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Pre-Independence Polity of India

The political history before Independence, especially before the promulgation of the Constitution on 26th January, 1950, can broadly be divided into two parts: The rule of the British East India Company and direct British rule.

I. The rule of the East India Company

Regulating Act, 1773

- This act was the first step taken by the British Government to control the Company rule in India.
- The Act designated the Governor of Bengal as the 'Governor-General of Bengal' and created an Executive Council of four members to assist him.
- The governors of Bombay and Madras presidencies were made subordinate to the Governor-General of Bengal.
- It provided for the establishment of a Supreme Court at Calcutta.

Pitt's India Act, 1784

- The Act established dual system in India by distinguishing between commercial and political functions of the Company.
- It allowed the Court of Directors to manage the commercial affairs but created a new body called Board of Control to manage the political affairs.
- The Act gave the British Government supreme control over Company's affairs and its administration in India.

Charter Act, 1833

- It made the Governor-General of Bengal the Governor-General of India.
- It ended the activities of the East India Company as a commercial body; it became a purely administrative body.

Charter Act, 1853

- The legislative and executive functions of the Governor-General's council were separated.
- It established a six-member Governor-General's legislative council which came to be known as the Central Legislative Council.
- It introduced an open competition system of selection for civil servants on the recommendations of the Macaulay Committee and threw open the competition for Indians also.
- It introduced local representation in the Central Legislative Council.

II. Direct British rule

After the 'sepoy mutiny' of 1857, the British Government assumed direct charge of the administration of India and India started to be ruled in the name of Her Majesty, the Queen of England.

Government of India Act, 1858

- This landmark Act abolished the rule of the East India Company, and transferred the powers of government to the British Crown.
- It changed the designation of Governor-General of India to Viceroy of India as the direct representative of the British Crown in India.
- It ended the system of double government by abolishing the Board of Control and Court of Directors.
- It created a new office, Secretary of State for India, vested with complete control over Indian administration. The secretary of state was a member of the British cabinet and was responsible ultimately to the British Parliament.

Indian Councils Act, 1861

- It provided for the nomination of some Indians as non-official members of his expanded council by the Viceroy.
- It empowered the Viceroy to issue ordinances, without the concurrence of the legislative council, during an emergency. The life of such an ordinance was six months.

Indian Council Act, 1892

- It increased the number of additional (non-official) members in the Central and provincial legislative councils, but maintained the official majority in them.
- It increased the functions of legislative councils and gave them the powers of discussing the budget and addressing questions to the executive.
- It provided for the nomination of some non-official members of the (a) Central Legislative Council by the viceroy on the recommendation of the provincial legislative councils and the Bengal Chamber of Commerce, and (b) Provincial legislative councils by the Governors on the recommendation of the district boards, municipalities, universities, trade associations, *zamindars* and chambers.

Indian Council Act, 1909

- The Act is also known as Morley-Minto Reforms.
- It considerably increased the size of the legislative councils, both Central and provincial. The number of members in the Central Legislative Council was raised from 16 to 60.

- It provided for the first time for the association of Indians with the Executive Councils of the Viceroy and Governors. **Satyendra Prasad Sinha** became the first Indian to join the Viceroy's Executive Council.
- It introduced a system of communal representation for Muslims by accepting the concept of 'separate electorate'. Under this, the Muslim members were to be elected only by Muslim voters.

Government of India Act of 1919

- This Act is also known as Montagu-Chelmsford Reforms.
- It relaxed the central control over the provinces by demarcating and separating the central and provincial subjects.
- It further divided the provincial subjects into two parts—transferred and reserved. The **transferred subjects** were to be administered by the governor with the aid of ministers responsible to the legislative Council. The **reserved subjects**, on the other hand, were to be administered by the governor and his executive council without being responsible to the legislative Council. This dual scheme of governance was known as **dyarchy**.
- It introduced, for the first time, **bicameralism** and **direct elections** in the country.
- It extended the principle of communal representation by providing separate electorates for Sikhs, Indian Christians, Anglo-Indians and Europeans.
- It provided for the establishment of a public service commission. Hence, a **Central Public Service Commission** was set up in 1926 for recruiting civil servants.
- It separated, for the first time, provincial budgets from the Central budget and authorised the provincial legislatures to enact their budgets.

