be challenged in any court on any ground.
  - But, this provision was subsequently deleted by the 44<sup>th</sup> Amendment Act of 1978 implying that the satisfaction of the President is not beyond judicial review.

#### Financial Emergency

- **Grounds of declaration: Article 360** empowers the president to proclaim a Financial Emergency if he is satisfied that a situation has arisen due to which the financial stability or credit of India or any part of its territory is threatened.
- **Parliamentary approval and duration:** A proclamation declaring financial emergency must be approved by both the Houses of Parliament within two months from the date of its issue.
  - However, if the proclamation of Financial Emergency is issued at a time when the Lok Sabha has been dissolved or the dissolution of the Lok Sabha takes place during the period of two months without approving the proclamation, then the proclamation survives until 30 days from the first sitting of the Lok Sabha after its reconstitution, provided the Rajya Sabha has in the meantime approved it.
    - Once approved by both the houses of Parliament, the Financial Emergency continues indefinitely till it is revoked.

#### Effects of Financial Emergency

- Extension of the executive authority of the Union over the financial matters of the States.
- Reduction of salaries and allowances of all or any class of persons serving in the State.
- Reservation of all money bills or other financial bills for the consideration of the President after they are passed by the legislature of the State.
- Direction from the President for the reduction of salaries and allowances of all or any class of persons serving the Union; and the judges of the Supreme Court and the High Courts.

### Criticism of the Emergency Provision

- Some members of the Constituent Assembly criticised the incorporation of emergency provisions in the constitution on the following grounds:
  - The federal character of the constitution will be destroyed and the union will become all-powerful
  - The powers of the State- both the Union and the Units- will entirely be concentrated in the hands of the union executive.
  - The president will become a dictator
  - The financial autonomy of the state will be nullified
  - Fundamental rights will become meaningless and, as a result, the democratic foundation of the constitution will be destroyed.'
- While defending the emergency provisions in the Constituent Assembly, Dr Ambedkar accepted the possibility of their misuse. He observed, 'I do not altogether deny that there is a possibility of the Articles being abused or employed for political purposes.'

## UNIT – IV: STATE AND LOCAL GOVERNMENTS

State and Local Governments: Governor, State Legislature, Assembly and Council, Chief Minister and Council of Ministers, High Court, Rural and Urban Local Governments with special reference to 73rd and 74th Constitutional amendment acts.

### 4.1 Governor

The Constitution of India envisages the same pattern of government in the states as that for the Centre, that is, a parliamentary system. Part VI of the Constitution deals with the government in the states. Articles 153 to 167 in Part VI of the Constitution deal with the state executive. The state executive consists of the governor, the chief minister, the council of ministers and the advocate general of the state. Thus, there is no office of vice-governor (in the state) like that of Vice-President at the Centre.

The governor is the chief executive head of the state. But, like the president, he is a nominal executive head (titular or constitutional head). The governor also acts as an agent of the central government. Therefore, the office of governor has a dual role. Usually, there is a governor for each state, but the 7th Constitutional Amendment Act of 1956 facilitated the appointment of the same person as a governor for two or more states.

#### **Appointment of Governor**

The Indian President appoints Governor for each state by warrant under his hand and seal. Central Government is responsible to nominate the governor for each state.

#### **Note:**

- Unlike elections of the President, there is no direct or indirect election for the post of Governor.
- The office of a governor is not a part of the union executive and is an independent constitutional office. The governor doesn't serve the union government and neither is subordinate to it.
- The nomination of a governor by the Union and his appointment by the President in India is based on the Canadian model of government.

A governor holds office for a term of five years from the date on which he enters upon his office. However, this term of five years is subject to the pleasure of the President. Further, he can resign at any time by addressing a resignation letter to the President. The Supreme Court held that the pleasure of the President is not justifiable. The governor has no security of tenure and no fixed term of office. He may be removed by the President at any time.

#### **Powers and Functions of Governor**

A governor possesses executive, legislative, financial and judicial powers more or less analogous to the President of India. However, he has no diplomatic, military or emergency powers like the president. The powers and functions of the governor can be studied under the following heads: 1. Executive powers. 2. Legislative powers. 3. Financial powers 4. Judicial Powers.

#### **Executive Powers**

The executive powers and functions of the Governor are:

1. All executive actions of the government of a state are formally taken in his name.
2. He can make rules specifying the manner in which the Orders and other instruments made and executed in his name shall be authenticated.

3. He can make rules for more convenient transaction of the business of a state government and for the allocation among the ministers of the said business.
4. He appoints the chief minister and other ministers. They also hold office during his pleasure.
5. He appoints the state election commissioner and determines his conditions of service and tenure of office.
6. He appoints the chairman and members of the state public service commission.

### **Legislative Powers**

A governor is an integral part of the state legislature. In that capacity, he has the following legislative powers and functions:

1. He can summon or prorogue the state legislature and dissolve the state legislative assembly.
2. He can address the state legislature at the commencement of the first session after each general election and the first session of each year.
3. He can send messages to the house or houses of the state legislature, with respect to a bill pending in the legislature or otherwise.
4. He can appoint any member of the State legislative assembly to preside over its proceedings when the offices of both the Speaker and the Deputy Speaker fall vacant.
5. He nominates one-sixth of the members of the state legislative council from amongst persons having special knowledge or practical experience in literature, science, art, cooperative movement and social service.
6. He can nominate one member to the state legislature assembly from the Anglo-Indian community.

### **Financial Powers**

The financial powers and functions of the governor are:

1. He sees that the Annual Financial Statement (state budget) is laid before the state legislature.
2. Money bills can be introduced in the state legislature only with his prior recommendation.
3. No demand for a grant can be made except on his recommendation.
4. He can make advances out of the Contingency Fund of the state to meet any unforeseen expenditure.
5. He constitutes a finance commission after every five years to review the financial position of the panchayats and the municipalities.

### **Judicial Powers**

The judicial powers and functions of the governor are:

1. He can grant pardons, reprieves, respites and remissions of punishment or suspend, remit and commute the sentence of any person convicted of any offence against any law relating to a matter to which the executive power of the state extends.
2. He is consulted by the president while appointing the judges of the concerned state high court.
3. He makes appointments, postings and promotions of the district judges in consultation with the state high court.
4. He also appoints persons to the judicial service of the state (other than district judges) in consultation with the state high court and the State Public Service Commission.

## 4.2 State Legislature

The state legislature occupies a preeminent and central position in the political system of a state. Articles 168 to 212 in Part VI of the Constitution deal with the organisation, composition, duration, officers, procedures, privileges, powers and so on of the state legislature. Though these are similar to that of Parliament, there are some differences as well.

In most of the States, the Legislature consists of the Governor and the Legislative Assembly (Vidhan Sabha). This means that these States have unicameral Legislature.

In a few States, there are two Houses of the Legislature namely,

1. Legislative Assembly (Vidhan Sabha) and
2. Legislative council (Vidhan Parishad) besides the Governor.

Where there are two Houses, the Legislature, is known as bicameral

### Composition of Assembly Strength

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. It means that its strength varies from 60 to 500 depending on the population size of the state. However, 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. Further, some members of the legislative assemblies in Sikkim and Nagaland are also elected indirectly.

- There is a Legislative Assembly (Vidhan Sabha) in every State.
- It represents the people of State.
- The members of Vidhan Sabha are directly elected by people on the basis of universal adult franchise.
- They are directly elected by all adult citizens registered as voters in the State.
- All men and women who are 18 years of age and above are eligible to be included in the voters' List.
- They vote to elect members of State Assembly.
- Members are elected from territorial constituencies.
- Every State is divided into as many (single member) constituencies as the number of members to be elected.
- As in case of Lok Sabha, certain number of seats are reserved for Scheduled Castes, and in some States for Scheduled Tribes also.
- This depends on population of these weaker sections in the State.

### Qualification of Member of Vidhan Sabha

- be a citizen of India;
- have attained the age of 25 years;
- his/her name must be in voters' list;
- must not hold any office of profit i.e.;
- should not be a government servant.

### Composition of Council Strength

Unlike 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.



Though the Constitution has fixed the maximum and the minimum limits, the actual strength of a Council is fixed by Parliament.

- Vidhan Parishad is the upper House of the State Legislature.
- It is not in existence in every State.
- Very few States have bicameral Legislature that means having two Houses.
- At present five states viz. Andhra Pradesh, Uttar Pradesh, Bihar, Karnataka and Maharashtra.
- Legislative Councils are legacy of the British period.
- The Vidhan Parishad is partly elected and partly nominated.
- Most of the members are indirectly elected in accordance with the principle of proportional representation by means of single transferable vote system.
- Different categories of members represent different interests

### **Manner of Election**

Of the total number of members of a 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.

### **Duration of 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. However, 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.

**Duration of Council** Like the Rajya Sabha, the legislative council is a continuing chamber, that is, 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

### **Presiding Officer (The Speaker)**

The members of Vidhan Sabha elect their presiding officer. The Presiding officer is known as the Speaker. The Speaker presides over the meetings of the House and conducts its proceedings. He maintains order in the House, allows the members to ask questions and speak. He puts bills and other measures to vote and announces the result of voting. The Speaker does not ordinarily vote at the time of voting. However, he may exercise casting vote in case of a tie. The Deputy Speaker presides over the meeting during the absence of the Speaker. He is also elected by the Assembly from amongst its members.

### **Chairman of the Legislative Council (Presiding Officer)**

The presiding officer of the Vidhan Parishad (Legislative Council) is known as the Chairman, who is elected by its members. The business of Vidhan Parishad is conducted by the Chairman. He presides over the meetings and maintains discipline and order in the House. In addition to his vote as a member, he can exercise his casting vote in case of a tie. In his absence, Deputy

Chairman presides over the House. He is also elected by the members of the Parishad from amongst themselves.