Simon Commission

- In the spirit of the stipulation in the Act of 1919 that every 10 years the constitutional provisions will be reviewed, the British Government announced the appointment a seven-member statutory commission under the chairmanship of **Sir John Simon**.
- To consider the proposals of the commission, the British Government convened three Round Table Conferences of the representatives of the British Government, British India and Indian princely states.
- The recommendations of this committee were incorporated in the next Government of India Act of 1935.

Government of India Act of 1935

- It provided for the establishment of an All-India Federation consisting of provinces and princely states as units.
- The Act divided the powers between the Centre and units in terms of three lists—**Federal List** (59 items),

Provincial List (54 items) and the **Concurrent List** (36 items). Residuary powers were vested with the Viceroy.

- It abolished dyarchy in the provinces and they were allowed to act as autonomous units of administration in their defined spheres.
- It provided for the adoption of dyarchy at the Centre.
- It provided for the establishment of a Federal Court which was set up in 1937.

August Offer, 1940

During the Second World War, to get Indian support, the Viceroy announced some proposals in August, 1940. Therefore it is known as August offer. It proposed:

- Dominion status would be the objective for India.
- A constituent assembly would be set up where mainly Indians would decide the constitution.

Cripps Mission, 1942

Cripps mission was sent to India in March 1942 headed by **Stafford Cripps** with constitutional proposals to seek Indian support for the war. It proposed that:

- An Indian union of the British province, princely states and chief commissioner areas would be set up with a dominion status.
- After the war a constituent assembly would be convened to frame a new constitution but the provinces will have right to accept or reject the constitution.
- Any province not willing to join the union could have a separate constitution and form a separate union.
- In the meantime, defence of India would remain in British hands and the governor-general's powers remain intact.
- All political parties rejected it and Mahatma Gandhi called it a '**postdated cheque**'.

The Cabinet Mission, 1946

In February, 1946 the British government decided to send a high-powered mission to India to find out ways and means for a negotiated, peaceful transfer of power to India. It is known as the **Cabinet Mission**. The mission came to Delhi on March 24, 1946.

Important points regarding the Cabinet Mission:

- It rejected the demand for a full-fledged Pakistan.
- A constituent assembly to be elected by provincial assemblies through proportional representation
- This constituent assembly to be a 389-member body with provincial assemblies sending 292, chief commissioner's province sending 4, and princely states sending 93 members.
- Grouping of existing provincial assemblies into three sections: **Section A, Section B and Section C**.
- In the constituent assembly, members from groups A, B and C were to sit separately to decide the constitution for the province.
- Then the whole constituent assembly would sit together

to formulate the Union Constitution.

- Meanwhile, an interim government to be formed from the constituent assembly.

Indian Independence Act, 1947

On February 20, 1947, the British Prime Minister **Clement Attlee** declared that the British rule in India would end by June 30, 1948. The Muslim League demanded partition of the country. Ultimately, on June 3, 1947, Lord Mountbatten, the Viceroy of India, put forth the partition plan, known as the

Mountbatten Plan. The plan was accepted by the Congress and the Muslim League.

- It ended the British rule in India and declared India as an independent and sovereign state.
- It provided for the partition of India and creation of two independent dominions of India and Pakistan.
- It provided for the governance of each of the dominions and the provinces by the Government of India Act of 1935, till the new Constitutions were framed.

Evolution of Indian Constitution

The idea of a Constituent Assembly to frame the Constitution of India was first mooted by the Communist leader **MN Roy**. The Indian National Congress (INC) demanded a Constituent Assembly for the first time in 1935. The British Government accepted the demand in its “August Offer” in 1940. The Cripps Mission in 1942 came to India with a draft proposal but the Muslim League didn’t accept it as it wanted the division of India. Finally, the Cabinet Mission came out with a compromise formula which constituted the Constituent Assembly in November, 1946.

The Constituent Assembly

- The Constituent Assembly was set up in November 1946 as per the plan of Cabinet Mission.
- Total members in the constituent assembly: 389 (292 from British Province, 4 from Chief Commissioner Areas and 93 from Princely States)
- Seats were allocated in proportion to the population: one seat was to be allotted for every million population.
- **INC won 208 seats, the Muslim League 73 seats**, and the small groups and independents got the remaining 15 seats. 93 representatives allotted to the princely states stayed away from the Constituent Assembly.
- The first meeting of the Constituent Assembly was convened on December 9, 1946 with **Sachchidanand Sinha** as the Interim President. He was the oldest member of the assembly.
- On December 11, 1946, **Dr Rajendra Prasad** was elected as Permanent President of the Constituion Assembly.
- The Muslim League boycotted the meeting and insisted on a separate state of Pakistan.
- On December 13, 1946, Jawaharlal Nehru moved the historic ‘**Objectives Resolution**’ in the Assembly. It pledged to make India an independent sovereign union of states.
- **Sir B.N. Rao** was appointed as the Constitutional Advisor to the Assembly.

- The Constitution Assembly formed different types of committees for framing the Constitution. Some important committees and their chairman were as follows:

	Committee	Chairman
1.	Drafting Committee	Dr. B.R. Ambedkar
2.	Rules and Procedure Committee	Dr. Rajendra Prasad
3.	Committee on National Flag	J.B. Kripalani
4.	Provincial Constitution Committee	Sardar Patel
5.	Union Constitution Committee	J.L. Nehru
6.	Committee on Fundamental Rights and Minorities	Sardar Patel

- The final reading of the draft was completed on November 26, 1949 and the Constitution was declared as passed.
- The Provisions relating to citizenship, elections and provisional parliament etc. were implemented with immediate effect, that is from the **26th November, 1949**.
- The Constituion came into full operation with effect from **26 January 1950**.

Note: During this period the Constituent Assembly acted as “Temporary Parliament” (15 August 1947 to 26 November 1949).

- The Constituent Assembly took **2 years, 11 months and 18 days** to frame the Constitution.
- Originally, the Constitution had **22 parts, 395 articles and 8 schedules**.
- Presently, it consists of **450 articles (divided into 24 parts) and 12 schedules**.

Various sources of our Constitution

The Indian Constitution is borrowed from almost all the major countries of the world but has its own unique features too. Major sources are:

1. **Government of India Act of 1935**- Federal Scheme, Office of Governor, Judiciary, Public Service Commission, Emergency provisions and administrative details.
2. **British Constitution** – Parliamentary System, Rule of law, Legislative Procedure, Single Citizenship, Cabinet System, Prerogative Writs, Parliamentary Privileges and Bicameralism.
3. **US Constitution** – Fundamental rights, independence of judiciary, judicial review, impeachment of president, removal of Supreme court and high court judges and post of vice president.
4. **Irish Constitution**- Directive Principles of State Policy, nomination of members of Rajya Sabha and method of election of president
5. **Canadian Constitution**- Federation with a strong centre, vesting of residuary power in the centre, appointment of state Governor by the centre and advisory jurisdiction of Supreme Court.
6. **Australian Constitution**- Concurrent list, joint sitting of two houses of Parliament.
7. **Constitution of Germany**- Suspension of fundamental rights during emergency.
8. **French Constitution**- Republic and ideals of liberty, equality and fraternity in the Preamble.
9. **South African Constitution**- Procedure for amendment of the constitution and election of members of Rajya Sabha.
10. **Japanese Constitution**- Procedure established by Law.
11. **Constitution of former USSR**: Procedure of five-year plan, fundamental duties, ideals of justice in Preamble.