### **Powers and Functions of the State Legislature**

1. **Law Making Function** The primary function of the State Legislature, like the Union Parliament, is law-making. The State Legislature is empowered to make laws on State List and Concurrent List. The Parliament and the Legislative Assemblies have the right to make the laws on the subjects mentioned in the Concurrent List. But in case of contradiction between the Union and State law on the subject the law made by the Parliament shall prevail. Bills are of two types-Ordinary bills and Money bills. Ordinary bills can be introduced in either of the Houses (if the State Legislature is bicameral), but Money bill is first introduced in the Vidhan Sabha. After the bill is passed by both Houses, it is sent to the Governor for his assent,.
2. **Financial Powers** The State Legislature keeps control over the finances of the State. A money bill is introduced first only in the Vidhan Sabha. The money bill includes authorisation of the expenditure to be incurred by the government, imposition or abolition of taxes, borrowing, etc. The bill is introduced by a Minister on the recommendations of the Governor. The money bill cannot be introduced by a private member. The Speaker of the Vidhan Sabha certifies that a particular bill is a money bill.
3. **Control over the Executive** Like the Union Legislature, the State Legislature keeps control over the executive. The Council of Ministers is responsible to Vidhan Sabha collectively and remains in the office so long as it enjoys the confidence of the Vidhan Sabha. The Council is removed if the Vidhan Sabha adopts a vote of no-confidence, or when it rejects a government bill.
4. **Electoral Functions** The elected members of the Vidhan Sabha are members of the Electoral College for the election of the President of India. Thus they have say in the election of the President of the Republic (see Lesson No. 10) The members of the Vidhan Sabha also elect members of the Rajya Sabha from their respective States. One-third members of the Vidhan Parishad (if it is in existence in the State) are also elected by the members of the Vidhan Sabha. In all these elections, members of the Vidhan Sabha (Assembly) cast their votes in accordance with single transferable vote system.
5. **Constitutional Functions** The procedure of amendment of the Constitution. An Amendment requires special majority of each House of the Parliament and ratification by not less than half of the States relating to Federal subjects. The resolution for the ratification is passed by State Legislatures with simple majority. However, a constitutional amendment cannot be initiated in the State Legislature.

### **4.3 Chief Minister**

The scheme of parliamentary system of government provided by the Constitution, the governor is the nominal executive authority (de jure executive) and the Chief Minister is the real executive authority (de facto executive). In other words, the governor is the head of the state while the Chief Minister is the head of the government. Thus the position of the Chief Minister at the state level is analogous to the position of prime minister at the Centre.

#### **Appointment of Chief Minister**

The Constitution does not contain any specific procedure for the selection and appointment of the Chief Minister. Article 164 only says that the Chief Minister shall be appointed by the governor. However, this does not imply that the governor is free to appoint any one as the Chief Minister. In accordance with the conventions of the parliamentary system of government, the governor has to appoint the leader of the majority party in the state

legislative assembly as the Chief Minister. But, when no party has a clear majority in the assembly, then the governor may exercise his personal discretion in the selection and appointment of the Chief Minister. In such a situation, the governor usually appoints the leader of the largest party or coalition in the assembly as the Chief Minister and ask him to seek a vote of confidence in the House within a month.

The governor may have to exercise his individual judgement in the selection and appointed of the Chief Minister when the Chief Minister in office dies suddenly and there is no obvious successor. However, on the death of a Chief Minister, the ruling party usually elects a new leader and the governor has no choice but to appoint him as Chief Minister. The Constitution does not require that a person must prove his majority in the legislative assembly before he is appointed as the Chief Minister. The governor may first appoint him as the Chief Minister and then ask him to prove his majority in the legislative assembly within a reasonable period. This is what has been done in a number of cases.

A person who is not a member of the state legislature can be appointed as Chief Minister for six months, within which time, he should be elected to the state legislature, failing which he ceases to be the Chief Minister.

According to the Constitution, the Chief Minister may be a member of any of the two Houses of a state legislature. Usually Chief Ministers have been selected from the Lower House (legislative assembly), but, on a number of occasions, a member of the Upper House (legislative council) has also been appointed as Chief Minister.

**Oath, Term and Salary** Before the Chief Minister enters his office, the governor administers to him the oaths of office and secrecy. In his oath of office, the Chief Minister swears:

1. to bear true faith and allegiance to the Constitution of India,
2. to uphold the sovereignty and integrity of India,
3. to faithfully and conscientiously discharge the duties of his office, and
4. to do right to all manner of people in accordance with the Constitution and the law, without fear or favour, affection or illwill.

In his oath of secrecy, the Chief Minister swears that he will not directly or indirectly communicate or reveal to any person(s) any matter that is brought under his consideration or becomes known to him as a state minister except as may be required for the due discharge of his duties as such minister.

The term of the Chief Minister is not fixed and he holds office during the pleasure of the governor. However, this does not mean that the governor can dismiss him at any time. He cannot be dismissed by the governor as long as he enjoys the majority support in the legislative assembly. But, if he loses the confidence of the assembly, he must resign or the governor can dismiss him.

The salary and allowances of the Chief Minister are determined by the state legislature. In addition to the salary and allowances, which are payable to a member of the state legislature, he gets a sumptuary allowance, free accommodation, travelling allowance, medical facilities, etc.

### **Powers and Functions of Chief Minister**

The powers and functions of the Chief Minister can be studied under the following heads: In Relation to Council of Ministers The Chief Minister enjoys the following powers as head of the state council of ministers:

- a) The governor appoints only those persons as ministers who are recommended by the Chief Minister.
- b) He allocates and reshuffles the portfolios among ministers.
- c) He can ask a minister to resign or advise the governor to dismiss him in case of difference of opinion.

- d) He presides over the meetings of the council of ministers and influences its decisions.
- e) He guides, directs, controls and coordinates the activities of all the ministers.
- f) He can bring about the collapse of the council of ministers by resigning from office. Since the Chief Minister is the head of the council of ministers, his resignation or death automatically dissolves the council of ministers. The resignation or death of any other minister, on the other hand, merely creates a vacancy, which the Chief Minister may or may not like to fill.

### **In Relation to the Governor**

The Chief Minister enjoys the following powers in relation to the governor: (

- a) He is the principal channel of communication between the governor and the council of ministers. It is the duty of the Chief Minister:
  - (i) to communicate to the Governor of the state all decisions of the council of ministers relating to the administration of the affairs of the state and proposals for legislation;
  - (ii) to furnish such information relating to the administration of the affairs of the state and proposals for legislation as the governor may call for; and
  - (iii) if the governor so requires, to submit for the consideration of
  - (iv) He advises the governor with regard to the appointment of important officials like advocate general, chairman and members of the state public service commission, state election commissioner, and so on.

### **In Relation to State Legislature**

The Chief Minister enjoys the following powers as the leader of the house:

- (i) He advises the governor with regard to the summoning and proroguing of the sessions of the state legislature.
- (ii) He can recommend the dissolution of the legislative assembly to the governor at any time.
- (iii) He announces the government policies on the floor of the house. Other Powers and

Functions In addition, the Chief Minister also performs the following functions:

- He is the chairman of the State Planning Board.
- He acts as a vice-chairman of the concerned zonal council by rotation, holding office for a period of one year at a time.
- He is a member of the Inter-State Council and the Governing Council of NITI Aayog, both headed by the prime minister.
- He is the chief spokesman of the state government.
- He is the crisis manager-in-chief at the political level during emergencies.
- As a leader of the state, he meets various sections of the people and receives memoranda from them regarding their problems, and so on.
- He is the political head of the services.

### **Relationship With The Governor**

The following provisions of the Constitution deal with the relationship between the governor and the Chief Minister:

1. Article 163: There shall be a council of ministers with the Chief Minister as the head to aid and advise the governor on the exercise of his functions, except in so far as he is required to exercise his functions or any of them in his discretion.
2. Article 164: (a) The Chief Minister shall be appointed by the governor and other ministers shall be appointed by the governor on the advice of the Chief Minister; (b) The ministers shall hold office during the pleasure of the governor; and (c) The council of ministers shall be collectively responsible to the legislative assembly of the state.

3. Article 167: It shall be the duty of the Chief Minister: (a) to communicate to the governor of the state all decisions of the council of ministers relating to the administration of the affairs of the state and proposals for legislation; (b) to furnish such information relating to the administration of the affairs of the state 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.

#### 4.4 State Council of Ministers

The Constitution of India provides for a parliamentary system of government in the states on the Union pattern, the council of ministers headed by the chief minister is the real executive authority in the politico-administrative system of a state. The council of ministers in the states is constituted and function in the same way as the council of ministers at the Centre. The principles of parliamentary system of government are not detailed in the Constitution; but two Articles (163 and 164) deal with them in a broad, sketchy and general manner. Article 163 deals with the status of the council of ministers while Article 164 deals with the appointment, tenure, responsibility, qualifications, oath and salaries and allowances of the ministers

**Article 163–Council of Ministers to aid and advise Governor** 1. There shall be a Council of Ministers with the Chief Minister as the head to aid and advise the Governor in the exercise of his functions, except in so far as he is required to exercise his functions in his discretion. 2. If any question arises whether a matter falls within the Governor's discretion or not, decision of the Governor shall be final, and the validity of anything done by the Governor shall not be called in question on the ground that he ought or ought not to have acted in his discretion. 3. The advice tendered by Ministers to the Governor shall not be inquired into in any court.