Schedules of the Constitution

- **First Schedule:** It deals with the territories of the 28 States and 7 Union Territories of the Indian Union.
- **Second Schedule:** It prescribes the salaries, allowances etc. of the President, Vice President, Speaker of the Lok Sabha, Comptroller and Auditor General, Judges of the Supreme Court and High Court.
- **Third Schedule:** Forms of oath of affirmation to be taken by the Union Ministers, candidates for election to the Parliament, Judges of the Supreme Court and High Court, Comptroller and Auditor General, Members of Parliament and State Legislature.
- **Fourth Schedule:** : Allotment of seats in the Rajya Sabha to States and Union Territories.
- **Fifth Schedule:** It deals with the administration and control of Scheduled Areas as well as of Scheduled Tribes in states other than Assam, Meghalaya, Tripura and Mizoram.
- **Sixth Schedule:** It deals with the provisions regarding administration of Tribal Areas in the states of Assam, Meghalaya, Mizoram, Tripura and Arunachal Pradesh.
- **Seventh Schedule:** This Schedule gives the details of the division of subjects into the three lists: **List I (the Union list–100 subjects)**, **List II (the States List–61 subjects)** and **List III (the concurrent list–52 subjects)**.
- **Eighth Schedule:** It gives the list of **22 languages** recognised by the Constitution. Sindhi was added by the 21st Amendment Act 1967; Konkani, Manipuri and Nepali were added by the 71st Amendment Act 1992; Bodo, Dogri, Maithili and Santhali were added by the 92nd Amendment Act 2003.
- **Ninth Schedule:** It contains certain Acts and regulations of State Legislature dealing with land reforms and abolition of the Zamindari system. These Acts and regulations are protected from judicial scrutiny. At the end of 1995 this Schedule contained 285 such Acts [Article-31B].
- **Tenth Schedule:** It was added to the Constitution in 1985 by the **52nd Amendment Act** and contains provisions regarding disqualification on grounds of defection.
- **Eleventh Schedule:** It enumerates the powers and functions of Panchayati Raj Institutions and was inserted by the **73rd Amendment Act**, 1993. It has **29** matters.
- **Twelfth Schedule:** This Schedule lists **18** matters which are the responsibility of the municipalities. It was added by the **74th Amendment Act**.

Preamble to the Constitution

The Constitution begins with the Preamble. The objective resolution proposed by Pt. Nehru ultimately became the preamble. It contains the summary or essence of the

Constitution. It has been amended by the 42nd Constitutional Amendment Act (1976), which added three new words— **socialist, secular** and **integrity**.

The Preamble in its present form reads: “We, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN *SOCIALIST SECULAR* DEMOCRATIC REPUBLIC and to secure to all its citizens:

JUSTICE, Social, Economic and Political;

LIBERTY of thought, expression, belief, faith and worship;

EQUALITY of status and of opportunity; and to promote among them all; FRATERNITY assuring the dignity of the individual and the unity *and integrity* of the Nation; IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November, 1949, do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION”.

Interpretation of key words

Sovereign: The word ‘sovereign’ implies that India is neither a dependence nor a dominion of any other nation, but an independent state. There is no authority above it, and it is free to conduct its own affairs (both internal and external).

Socialist: It was added by the **42nd Constitution Amendment Act, 1976**. The Constitution aims to achieve socialistic pattern through democratic means, ie the Indian brand of socialism is a “Democratic Socialism and not a Communistic Socialism”.

Secular: It was also added by the **42nd Constitution Amendment Act, 1976**. It means India is a Secular state. It does not mean that India is **non-religious or irreligious or anti-religious** but simply that the state in itself is not religious and follows the ancient Indian principle of “Sarva Dharma Samabhava.”

Democratic: A democratic polity, as stipulated in the Preamble, is based on the doctrine of popular sovereignty, that is, possession of supreme power by the people. Under this principle, the representatives elected by the people exercise the supreme power and thus carry on the government and make the laws. The term ‘democratic’ is used in the Preamble in the broader sense, embracing not only political democracy but also social and economic democracy.

Republic: Republic means that there exists no hereditary ruler in India and all the authorities of the state are directly or indirectly elected by the people.

Justice: The term ‘justice’ in the Preamble encompasses three distinct forms—social, economic and political. Social justice denotes the equal treatment of all citizens without any social distinction based on caste, colour, race, religion, sex and so on. Economic justice denotes the non-discrimination between people on the basis of economic factors. It involves the elimination of glaring inequalities in wealth, income and property. Political justice implies that all citizens should have

equal political rights, equal access to all political offices and equal voice in the government.

Liberty: The Preamble secures to all citizens of India liberty of thought, expression, belief, faith and worship, through their Fundamental Rights, enforceable in court of law, in case of violation.

Equality: The Preamble secures to all citizens of India equality of status and opportunity. This provision embraces three dimensions of equality—civic, political and economic.

Fraternity: Fraternity means a sense of brotherhood prevailing amongst all the sections of the people. This is sought to be achieved by making the state, guaranteeing fundamental and other rights equally to people of all sections and protecting their interest.

Status of Preamble in the Constitution

One of the controversies about the Preamble is whether it is a part of the Constitution or not. In the *Berubari Union* case (1960), the Supreme Court specifically opined that the Preamble is *not* a part of the Constitution. In the *Kesavananda Bharati* case (1973), the Supreme Court rejected the earlier opinion and held that the Preamble is a part of the Constitution. However, the Preamble is not enforceable in a court of law.

Can the Preamble be amended?

The question as to whether the Preamble can be amended under **Article 368** of the Constitution arose for the first time in the historic case of *Kesavananda Bharati (1973)*. It was urged that the Preamble cannot be amended as it is not a part of the Constitution. But the Supreme Court held that the Preamble is a part of the Constitution. The Preamble has been amended only once so far, in 1976, by the 42nd Constitutional Amendment Act, which has added three new words—socialist, secular and integrity—to the Preamble. This amendment was held to be valid.

Important part of the Indian Constitution

Part I	The Union and its Territory	Article [1 to 4]
Part II	Citizenship	Article [5 to 11]
Part III	Fundamental Rights	Article [12 to 35]
Part IV	Directive Principles of State Policy	Article [36 to 51]
Part V(a)	Fundamental Duties	Article [51(a)]
Part V	The Union Executive	Article [52 to 151]
Part VI	The State Executive	Article [152 to 237]
Part XVIII	Emergency Provisions	Article [352 to 360]
Part XX	Constitution Amendments	Article [368]

Part-I: The Union and its Territory [Article 1 to 4]

Articles 1 to 4 under Part-I of the Constitution deal with the Union and its territory.

Article 1 describes India that is Bharat as a 'Union of States'. Although the Constitution is federal in structure, it describes India as 'Union'. The federation is a Union because it is indestructible.

Article 2 gives the Parliament the power to admit into the Union of India new states and to establish new states.

Article 3 authorises the Parliament to:

- Form a new state by separation of territory from any state or by uniting two or more states or parts of states or by uniting any territory to a part of any state.

Integration of Princely States

- At the time of Independence, India comprised two categories of political units, namely the British provinces and the princely states.
- Of the 552 princely states situated within the geographical boundaries of India, 549 joined India and the remaining three (**Hyderabad, Junagarh and Kashmir**) refused to join India.
- However, in course of time, they were also integrated with India—**Hyderabad by means of police action, Junagarh by means of referendum and Kashmir by the Instrument of Accession.**