**Article 164–Other Provisions as to Ministers** 1. The Chief Minister shall be appointed by the Governor and the other Ministers shall be appointed by the Governor on the advice of the Chief Minister. However, in the states of Chhattisgarh, Jharkhand, Madhya Pradesh and Odisha, there shall be a Minister in charge of tribal welfare who may in addition be in charge of the welfare of the scheduled castes and backward classes or any other work. The state of Bihar was excluded from this provision by the 94th Amendment Act of 2006. 2. The total number of ministers, including the chief minister, in the council of ministers in a state shall not exceed 15 per cent of the total strength of the legislative assembly of that state. But, the number of ministers, including the chief minister, in a state shall not be less than 12. This provision was added by the 91st Amendment Act of 2003. 3. A member of either House of state legislature belonging to any political party who is disqualified on the ground of defection shall also be disqualified to be appointed as a minister. This provision was also added by the 91st Amendment Act of 2003. 4. The ministers shall hold office during the pleasure of the Governor. 5. The council of ministers shall be collectively responsible to the state Legislative Assembly. 6. The Governor shall administer the oaths of office and secrecy to a minister. 7. A minister who is not a member of the state legislature for any period of six consecutive months shall cease to be a minister. 8. The salaries and allowances of ministers shall be determined by the state legislature.

**Article 166–Conduct of Business of the Government of a State** 1. All executive action of the Government of a State shall be expressed to be taken in the name of the Governor. 2. Orders and other instruments made and executed in the name of the Governor shall be authenticated in such manner as may be specified in rules to be made by the Governor. Further, the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the Governor. 3. The Governor shall

make rules for the more convenient transaction of the business of the government of the state, and for the allocation among ministers of the said business in so far as it is not business with respect to which the Governor is required to act in his discretion.

**Article 167–Duties of Chief Minister** It shall be the duty of the Chief Minister of each state 1. To communicate to the governor of the state all decisions of the council of ministers relating to the administration of the affairs of the state and proposals for legislation 2. To furnish such information relating to the administration of the affairs of the state and proposals for legislation as the governor may call for 3. 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

**Article 177–Rights of Ministers as Respects the Houses** Every minister shall have the right to speak and take part in the proceedings of the Assembly (and also the Council where it exists) and any Committee of the State Legislature of which he may be named a member. But he shall not be entitled to vote.

**Appointment of Ministers** The chief minister is appointed by the governor. The other ministers are appointed by the governor on the advice of the chief minister. This means that the governor can appoint only those persons as ministers who are recommended by the chief minister. The 94th Amendment Act of 2006 freed Bihar from the obligation of having a tribal welfare minister as there are no Scheduled Areas in Bihar now and the fraction of population of the Scheduled Tribes is very small. The same Amendment also extended the above provision to the newly formed states of Chhattisgarh and Jharkhand. Usually, the members of the state legislature, either the legislative assembly or the legislative council, are appointed as ministers. A person who is not a member of either House of the state legislature can also be appointed as a minister. But, within six months, he must become a member (either by election or by nomination) of either House of the state legislature, otherwise, he ceases to be a minister.

**Oath And Salary of Ministers** Before a minister enters upon his office, the governor administers to him the oaths of office and secrecy. In his oath of office, the minister swears: 1. to bear true faith and allegiance to the Constitution of India, 2. to uphold the sovereignty and integrity of India, 3. to faithfully and conscientiously discharge the duties of his office, and 4. to do right to all manner of people in accordance with the Constitution and the law, without fear or favour, affection or ill-will. In his oath of secrecy, the minister swears that he will not directly or indirectly communicate or reveal to any person(s) any matter that is brought under his consideration or becomes known to him as a state minister except as may be required for the due discharge of his duties as such minister. The salaries and allowances of ministers are determined by the state legislature from time to time. A minister gets the salary and allowances which are payable to a member of the state legislature. Additionally, he gets a sumptuary allowance (according to his rank), free accommodation, travelling allowance, medical facilities, etc.

### **Cabinet**

A smaller body called cabinet is the nucleus of the council of ministers. It consists of only the cabinet ministers. It is the real centre of authority in the state government. It performs the following role:

1. It is the highest decisionmaking authority in the politicoadministrative system of a state.
2. It is the chief policy formulating body of the state government.
3. It is the supreme executive authority of the state government.
4. It is the chief coordinator of state administration.
5. It is an advisory body to the governor.

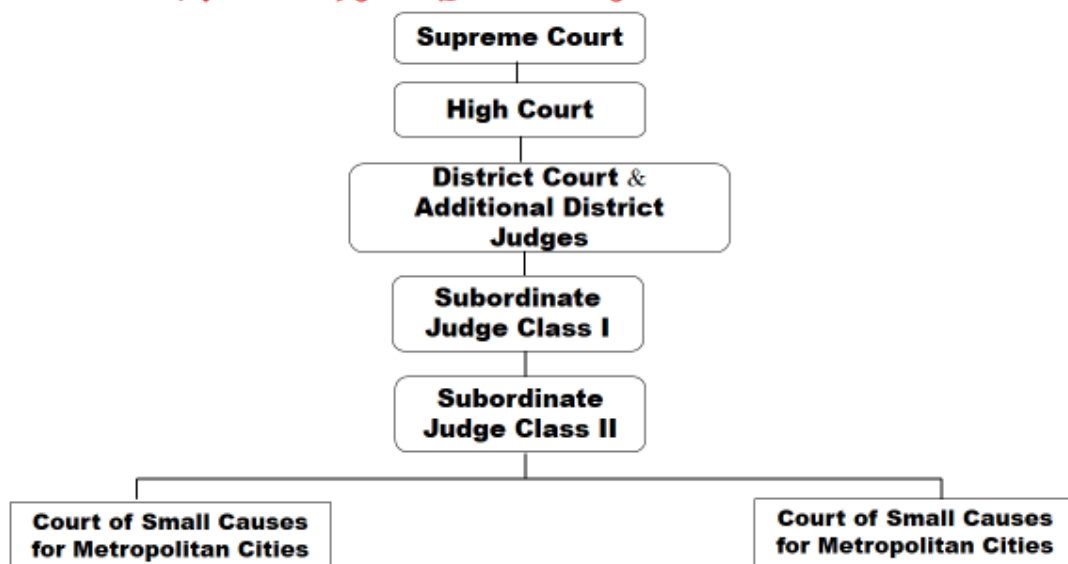
6. It is the chief crisis manager and thus deals with all emergency situations.
7. It deals with all major legislative and financial matters.
8. It exercises control over higher appointments like constitutional authorities and senior secretariat administrators. Cabinet Committees

The cabinet works through various committees called cabinet committees. They are of two types—standing and ad hoc. The former are of a permanent nature while the latter are of a temporary nature. They are set up by the chief minister according to the exigencies of the time and requirements of the situation. Hence, their number, nomenclature and composition varies from time to time. They not only sort out issues and formulate proposals for the consideration of the cabinet but also take decisions. However, the cabinet can review their decisions.

#### 4.5 High Court

In the Indian single integrated judicial system, the high court operates below the Supreme Court but above the subordinate courts. The judiciary in a state consists of a high court and a hierarchy of subordinate courts. The high court occupies the top position in the judicial administration of a state. The institution of high court originated in India in 1862 when the high courts were set up at Calcutta, Bombay and Madras . In 1866, a fourth high court was established at Allahabad. In the course of time, each province in British India came to have its own high court. After 1950, a high court existing in a province became the high court for the corresponding state. The Constitution of India provides for a high court for each state, but the Seventh Amendment Act of 1956 authorised the Parliament to establish a common high court for two or more states or for two or more states and a union territory. The territorial jurisdiction of a high court is co-terminus with the territory of a state. Similarly, the territorial jurisdiction of a common high court is co-terminus with the territories of the concerned states and union territory.

### Hierarchy of Judiciary in India



#### Composition and Appointment

Every high court (whether exclusive or common) consists of a chief justice and such other judges as the president may from time to time deem necessary to appoint. Thus, the Constitution does not specify the strength of a high court and leaves it to the discretion of the president. Accordingly, the President determines the strength of a high court from time to time depending upon its workload.

**Qualifications, Oath And Salaries** Qualifications of Judges A person to be appointed as a judge of a high court, should have the following qualifications:

1. He should be a citizen of India.
2. (a) He should have held a judicial office in the territory of India for ten years;  
or  
(b) He should have been an advocate of a high court (or high courts in succession) for ten years.

From the above, it is clear that the Constitution has not prescribed a minimum age for appointment as a judge of a high court. Moreover, unlike in the case of the Supreme Court, the Constitution makes no provision for appointment of a distinguished jurist as a judge of a high court. **Oath or Affirmation**

A person appointed as a judge of a high court, before entering upon his office, has to make and subscribe an oath or affirmation before the governor of the state or some person appointed by him for this purpose. In his oath, a judge of a high court swears: 1. to bear true faith and allegiance to the Constitution of India; 2. to uphold the sovereignty and integrity of India; 3. to duly and faithfully and to the best of his ability, knowledge and judgement perform the duties of the office without fear or favour, affection or ill-will; and 4. to uphold the Constitution and the laws.

### **Tenure of Judges**

The Constitution has not fixed the tenure of a judge of a high court. However, it makes the following four provisions in this regard:

1. He holds office until he attains the age of 62 years . Any questions regarding his age is to be decided by the president after consultation with the chief justice of India and the decision of the president is final.
2. He can resign his office by writing to the president.
3. He can be removed from his office by the President on the recommendation of the Parliament.
4. He vacates his office when he is appointed as a judge of the Supreme Court or when he is transferred to another high court.