Reorganisation of states

- After Independence, the demand for the reorganisation of states on linguistic basis was raised from different regions.
- The President of the Constituent Assembly, Dr Rajendra Prasad, appointed the **S.K. Dhar Commission** in 1947 to look into the matter of reorganisation of states on linguistic basis.
- The Commission recommended, among other things, that the major consideration for the reorganisation of states should be **administrative convenience.**
- The Congress, in its **Jaipur Session** (1948), appointed a three-member committee to consider the recommendations of the Dhar Commission.
- The members of this committee (popularly known as JVP Committee) were Pt. Jawaharlal Nehru, Sardar Vallabhbhai Patel and Pattabhi Sitaramayya.
- This committee also rejected the demand for the reorganisation of states on linguistic basis.
- After the report of the JVP Committee, Telugu-speaking people in Madras started a movement under the leadership of **Potti Sriramulu.**
- Potti Sriramulu died after 56 days' hunger strike.
- After the death of Sriramulu, the state of Andhra Pradesh

was created by separating the Telugu-speaking areas from the state of Madras.

- **Andhra Pradesh** was the first linguistic state.
- **Fazl Ali Commission:** The commission is commonly known as States Reorganisation Commission.
- The Government of India appointed a three-member state reorganisation commission in 1953 under the chairmanship of Fazl Ali. Its other two members were **KM Panikkar** and **Hriday Nath Kunzru.**
- The commission submitted its report in 1955 and broadly accepted language as the basis for the reorganisation of states.
- **The State Re-Organisation Act was passed in 1956.** As a result 14 states and 6 UTs were created on November 1, 1956.

New States and Union Territories created after 1956

- In 1960, the bilingual state of **Bombay** was divided into two separate states—Maharashtra for Marathi-speaking people and Gujarat for Gujarati-speaking people.
- The Portuguese ruled Dadra and Nagar Haveli until its liberation in 1954. Subsequently, it was converted into a union territory of India by the **10th Constitutional Amendment Act, 1961.**
- India acquired Goa, Daman and Diu from the Portuguese by means of a police action in **1961.** They were constituted as a union territory by the 12th Constitutional Amendment Act, 1962. Later, in 1987, Goa was conferred statehood. Consequently, Daman and Diu was made a separate union territory.
- The French handed over **Puducherry** to India in 1954. Subsequently, it was administered as an 'acquired territory' till 1962, when it was made a union territory by the 14th Constitutional Amendment Act.
- The **22nd Constitutional Amendment Act (1969)** created Meghalaya as an 'autonomous state' or 'sub-state' within the state of Assam with its own legislature and council of ministers. The union territories of Mizoram and Arunachal Pradesh were also formed out of the territories of Assam.
- Sikkim was made 22nd state of India under the **35th Constitutional Amendment Act (1974).**
- In 1987, three new States of Mizoram, Arunachal Pradesh and Goa came into being as the 23rd, 24th and 25th states of the Indian Union respectively. The Union Territory of Mizoram was conferred the status of a full state.
- In 2000, three more new States of Chhattisgarh, Uttarakhand and Jharkhand were created out of Madhya Pradesh, Uttar Pradesh and Bihar respectively.

Part-II: Citizenship [Article 5 to 11]

The Indian Constitution provides for only a single citizenship that is Indian Citizenship. The Citizenship Act 1955 provides for the acquisition and loss of citizenship after the commencement of the Constitution.

Acquisition of Citizenship

By Birth: A person born in India on or after 26th January 1950 but before 1st July 1987 is a citizen of India by birth irrespective of the nationality of his parents. A person born in India on or after 1st July 1987 is considered as a citizen of India only if either of his parents is a citizen of India at the time of his birth.

By Descent: A person born outside India on or after 26th January 1950 but before 10th December 1992 is a citizen of India by descent, if his father was a citizen of India at the time of his birth. A person born outside India on or after 10th December 1992 is considered as a citizen of India if either of his parents is a citizen of India at the time of his birth.

By Registration: The Central Government may, on an application, register 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 seven 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 is 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 citizens of India.

By Incorporation of Territory: If any foreign territory becomes a part of India, the Government of India specifies the persons who among the people of the territory shall be the citizens of India.