### **Acting, Additional And Retired Judges**

#### **Acting Chief Justice**

The President can appoint a judge of a high court as an acting chief justice of the high court when:

1. The office of chief justice of the high court is vacant; or
2. The chief justice of the high court is temporarily absent; or
3. The chief justice of the high court is unable to perform the duties of his office.

#### **Additional and Acting Judges**

The President can appoint duly qualified persons as additional judges of a high court for a temporary period not exceeding two years when:

1. there is a temporary increase in the business of the high court; or
2. there are arrears of work in the high court.

The President can also appoint a duly qualified person as an acting judge of a high court when a judge of that high court (other than the chief justice) is:

1. unable to perform the duties of his office due to absence or any other reason; or
2. appointed to act temporarily as chief justice of that high court.

An acting judge holds office until the permanent judge resumes his office. However, both the additional or acting judge cannot hold office after attaining the age of 62 years.

**Retired Judges** At any time, the chief justice of a high court of a state can request a retired judge of that high court or any other high court to act as a judge of the high court of that



state for a temporary period. He can do so only with the previous consent of the President and also of the person to be so appointed. Such a judge is entitled to such allowances as the President may determine. He will also enjoy all the jurisdiction, powers and privileges of a judge of that high court. But, he will not otherwise be deemed to be a judge of that high court.

- The "Great Writ" of **habeas corpus** is a fundamental right in the Constitution that protects against unlawful and indefinite imprisonment.
- **Mandamus**, is a judicial remedy in the form of an order from a court to any government, subordinate court, corporation, or public authority, to do some specific act
- **Certiorari**, In law, certiorari is a court process to seek judicial review of a decision of a lower court or government agency.

As a court of record, a high court has two powers:

- (a) The judgements, proceedings and acts of the high courts are recorded for perpetual memory and testimony.
- (b) These records are admitted to be of evidentiary value and cannot be questioned when produced before any subordinate court. They are recognised as legal precedents and legal references.

It has power to punish for contempt of court, either with simple imprisonment or with fine or with both.

The Constitution has made the following provisions to safeguard and ensure the independent and impartial functioning of a high court.

1. Mode of Appointment
2. Security of Tenure
3. Fixed Service Conditions
4. Expenses Charged on Consolidated Fund
5. Conduct of Judges cannot be Discussed
6. Ban on Practice after Retirement
7. Power to Punish for its Contempt
8. Freedom to Appoint its Staff
9. Its Jurisdiction cannot be Curtailed
10. Separation from Executive

#### 4.6 Urban Local Governments

The term Panchayati Raj in India signifies the system of rural local selfgovernment. It has been established in all the states of India by the Acts of the state legislatures to build democracy at the grass root level. It is entrusted with rural development. It was constitutionalised through the 73rd Constitutional Amendment Act of 1992.

Balwant Rai Mehta Committee In January 1957, the Government of India appointed a committee to examine the working of the Community Development Programme (1952) and the National Extension Service (1953) and to suggest measures for their better working. The chairman of this committee was Balwant Rai G Mehta. The committee submitted its report in November 1957 and recommended the establishment of the scheme of 'democratic decentralisation', which ultimately came to be known as Panchayati Raj. The specific recommendations made by it are:

1. Establishment of a three-tier panchayati raj system—gram panchayat at the village level, panchayat samiti at the block level and zila parishad at the district level. These tiers should be organically linked through a device of indirect elections.

2. The village panchayat should be constituted with directly elected representatives, whereas the panchayat samiti and zila parishad should be constituted with indirectly elected members.
3. All planning and development activities should be entrusted to these bodies.
4. The panchayat samiti should be the executive body while the zila parishad should be the advisory, coordinating and supervisory body.
5. The district collector should be the chairman of the zila parishad.
6. There should be a genuine transfer of power and responsibility to these democratic bodies.
7. Adequate resources should be transferred to these bodies to enable them to discharge their functions and fulfil their responsibilities.
8. A system should be evolved to effect further devolution of authority in future. These recommendations of the committee were accepted by the National Development Council in January 1958.

The council did not insist on a single rigid pattern and left it to the states to evolve their own patterns suitable to local conditions. But the basic principles and broad fundamentals should be identical throughout the country.

### **Various Committees**

1. 1960 Committee on Rationalisation of Panchayat Statistics V.R. Rao
2. 1961 Working Group on Panchayats and Cooperatives S.D. Mishra
3. 1961 Study Team on Panchayati Raj Administration V. Iswaran
4. 1962 Study Team on Nyaya Panchayats G.R. Rajgopal
5. 1963 Study Team on the Position of Gram Sabha in Panchayati Raj Movement R.R. Diwakar
6. 1963 Study Group on Budgeting and Accounting Procedure of M. Rama Krishnayya Panchayati Raj Institutions
7. 1963 Study Team on Panchayati Raj Finances K. Santhanam
8. 1965 Committee on Panchayati Raj Elections K. Santhanam
9. 1965 Study Team on the Audit and Accounts of Panchayati Raj Bodies R.K. Khanna
10. 1966 Committee on Panchayati Raj Training Centres G. Ramachandran
11. 1969 Study Team on Involvement of Community Development Agency and Panchayati Raj Institutions in the Implementation of Basic Land Reform Measures V. Ramanathan
12. 1972 Working Group for Formulation of Fifth Five Year Plan on Community Development and Panchayati Raj N. Ramakrishnayya
13. 1976 Committee on Community Development and Panchayati Raj Smt. Daya Choubey

## **73rd Amendment Act of 1992**

### **Significance of the Act**

This act has added a new Part-IX to the Constitution of India. This part is entitled as 'The Panchayats' and consists of provisions from Articles 243 to 243 O. In addition, the act has also added a new Eleventh Schedule to the Constitution. This schedule contains 29 functional items of the panchayats. It deals with Article 243-G.

The act has given a practical shape to Article 40 of the Constitution which says that, "The State shall take steps to organise village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government." This article forms a part of the Directive Principles of State Policy.

The act gives a constitutional status to the panchayati raj institutions. It has brought them under the purview of the justiciable part of the Constitution. In other words, the state governments are under constitutional obligation to adopt the new panchayati raj system in accordance with the provisions of the act. Consequently, neither the formation of panchayats

nor the holding of elections at regular intervals depend on the will of the state government any more.

### **Three-Tier System**

The act provides for a three-tier system of panchayati raj in every state, that is, panchayats at the village, intermediate, and district levels. Thus, the act brings about uniformity in the structure of panchayati raj throughout the country. However, a state having a population not exceeding 20 lakh may not constitute panchayats at the intermediate level.

### **Election of Members and Chairpersons**

All the members of panchayats at the village, intermediate and district levels shall be elected directly by the people. Further, the chairperson of panchayats at the intermediate and district levels shall be elected indirectly—by and from amongst the elected members thereof. However, the chairperson of a panchayat at the village level shall be elected in such manner as the state legislature determines. The chairperson of a panchayat and other members of a panchayat elected directly or indirectly shall have the right to vote in the meetings of the panchayats.

### **Reservation of Seats**

The act provides for the reservation of seats for scheduled castes and scheduled tribes in every panchayat (i.e., at all the three levels) in proportion of their population to the total population in the panchayat area. Further, the state legislature shall provide for the reservation of offices of chairperson in the panchayat at the village or any other level for the SCs and STs. The act 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 women belonging to the SCs and STs). Further, not less than one-third of the total number of offices of chairpersons in the panchayats at each level shall be reserved for women.

### **Duration of Panchayats**

The act provides for a five-year term of office to the panchayat at every level. However, it can be dissolved before the completion of its term. Further, fresh elections to constitute a panchayat shall be completed (a) before the expiry of its duration of five years; or (b) in case of dissolution, before the expiry of a period of six months from the date of its dissolution.

**Finance Commission** The governor of a state shall, after every five years, constitute a finance commission to review the financial position of the panchayats. It shall make the following recommendations to the Governor:

1. The principles that should govern: (a) The distribution between the state and the panchayats of the net proceeds of the taxes, duties, tolls and fees levied by the state and allocation of shares amongst the panchayats at all levels. (b) The determination of taxes, duties, tolls and fees that may be assigned to the panchayats. (c) The grants-in-aid to the panchayats from the consolidated fund of the state.
2. The measures needed to improve the financial position of the panchayats.
3. Any other matter referred to it by the governor in the interests of sound finance of the panchayats.

### **A. Compulsory Provisions**

1. Organisation of Gram Sabha in a village or group of villages.
2. Establishment of panchayats at the village, intermediate and district levels.
3. Direct elections to all seats in panchayats at the village, intermediate and district levels.
4. Indirect elections to the post of chairperson of panchayats at the intermediate and district levels.

5. Voting rights of the chairperson and other members of a panchayat elected directly or indirectly.
6. 21 years to be the minimum age for contesting elections to panchayats.
7. Reservation of seats (both members and chairpersons) for SCs and STs in panchayats at all the three levels.
8. Reservation of one-third seats (both members and chairpersons) for women in panchayats at all the three levels.
9. Fixing tenure of five years for panchayats at all levels and holding fresh elections within six months in the event of supersession of any panchayat.
10. Establishment of a State Election Commission for conducting elections to the panchayats.
11. Constitution of a State Finance Commission after every five years to review the financial position of the panchayats.

### **B. Voluntary Provisions**

1. Endowing the Gram Sabha with powers and functions at the village level.
2. Determining the manner of election of the chairperson of the village panchayat.
3. Giving representation to the chairpersons of the village panchayats in the intermediate panchayats or in the case of a state not having intermediate panchayats, in the district panchayats.
4. Giving representation to the chairpersons of the intermediate panchayats in the district panchayats.
5. Giving representation to members of the Parliament (both the Houses) and the state legislature (both the Houses) in the panchayats at different levels falling within their constituencies.
6. Providing reservation of seats (both members and chairpersons) for backward classes in panchayats at any level.
7. Granting powers and authority to the panchayats to enable them to function as institutions of self-government (in brief, making them autonomous bodies).
8. Devolution of powers and responsibilities upon panchayats to prepare plans for economic development and social justice; and to perform some or all of the 29 functions listed in the Eleventh Schedule of the Constitution.
9. Granting financial powers to the panchayats, that is, authorizing them to levy, collect and appropriate taxes, duties, tolls and fees.
10. Assigning to a panchayat the taxes, duties, tolls and fees levied and collected by the state government.
11. Making the grants-in-aid to the panchayats from the consolidated fund of the state.
12. Providing for constitution of funds for crediting all moneys of the panchayat.

### **Types of Urban Government**

The term 'Urban Local Government' in India signifies the governance of an urban area by the people through their elected representatives. The jurisdiction of an urban local government is limited to a specific urban area which is demarcated for this purpose by the state government. The system of urban government was constitutionalised through the 74th Constitutional Amendment Act of 1992. At the Central level, the subject of 'urban local government' is dealt with by the following three ministries:

- (i) Ministry of Housing and Urban Affairs.
- (ii) Ministry of Defence in the case of cantonment boards
- (iii) Ministry of Home Affairs in the case of Union Territories

**The following eight types of urban local bodies are created in India for the administration of urban areas:**

- Municipal Corporation

- Municipality
- Notified Area Committee
- Town Area Committee
- Cantonment Board
- Township
- Port Trust
- **Special Purpose Agency**

Sl.No.	Type	Description
1.	<b>Municipal Corporation</b>	<ul style="list-style-type: none"> <li>• The council, the standing committees and the commissioner.</li> <li>• The composition of the Council including the reservation of seats for SCs, STs and women is governed by the 74th Constitutional Amendment Act.</li> <li>• The Council is headed by a Mayor. He is assisted by a Deputy Mayor.</li> <li>• He is elected in a majority of the states for a one-year renewable term.</li> </ul>
2.	<b>Municipality</b>	<ul style="list-style-type: none"> <li>• The municipalities are established for the administration of towns and smaller cities.</li> <li>• A municipal corporation, a municipality also has three authorities,</li> <li>• Namely, the council, the standing committees and the chief executive officer.</li> </ul>
3.	<b>Notified Area Committee</b>	<ul style="list-style-type: none"> <li>• A notified area committee is created for the administration of two types of areas—a fast developing town due to industrialization, and</li> <li>• A town which does not yet fulfil all the conditions necessary for the constitution of a municipality,</li> </ul>
4.	<b>Town Area Committee</b>	<ul style="list-style-type: none"> <li>• A town area committee is set up for the administration of a small town.</li> <li>• It is a semimunicipal authority and is entrusted with a limited number of civic functions</li> </ul>
5.	<b>Cantonment Board</b>	<ul style="list-style-type: none"> <li>• A cantonment board is established for municipal administration for civilian population in the cantonment area .</li> <li>• It is set up under the provisions of the Cantonments Act of 2006—a legislation enacted by the Central government</li> </ul>
6.	<b>Township</b>	<ul style="list-style-type: none"> <li>• This type of urban government is established by the large public enterprises to provide civic amenities to its staff and workers who live in the housing colonies built near the plant.</li> </ul>
7.	<b>Port Trust</b>	<ul style="list-style-type: none"> <li>• The port trusts are established in the port areas like Mumbai, Kolkata, Chennai and so on for two purposes:</li> </ul>

		(a) to manage and protect the ports; and (b) to provide civic amenities.
<b>8.</b>	<b>Special Purpose Agencies</b>	<ul style="list-style-type: none"> <li>• These are function-based and not area based.</li> <li>• They are known as ‘single purpose’, ‘uni-purpose’ or ‘special purpose’ agencies or ‘functional local bodies’.</li> </ul>

### **74th Amendment Act of 1992**

This Act has added a new Part IX-A to the Constitution of India. This part is entitled as ‘The Municipalities’ and consists of provisions from Articles 243-P to 243-ZG. In addition, the act has also added a new Twelfth Schedule to the Constitution. This schedule contains eighteen functional items of municipalities. It deals with Article 243-W. The act gave constitutional status to the municipalities. It has brought them under the purview of justiciable part of the Constitution. In other words, state governments are under constitutional obligation to adopt the new system of municipalities in accordance with the provisions of the act. The act aims at revitalising and strengthening the urban governments so that they function effectively as units of local government.

### **Salient Features**

The salient features of the act are: 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 areas

### **Composition**

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).

### **Wards 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. Further, 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).

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## UNIT – V: OTHER CONSTITUTIONAL AND STATUTORY BODIES

**Other Constitutional and Statutory Bodies:** Comptroller and Auditor General, Election Commission, Finance Commission, Attorney General And Advocate General, Union Public Service Commission(UPSC), State Public Service Commissions(Spscs), Tribunals, National Human Rights Commission(NHRC).

### 5.1 Comptroller and Auditor General (CAG)

The Constitution of India (Article 148) provides for an independent office of the Comptroller and Auditor General of India (CAG). He is the head of the Indian Audit and Accounts Department . He is the guardian of the public purse and controls the entire financial system of the country at both the levels—the Centre and the state. His duty is to uphold the Constitution of India and laws of Parliament in the field of financial administration. This is the reason why Dr. B.R. Ambedkar said that the CAG shall be the most important Officer under the Constitution of India<sup>2</sup> . He is one of the bulwarks of the democratic system of government in India; the others being the Supreme Court, the Election Commission and the Union Public Service Commission.

#### Appointment and Term

The CAG is appointed by the president of India by a warrant under his hand and seal. The CAG, before taking over his office, makes and subscribes before the president an oath or affirmation:

1. to bear true faith and allegiance to the Constitution of India;
2. to uphold the sovereignty and integrity of India;
3. to duly and faithfully and to the best of his ability, knowledge and judgement perform the duties of his office without fear or favour, affection or ill-will; and
4. to uphold the Constitution and the laws.

He holds office for a period of six years or upto the age of 65 years, whichever is earlier. He can resign any time from his office by addressing the resignation letter to the president. He can also be removed by the president on same grounds and in the same manner as a judge of the Supreme Court. In other words, he can be removed by the president on the basis of a resolution passed to that effect by both the Houses of Parliament with special majority, either on the ground of proved misbehaviour or incapacity.

#### Independence

The Constitution has made the following provisions to safeguard and ensure the independence of CAG:

1. He is provided with the security of tenure. He can be removed by the president only in accordance with the procedure mentioned in the Constitution. Thus, he does not hold his office till the pleasure of the president, though he is appointed by him.
2. He is not eligible for further office, either under the Government of India or of any state, after he ceases to hold his office.
3. His salary and other service conditions are determined by the Parliament. His salary is equal to that of a judge of the Supreme Court .
4. Neither his salary nor his rights in respect of leave of absence, pension or age of retirement can be altered to his disadvantage after his appointment.
5. The conditions of service of persons serving in the Indian Audit and Accounts Department and the administrative powers of the CAG are prescribed by the president after consultation with the CAG.
6. The administrative expenses of the office of the CAG, including all salaries, allowances and pensions of persons serving in that office are charged upon the Consolidated Fund of India.



Thus, they are not subject to the vote of Parliament. Further, no minister can represent the CAG in Parliament (both Houses) and no minister can be called upon to take any responsibility for any actions done by him.

### **Duties of CAG**

The duties and functions of the CAG as laid down by the Parliament and the Constitution are:

1. He audits the accounts related to all expenditure from the Consolidated Fund of India, consolidated fund of each state and consolidated fund of each union territory having a Legislative Assembly.
2. He audits all expenditure from the Contingency Fund of India and the Public Account of India as well as the contingency fund of each state and the public account of each state.
3. He audits all trading, manufacturing, profit and loss accounts, balance sheets and other subsidiary accounts kept by any department of the Central Government and state governments.
4. He audits the receipts and expenditure of the Centre and each state to satisfy himself that the rules and procedures in that behalf are designed to secure an effective check on the assessment, collection and proper allocation of revenue.
5. He audits the receipts and expenditure of the following: (a) All bodies and authorities substantially financed from the Central or state revenues; (b) Government companies; and (c) Other corporations and bodies, when so required by related laws.
6. He audits all transactions of the Central and state governments related to debt, sinking funds, deposits, advances, suspense accounts and remittance business. He also audits receipts, stock accounts and others, with approval of the President, or when required by the President.
7. He audits the accounts of any other authority when requested by the President or Governor. For example, the audit of local bodies.
8. He advises the President with regard to prescription of the form in which the accounts of the Centre and the states shall be kept (Article 150).
9. He submits his audit reports relating to the accounts of the Centre to President, who shall, in turn, place them before both the Houses of Parliament (Article 151).
10. He submits his audit reports relating to the accounts of a state to governor, who shall, in turn, place them before the state legislature (Article 151).
11. He ascertains and certifies the net proceeds of any tax or duty (Article 279). His certificate is final. The 'net proceeds' means the proceeds of a tax or a duty minus the cost of collection.
12. He acts as a guide, friend and philosopher of the Public Accounts Committee of the Parliament.
13. He compiles and maintains the accounts of state governments. In 1976, he was relieved of his responsibilities with regard to the compilation and maintenance of accounts of the Central Government due to the separation of accounts from audit, that is, departmentalisation of accounts.