Loss of Citizenship

By Renunciation: Any citizen of India of full age and capacity can make a declaration renouncing his Indian citizenship. Upon the registration of that declaration, that person ceases to be a citizen of India.

By Termination: When an Indian citizen voluntarily acquires the citizenship of another country, his Indian citizenship automatically terminates.

By Deprivation: It is a compulsory termination of Indian citizenship by the Central government, if:

- The citizen has obtained the citizenship by fraud;
- The citizen has shown disloyalty to the Constitution of India;
- The citizen has unlawfully traded or communicated with the enemy during a war;
- The citizen has, within five years after registration or naturalisation, been imprisoned in any country for two years; and
- The citizen has been ordinarily resident out of India for seven years continuously.

Part-III: Fundamental Rights [Article 12 to 35]

Part III of the Constitution is described as the **magna carta of India**. The Fundamental Rights are named so because they are guaranteed and protected by the Constitution.

Major characteristics of Fundamental Rights

- Some of them are available only to the citizens while others are available to all persons, whether citizens, foreigners or legal persons like corporations or companies.
- They are **justiciable**, allowing persons to move the courts for their enforcement, if and when they are violated.
- They are defended and guaranteed by the Supreme Court. Hence, the aggrieved person can directly go to the Supreme Court.

- They can be suspended during the operation of a National Emergency except the rights guaranteed by **Articles 20 and 21**. More, the six rights guaranteed by Article 19 can be suspended only when emergency is declared on the grounds of war or external aggression. Originally the Constitution provided for seven fundamental rights:

1. Right to equality [Art. 14-18]
2. Right to freedom [Art. 19-22]
3. Right against exploitation [Art. 23-24].
4. Right to freedom [Art. 25-28]
5. Cultural and educational rights [Art. 29-30]
6. Right to property [Art. 31]
7. Right to constitutional remedies [Art. 32]

However, the 'right to property' was deleted from the list of fundamental rights by the **44th Constitutional Amendment Act, 1978**. It has been made a legal right under **Article 300-A** in the Constitution. So, at present, there are only six fundamental rights.

Right to equality (Article 14 to 18)

Article 14: Article 14 says that the State shall not deny to any person equality before law or the equal protection of the laws within the territory of India.

Article 15: Article 15 provides that the State shall not discriminate against any citizen on grounds only of religion, race, caste, sex or place of birth.

Article 16: Article 16 provides that no citizen can be discriminated against or be ineligible for any employment or office under the State on grounds of only religion, race, caste, sex, descent, place of birth or residence.

Article 17: Article 17 abolishes 'untouchability' and forbids its practice in any form.

Article 18: Article 18 prohibits the state from conferring any title (except a military or academic distinction) on anybody, whether a citizen or a foreigner. It also prohibits a citizen of India from accepting any title from any foreign state.

Right to freedom (Articles 19-22)

Article 19: Article 19 guarantees six rights to all citizens.

These are:

- (a) Right to freedom of speech and expression.
- (b) Right to assemble peaceably and without arms.
- (c) Right to form associations or unions.
- (d) Right to move freely throughout the territory of India.
- (e) Right to reside and settle in any part of the territory of India.
- (f) Right to practise any profession or to carry on any occupation, trade or business.
- Freedom of press comes under the freedom of speech and expression mentioned in **Article 19**. This also includes right to propagate one's views, right to telecast, right to know about the government, right against encroachment into one's privacy, right to demonstration and picketing, etc.

Article 20: Article 20 grants protection against arbitrary and excessive punishment to an accused person, whether citizen or foreigner or legal person like a company or a corporation. It contains three provisions in that direction:

- (i) **No ex post facto law:** No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act, nor subjected to a penalty greater than that prescribed by the law in force at the time of the commission of the act.
- (ii) **No double jeopardy:** No person shall be prosecuted and punished for the same offence more than once.
- (iii) **No self-incrimination:** No person accused of any offence shall be compelled to be a witness against himself.

Article 21: Article 21 declares that no person shall be deprived of his life or personal liberty except according to procedure established by law. This right is available to both citizens and non-citizens.