### **CAG and Corporation**

The role of CAG in the auditing of public corporations is limited. Broadly speaking, his relationship with the public corporations falls into the following three categories:

- (i) Some corporations are audited totally and directly by the CAG, for example, Damodar Valley Corporation, Oil and Natural Gas Commission, Air India, Indian Airlines Corporation, and others.
- (ii) Some other corporations are audited by private professional auditors who are appointed by the Central Government in consultation with the CAG. If necessary, the CAG can conduct supplementary audit. The examples are, Central Warehousing Corporation, Industrial Finance Corporation, and others.
- (iii) Some other corporations are totally subjected to private audit. In other words, their audit is done exclusively by private professional auditors and the CAG does not come into the picture at all. They submit their annual reports and accounts directly to the Parliament. Examples of such corporations are Life Insurance Corporation of India, Reserve Bank of India, State Bank of India, Food Corporation of India, and others.

The role of the CAG in the auditing of Government companies is also limited. They are audited by private auditors who are appointed by the Government on the advise of the CAG. The CAG can also undertake supplementary audit or test audit of such companies. In 1968, an Audit Board was established

as a part of the office of CAG to associate outside specialists and experts to handle the technical aspects of audit of specialised enterprises like engineering, iron and steel, chemicals and so on. This board was established on the recommendations of the Administrative Reforms Commission of India. It consists of a Chairman and two members appointed by the CAG.

## **5.2. Election Commission (EC)**

The Election Commission is a permanent and an independent body established by the Constitution of India directly to ensure free and fair elections in the country. Article 324 of the Constitution provides that the power of superintendence, direction and control of elections to parliament, state legislatures, the office of president of India and the office of vice-president of India shall be vested in the election commission. Thus, the Election Commission is an all-India body in the sense that it is common to both the Central government and the state governments.

It must be noted here that the election commission is not concerned with the elections to panchayats and municipalities in the states. For this, the Constitution of India provides for a separate State Election Commission.

### **Composition**

Article 324 of the Constitution has made the following provisions with regard to the composition of election commission:

1. The Election Commission shall consist of the chief election commissioner and such number of other election commissioners, if any, as the president may from time to time fix.
2. The appointment of the chief election commissioner and other election commissioners shall be made by the president.
3. When any other election commissioner is so appointed, the chief election commissioner shall act as the chairman of the election commission.
4. The president may also appoint after consultation with the election commission such regional commissioners as he may consider necessary to assist the election commission.
5. The conditions of service and tenure of office of the election commissioners and the regional commissioners shall be determined by the president.

Since its inception in 1950 and till 15 October 1989, the election commission functioned as a single member body consisting of the Chief Election Commissioner. On 16 October 1989, the president appointed two more election commissioners to cope with the increased work of the election commission on account of lowering of the voting age from 21 to 18 years.

In case of difference of opinion amongst the Chief Election Commissioner and/or two other election commissioners, the matter is decided by the Commission by majority. They hold office for a term of six years or until they attain the age of 65 years, whichever is earlier. They can resign at any time or can also be removed before the expiry of their term.

### **Independence**

Article 324 of the Constitution has made the following provisions to safeguard and ensure the independent and impartial functioning of the Election Commission:

1. The chief election commissioner is provided with the security of tenure. He cannot be removed from his office except in same manner and on the same grounds as a judge of the Supreme Court. In other words, he can be removed by the president on the basis of a resolution passed to that effect by both the Houses of Parliament with special majority, either on the ground of proved misbehaviour or incapacity. Thus, he does not hold his office till the pleasure of the president, though he is appointed by him.
2. The service conditions of the chief election commissioner cannot be varied to his disadvantage after his appointment.
3. Any other election commissioner or a regional commissioner cannot be removed from office except on the recommendation of the chief election commissioner.

Though the constitution has sought to safeguard and ensure the independence and impartiality of the Election Commission, some flaws can be noted, viz.,

1. The Constitution has not prescribed the qualifications (legal, educational, administrative or judicial) of the members of the Election Commission.
2. The Constitution has not specified the term of the members of the Election Commission.

3. The Constitution has not debarred the retiring election commissioners from any further appointment by the government.

### **Powers and Functions**

The powers and functions of the Election Commission with regard to elections to the Parliament, state legislatures and offices of President and Vice-President can be classified into three categories, viz,

1. Administrative
2. Advisory
3. Quasi-Judicial

In detail, these powers and functions are:

1. To determine the territorial areas of the electoral constituencies throughout the country on the basis of the Delimitation Commission Act of Parliament.
2. To prepare and periodically revise electoral rolls and to register all eligible voters.
3. To notify the dates and schedules of elections and to scrutinise nomination papers.
4. To grant recognition to political parties and allot election symbols to them.
5. To act as a court for settling disputes related to granting of recognition to political parties and allotment of election symbols to them.
6. To appoint officers for inquiring into disputes relating to electoral arrangements.
7. To determine the code of conduct to be observed by the parties and the candidates at the time of elections.
8. To prepare a roster for publicity of the policies of the political parties on radio and TV in times of elections.
9. To advise the president on matters relating to the disqualifications of the members of Parliament.
10. To advise the governor on matters relating to the disqualifications of the members of state legislature.
11. To cancel polls in the event of rigging, booth capturing, violence and other irregularities.
12. To request the president or the governor for requisitioning the staff necessary for conducting elections.
13. To supervise the machinery of elections throughout the country to ensure free and fair elections.
14. To advise the president whether elections can be held in a state under president's rule in order to extend the period of emergency after one year.
15. To register political parties for the purpose of elections and grant them the status of national or state parties on the basis of their poll performance.

### **Guiding Principles**

The Commission has laid down for itself guiding principles of good governance:

1. To uphold the values enshrined in the Constitution viz, equality, equity, impartiality, independence; and rule of law in superintendence, direction and control over the electoral governance;
2. To conduct elections with highest standard of credibility, freeness, fairness, transparency, integrity, accountability, autonomy and professionalism;
3. To ensure participation of all eligible citizens in the electoral process in an inclusive voter centric and voterfriendly environment;
4. To engage with political parties and all stakeholders in the interest of electoral process;
5. To promote awareness about the electoral process and electoral governance amongst stakeholders namely, voters, political parties, election functionaries, candidates and people at large; and to enhance and strengthen confidence and trust in the electoral system of this country;
6. To develop the human resource for effective and professional delivery of electoral services;
7. To build quality infrastructure for smooth conduct of electoral process;
8. To adopt technology for improvement in all areas of electoral process;
9. To strive for adoption of innovative practices for achieving excellence and overall realization of the vision and mission;
10. To contribute towards the reinforcement of democratic values by maintaining and reinforcing confidence and trust of the people in the electoral system of the country.



### 5.3 Finance Commission (FC)

Article 280 of the Constitution of India provides for a Finance Commission as a quasi judicial body. It is constituted by the president of India every fifth year or at such earlier time as he considers necessary.

#### Composition

The Finance Commission consists of a chairman and four other members to be appointed by the president. They hold office for such period as specified by the president in his order. They are eligible for reappointment.

The Constitution authorises the Parliament to determine the qualifications of members of the commission and the manner in which they should be selected. Accordingly, the Parliament has specified the qualifications of the chairman and members of the commission. The chairman should be a person having experience in public affairs and the four other members should be selected from amongst the following:

1. A judge of high court or one qualified to be appointed as one.
2. A person who has specialised knowledge of finance and accounts of the government.
3. A person who has wide experience in financial matters and in administration.
4. A person who has special knowledge of economics

#### Functions

The Finance Commission is required to make recommendations to the president of India on the following matters:

1. The distribution of the net proceeds of taxes to be shared between the Centre and the states, and the allocation between the states of the respective shares of such proceeds.
2. The principles that should govern the grants-in-aid to the states by the Centre (i.e., out of the consolidated fund of India).
3. The measures needed to augment the consolidated fund of a state to supplement the resources of the panchayats and the municipalities in the state on the basis of the recommendations made by the state finance commission.
4. Any other matter referred to it by the president in the interests of sound finance

List of Finance Commissions			
Finance Commission	Year of establishment	Chairman	Operational duration
First	1951	R. K.C.Niyogi	1952–57
Second	1956	K. Santhanam	1957–62
Third	1960	A. K. Chanda	1962–66
Fourth	1964	P. V. Rajamannar	1966–69
Fifth	1968	Mahaveer Tyagi	1969–74
Sixth	1972	K. Brahmananda Reddy	1974–79
Seventh	1977	J. M. Shelat	1979–84
Eighth	1983	Y. B. Chavan	1984–89
Ninth	1987	N. K. P. Salve	1989–95
Tenth	1992	K. C. Pant	1995–00
Eleventh	1998	A. M. Khusro	2000–05
Twelfth	2002	C. Rangarajan	2005–10
Thirteenth	2007	Dr. Vijay L. Kelkar	2010–15
Fourteenth	2013	Dr. Y. V Reddy	2015–20
Fifteenth	2017	N. K. Singh	2020–25

### **Advisory Role**

It must be clarified here that the recommendations made by the Finance Commission are only of advisory nature and hence, not binding on the government. It is up to the Union government to implement its recommendations on granting money to the states. To put it in other words, 'It is nowhere laid down in the Constitution that the recommendations of the commission shall be binding upon the Government of India or that it would give rise to a legal right in favour of the beneficiary states to receive the money recommended to be offered to them by the Commission'.

As rightly observed by Dr. P.V. Rajamannar, the Chairman of the Fourth Finance Commission, "Since the Finance Commission is a constitutional body expected to be quasi-judicial, its recommendations should not be turned down by the Government of India unless there are very compelling reasons".

The Constitution of India envisages the Finance commission as the balancing wheel of fiscal federalism in India. However, till 2014, its role in the Centre-state fiscal relations was undermined by the erstwhile Planning Commission, a non-constitutional and a non-statutory body. Dr. P.V. Rajamannar, the Chairman of the Fourth Finance commission, highlighted the overlapping of functions and responsibilities between the Finance Commission and the erstwhile Planning Commission in federal fiscal transfers. In 2015, the Planning Commission was replaced by a new body called NITI Aayog (National Institution for Transforming India).

## **5.4 Attorney General(AG)**

The Constitution (Article 76) has provided for the office of the Attorney General for India. He is the highest law officer in the country.

### **Appointment and Term**

The Attorney General (AG) is appointed by the president. He must be a person who is qualified to be appointed a judge of the Supreme Court. In other words, he must be a citizen of India and he must have been a judge of some high court for five years or an advocate of some high court for ten years or an eminent jurist, in the opinion of the president.

The term of office of the AG is not fixed by the Constitution. Further, the Constitution does not contain the procedure and grounds for his removal. He holds office during the pleasure of the president. This means that he may be removed by the president at any time. He may also quit his office by submitting his resignation to the president. Conventionally, he resigns when the government (council of ministers) resigns or is replaced, as he is appointed on its advice.

The remuneration of the AG is not fixed by the Constitution. He receives such remuneration as the president may determine.

### **Duties and Functions**

As the chief law officer of the Government of India, the duties of the AG include the following:

1. To give advice to the Government of India upon such legal matters, which are referred to him by the president.
2. To perform such other duties of a legal character that are assigned to him by the president.
3. To discharge the functions conferred on him by the Constitution or any other law.

The president has assigned the following duties to the AG:

1. To appear on behalf of the Government of India in all cases in the Supreme Court in which the Government of India is concerned.
2. To represent the Government of India in any reference made by the president to the Supreme Court under Article 143 of the Constitution.
3. To appear (when required by the Government of India) in any high court in any case in which the Government of India is concerned.

### **Rights and Limitations**

In the performance of his official duties, the Attorney General has the right of audience in all courts in the territory of India. Further, he has the right to speak and to take part in the proceedings of both the Houses of Parliament or their joint sitting and any committee of the Parliament of which he may be named a member, but without a right to vote. He enjoys all the privileges and immunities that

are available to a member of Parliament. Following limitations are placed on the Attorney General in order to avoid any complication and conflict of duty:

1. He should not advise or hold a brief against the Government of India.
2. He should not advise or hold a brief in cases in which he is called upon to advise or appear for the Government of India.
3. He should not defend accused persons in criminal prosecutions without the permission of the Government of India.
4. He should not accept appointment as a director in any company or corporation without the permission of the Government of India.
5. He should not advise any ministry or department of Government of India or any statutory organization or any public sector undertaking unless the proposal or a reference in this regard is received through the Ministry of Law and Justice, Department of Legal Affairs

### **Solicitor General of India**

In addition to the AG, there are other law officers of the Government of India. They are the solicitor general of India and additional solicitor general of India. They assist the AG in the fulfilment of his official responsibilities. It should be noted here that only the office of the AG is created by the Constitution. In other words, Article 76 does not mention about the solicitor general and additional solicitor general. The AG is not a member of the Central cabinet. There is a separate law minister in the Central cabinet to look after legal matters at the government level.

## **5.5 Advocate General**

The Constitution (Article 165) has provided for the office of the advocate general for the states. He is the highest law officer in the state. Thus he corresponds to the Attorney General of India.

### **Appointment and Term**

The advocate general is appointed by the governor. He must be a person who is qualified to be appointed a judge of a high court. In other words, he must be a citizen of India and must have held a judicial office for ten years or been an advocate of a high court for ten years.

The term of office of the advocate general is not fixed by the Constitution. Further, the Constitution does not contain the procedure and grounds for his removal. He holds office during the pleasure of the governor. This means that he may be removed by the governor at any time. He may also quit his office by submitting his resignation to the governor. Conventionally, he resigns when the government (council of ministers) resigns or is replaced, as he is appointed on its advice.

The remuneration of the advocate general is not fixed by the Constitution. He receives such remuneration as the governor may determine

### **Duties and Functions**

As the chief law officer of the government in the state, the duties of the advocate general include the following:

1. To give advice to the government of the state upon such legal matters which are referred to him by the governor.
2. To perform such other duties of a legal character that are assigned to him by the governor.
3. To discharge the functions conferred on him by the Constitution or any other law.

In the performance of his official duties, the advocate general is entitled to appear before any court of law within the state. Further, he has the right to speak and to take part in the proceedings of both the Houses of the state legislature or any committee of the state legislature of which he may be named a member, but without a right to vote. He enjoys all the privileges and immunities that are available to a member of the state legislature.

## **5.6 union Public Service Commission (UPSC)**

The Union Public Service Commission (UPSC) is the central recruiting agency in India. It is an independent constitutional body in the sense that it has been directly created by the Constitution. Articles 315 to 323 in Part XIV of the Constitution contain elaborate provisions regarding the composition, appointment and removal of members along with the independence, powers and functions of the UPSC.

### **Composition**

The UPSC consists of a chairman and other members appointed by the president of India. The Constitution, without specifying the strength of the Commission has left the matter to the discretion of the president, who determines its composition. Usually, the Commission consists of nine to eleven members including the chairman. Further, no qualifications are prescribed for the Commission's membership except that one-half of the members of the Commission should be such persons who have held office for at least ten years either under the Government of India or under the government of a state. The Constitution also authorises the president to determine the conditions of service of the chairman and other members of the Commission.

The chairman and members of the Commission hold office for a term of six years or until they attain the age of 65 years, whichever is earlier. However, they can relinquish their offices at any time by addressing their resignation to the president. They can also be removed before the expiry of their term by the president in the manner as provided in the Constitution. The President can appoint one of the members of the UPSC as an acting chairman in the following two circumstances:

- a) When the office of the chairman falls vacant; or
- b) When the chairman is unable to perform his functions due to absence or some other reason.

The acting chairman functions till a person appointed as chairman enters on the duties of the office or till the chairman is able to resume his duties.

### **Removal**

The President can remove the chairman or any other member of UPSC from the office under the following circumstances:

- a) If he is adjudged an insolvent (that is, has gone bankrupt);
- b) If he engages, during his term of office, in any paid employment outside the duties of his office; or
- c) If he is, in the opinion of the president, unfit to continue in office by reason of infirmity of mind or body.

### **Independence**

The Constitution has made the following provisions to safeguard and ensure the independent and impartial functioning of the UPSC:

- a) The chairman or a member of the UPSC can be removed from office by the president only in the manner and on the grounds mentioned in the Constitution. Therefore, they enjoy security of tenure.
- b) The conditions of service of the chairman or a member, though determined by the president, cannot be varied to his disadvantage after his appointment.
- c) The entire expenses including the salaries, allowances and pensions of the chairman and members of the UPSC are charged on the Consolidated Fund of India. Thus, they are not subject to vote of Parliament.
- d) The chairman of UPSC (on ceasing to hold office) is not eligible for further employment in the Government of India or a state.
- e) A member of UPSC (on ceasing to hold office) is eligible for appointment as the chairman of UPSC or a State Public Service Commission (SPSC), but not for any other employment in the Government of India or a state.
- f) The chairman or a member of UPSC is (after having completed his first term) not eligible for reappointment to that office (i.e., not eligible for second term).

### **Functions**

The UPSC performs the following functions:

- a) It conducts examinations for appointments to the all-India services, Central services and public services of the centrally administered territories.

- b) It assists the states (if requested by two or more states to do so) in framing and operating schemes of joint recruitment for any services for which candidates possessing special qualifications are required.
- c) It serves all or any of the needs of a state on the request of the state governor and with the approval of the president of India.
- d) It is consulted on the following matters related to personnel management:
  - (i) All matters relating to methods of recruitment to civil service and for civil posts.
  - (ii) The principles to be followed in making appointments to civil services and posts and in making promotions and transfers from one service to another.
  - (iii) The suitability of candidates for appointments to civil service and posts; for promotions and transfers from one service to another; and appointments by transfer or deputation. The concerned departments make recommendations for promotion and request the UPSC to ratify them.
  - (iv) All disciplinary matters affecting a person serving under the Government of India in a civil capacity including memorials and petitions relating to such matters. These include: – Censure (Severe disapproval) – Withholding of increments – Withholding of promotions – Recovery of pecuniary loss – Reduction to lower service or rank (Demotion) – Compulsory retirement – Removal from service – Dismissal from service
  - (v) Any claim for reimbursement of legal expenses incurred by a civil servant in defending legal proceedings instituted against him in respect of acts done in the execution of his office duties.
  - (vi) Any claim for the award of a pension in respect of injury sustained by a person while serving under the Government of India and any question as to the amount of any such award.
  - (vii) Matters of temporary appointments for period exceeding one year and on regularisation of appointments.
  - (viii) Matters related to grant of extension of service and re-employment of certain retired civil servants.
  - (ix) Any other matter related to personnel management.

## 5.7 State Public Service Commissions (SPSCs)

Parallel to the Union Public Service Commission (UPSC) at the Centre, there is a State Public Service Commission (SPSC) in a state. The same set of Articles (i.e., 315 to 323 in Part XIV) of the Constitution also deal with the composition, appointment and removal of members, power and functions and independence of a SPSC.

### **Composition**

A State Public Service Commission consists of a chairman and other members appointed by the governor of the state. The Constitution does not specify the strength of the Commission but has left the matter to the discretion of the Governor. Further, no qualifications are prescribed for the commission's membership except that one-half of the members of the commission should be such persons who have held office for at least ten years either under the government of India or under the Government of a state. The Constitution also authorises the governor to determine the conditions of service of the chairman and members of the Commission.

The chairman and members of the Commission hold office for a term of six years or until they attain the age of 62 years, whichever is earlier (in the case of UPSC, the age limit is 65 years). However, they can relinquish their offices at any time by addressing their resignation to the governor.

The governor can appoint one of the members of the SPSC as an acting chairman in the following two circumstances:

- a. When the office of the chairman falls vacant; or
- b. When the chairman is unable to perform his functions due to absence or some other reason. The acting chairman functions till the person appointed as chairman enters on the duties of the office or till the chairman is able to resume his duties.



## Functions

A SPSC performs all those functions in respect of the state services as the UPSC does in relation to the Central services:

- a. It conducts examinations for appointments to the services of the state.
- b. It is consulted on the following matters related to personnel management:
  - i. All matters relating to methods of recruitment to civil service and for civil posts.
  - ii. The principles to be followed in making appointments to civil services and posts and in making promotions and transfers from one service to another.
  - iii. The suitability of candidates for appointments to civil service and posts; for promotions and transfers from one service to another; and appointments by transfer or deputation. The concerned departments make recommendations for promotion and request the SPSC to ratify them.
  - iv. All disciplinary matters affecting a person serving under the government of the state in a civil capacity including memorials, petitions relating to such matters. These include: – Censure (severe disapproval) – Withholding of increments – Withholding of promotions – Recovery of pecuniary loss – Reduction to lower service or rank (demotion) – Compulsory retirement – Removal from service – Dismissal from service.
  - v. Any claim for reimbursement of legal expenses incurred by a civil servant in defending legal proceedings instituted against him in respect of acts done in the execution of his official duties.
  - vi. Any claim for the award of a pension in respect of injuries sustained by a person while serving under the government of the state and any question as to the amount of any such award.
  - vii. Any other matter related to the personnel management.

## 5.8 Tribunals

The original Constitution did not contain provisions with respect to tribunals. The 42nd Amendment Act of 1976 added a new Part XIV-A to the Constitution. This part is entitled as 'Tribunals' and consists of only two Articles—Article 323A dealing with administrative tribunals and Article 323 B dealing with tribunals for other matters.

### Central Administrative Tribunal (CAT)

The Central Administrative Tribunal (CAT) was set up in 1985 with the principal bench at Delhi and additional benches in different states. At present, it has 17 regular benches, 15 of which operate at the principal seats of high courts and the remaining two at Jaipur and Lucknow. These benches also hold circuit sittings at other seats of high courts.

The CAT exercises original jurisdiction in relation to recruitment and all service matters of public servants covered by it. Its jurisdiction extends to the all-India services, the Central civil services, civil posts under the Centre and civilian employees of defence services. However, the members of the defence forces, officers and servants of the Supreme Court and the secretarial staff of the Parliament are not covered by it.

The appointment of Members in CAT is made on the basis of recommendations of a high powered selection committee chaired by a sitting Judge of Supreme Court who is nominated by the Chief Justice of India. After obtaining the concurrence of Chief Justice of India, appointments are made with the approval of Appointments Committee of the Cabinet (ACC).

### State Administrative Tribunals

The Administrative Tribunals Act of 1985 empowers the Central government to establish the State Administrative Tribunals (SATs) on specific request of the concerned state governments. So far (2019), the SATs have been set up in the nine states of Andhra Pradesh, Himachal Pradesh, Odisha, Karnataka, Madhya Pradesh, Maharashtra, Tamil Nadu, West Bengal and Kerala.

### Tribunals for Other Matters

Under Article 323 B, the Parliament and the state legislatures are authorised to provide for the establishment of tribunals for the adjudication of disputes relating to the following matters:

- a. Taxation
- b. Foreign exchange, import and export
- c. Industrial and labour
- d. Land reforms

- e. Ceiling on urban property
- f. Elections to Parliament and state legislatures
- g. Food stuffs
- h. Rent and tenancy right

## **5.9 National Human Rights Commission (NHRC)**

### **Establishment of Commission**

The National Human Rights Commission is a statutory (and not a constitutional) body. It was established in 1993 under a legislation enacted by the Parliament, namely, the Protection of Human Rights Act, 1993.

The commission is the watchdog of human rights in the country, that is, the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the international covenants and enforceable by courts in India. The specific objectives of the establishment of the commission are:

- a) To strengthen the institutional arrangements through which human rights issues could be addressed in their entirety in a more focussed manner;
- b) To look into allegations of excesses, independently of the government, in a manner that would underline the government's commitment to protect human rights; and
- c) To complement and strengthen the efforts that have already been made in this direction.

### **Composition of The Commission**

The commission is a multi-member body consisting of a chairperson and five members. The chairperson should be a retired chief justice of India or a judge of the Supreme Court and members should be a serving or retired judge of the Supreme Court, a serving or retired chief justice of a high court and three persons (out of which atleast one should be a woman) having knowledge or practical experience with respect to human rights. In addition to these full-time members, the commission also has seven ex-officio members—the chairpersons of the National Commission for Minorities, the National Commission for SCs, the National Commission for STs, the National Commission for Women, the National Commission for BCs and the National Commission for Protection of Child Rights and the Chief Commissioner for Persons with Disabilities.

The chairperson and members are appointed by the president on the recommendations of a six-member committee consisting of the prime minister as its head, the Speaker of the Lok Sabha, the Deputy Chairman of the Rajya Sabha, leaders of the Opposition in both the Houses of Parliament and the Central home minister. Further, a sitting judge of the Supreme Court or a sitting chief justice of a high court can be appointed only after consultation with the chief justice of India.

The chairperson and members hold office for a term of three years or until they attain the age of 70 years, whichever is earlier. They are eligible for re-appointment. After their tenure, the chairperson and members are not eligible for further employment under the Central or a state government.

### **Functions Of The Commission**

The functions of the Commission are:

- a. To inquire into any violation of human rights or negligence in the prevention of such violation by a public servant, either suo motu or on a petition presented to it or on an order of a court.
- b. To intervene in any proceeding involving allegation of violation of human rights pending before a court.
- c. To visit jails and detention places to study the living conditions of inmates and make recommendation thereon.
- d. To review the constitutional and other legal safeguards for the protection of human rights and recommend measures for their effective implementation.
- e. To review the factors including acts of terrorism that inhibit the enjoyment of human rights and recommend remedial measures.
- f. To study treaties and other international instruments on human rights and make recommendations for their effective implementation.
- g. To undertake and promote research in the field of human rights.
- h. To spread human rights literacy among the people and promote awareness of the safeguards available for the protection of these rights.

- i. To encourage the efforts of nongovernmental organisations (NGOs) working in the field of human rights.
- j. To undertake such other functions as it may consider necessary for the promotion of human rights

### **Performance of the Commission**

The various human rights issues taken up by the Commission are as follows:

1. Abolition of Bonded Labour
2. Functioning of the Mental Hospitals at Ranchi, Agra and Gwalior
3. Functioning of the Government Protective Home (Women), Agra
4. Issues Concerning Right to Food
5. Review of the Child Marriage Restraint Act, 1929
6. Protocols to the Convention on the Rights of the Child
7. Preventing Employment of Children by Government Servants: Amendment of Service Rule
8. Abolition of Child Labour
9. Guidebook for the Media on Sexual Violence against Children
10. Trafficking in Women and Children: Manual for the Judiciary for Gender Sensitisation
11. Sensitisation Programme on Prevention of Sex Tourism and Trafficking
12. Maternal Anemia and Human Rights
13. Rehabilitation of Destitute Women in Vrindavan
14. Combating Sexual Harassment of Women at the Work Place
15. Harassment of Women Passengers in Trains
16. Abolition of Manual Scavenging
17. Dalits Issues including Atrocities Perpetrated on them
18. Problems Faced by Denotified and Nomadic Tribes
19. Rights of the Disabled Persons
20. Issues Related to Right to Health
21. Rights of Persons Affected by HIV / AIDS
22. Relief Work for the Victims of 1999 Orissa Cyclone
23. Monitoring of Relief Measures undertaken after Gujarat Earthquake (2001)
24. District Complaints Authority
25. 25. Population Policy - Development and Human Rights
26. Review of Statutes, including Terrorist & Disruptive Activities Act, and (Draft) Prevention of Terrorism Bill, 2000
27. Protection of Human Rights in Areas of Insurgency and Terrorism
28. Guidelines to Check Misuse of the Power of Arrest by the Police
29. Setting up of Human Rights Cells in the State / City Police Headquarters
30. Steps to Check Custodial Deaths, Rape and Torture
31. Accession to the Convention against Torture, Additional Protocols to the Geneva Conventions.
32. Discussion on Adoption of a Refugee Law for the Country
33. Systemic Reforms of Police, Prisons and other Centers of Detention
34. Review of Laws, Implementation of Treaties, and the International Instruments on Human Rights
35. Promotion of Human Rights Literacy and Awareness in the Educational System
36. Human Rights Training for the Armed Forces and Police, Public Authorities and Civil Society
37. Action Research on Trafficking.
38. Research through well-known academic institutions and NGOs on various issues relating to human rights.
39. Constitution with NGOs and experts / specialists on human rights issues

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