Following are the important rights under Article 21 as declared by the Supreme Court:

Article 21 A declares that the State shall provide free and compulsory education to all children of the age of six to fourteen years in such a manner as the State may determine. Thus, this provision makes only elementary education a Fundamental Right and not higher or professional education.

Article 22: Article 22 grants protection to persons who are arrested or detained. Detention is of two types, namely, punitive and preventive. **Punitive detention** is to punish a person for an offence committed by him after trial and conviction in a court. **Preventive detention**, on the other hand, means detention of a person without trial and conviction by a court. Its purpose is not to punish a person for a past offence but to prevent him from committing an offence in the near future.

Right against exploitation (Article 23-24)

Article 23: Article 23 prohibits traffic in human beings, *begar* (forced labour) and other similar forms of forced labour. Any contravention of this provision shall be an offence punishable in accordance with law. This right is available to both citizens and non-citizens.

Article 24: Article 24 prohibits the employment of children below the age of 14 years in any factory, mine or other hazardous activities like construction work or railway. But it does not prohibit their employment in any harmless or innocent work.

Right to freedom of religion (Article 25-28)

Article 25: Article 25 says that all persons are equally entitled to freedom of conscience and the right to freely profess, practise and propagate religion. It covers not only religious beliefs (doctrines) but also religious practices (rituals). Moreover, these rights are available to all persons—citizens as well as non-citizens.

Article 26: According to Article 26, every religious denomination or any of its section shall have the following rights:

- (i) Right to establish and maintain institutions for religious and charitable purposes;
- (ii) Right to manage its own affairs in matters of religion;
- (iii) Right to own and acquire movable and immovable property.

Article 27: Article 27 lays down that no person shall be compelled to pay any taxes for the promotion or maintenance of any particular religion or religious denomination.

Article 28: Under Article 28, no religious instruction shall be provided in any educational institution wholly maintained out of State funds.

Cultural and educational rights (Article 29-30)

Article 29: Article 29 provides that any section of the citizens residing in any part of India having a distinct language, script or culture of its own, shall have the right to conserve the same. Further, no citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, or language.

Article 30: Article 30 grants the following rights to minorities, whether religious or linguistic:

- (i) All minorities shall have the right to establish and administer educational institutions of their choice.
- (ii) In granting aid, the State shall not discriminate against any educational institution managed by a minority.

Thus, the protection under Article 30 is confined only to minorities (religious or linguistic) and does not extend to any section of citizens (as under Article 29).

Right to property (Article 31): The right to property was deleted from the list of Fundamental Rights by the 44th Amendment Act, 1978. It has been made a legal right under Article 300-A.

Right to constitutional remedies (Article 32)

A mere declaration of fundamental rights in the Constitution is meaningless, useless and worthless without providing an effective machinery for their enforcement, if and when they are violated. Hence, Article 32 confers the right to remedies for the enforcement of the fundamental rights of an aggrieved citizen, i.e. the right to get the Fundamental Rights protected is in itself a fundamental right. So, **Dr. Ambedkar** called Article 32 ‘**Soul of the Constitution**’. Any aggrieved person can move the Supreme Court for the enforcement of the Fundamental Rights. The Supreme Court shall have power to issue directions or orders or writs for the enforcement of any of the fundamental rights. The writs issued may include Habeas Corpus, Mandamus, Prohibition, Certiorari and Quo-Warranto.

Writs: kinds and nature

The Supreme Court (under Article 32) and the High Courts

(under Article 226) can issue the writs of Habeas Corpus, Mandamus, Prohibition, Certiorari and Quo Warranto.

Habeas Corpus: It literally means ‘to have the body of’. It is an order issued by the court to a person who has detained another person, to produce the body of the latter before it. The court then examines the cause and legality of detention. It would set the detained person free, if the detention is found to be illegal.

Mandamus: It literally means ‘we command’. It is a command issued by the court to a public official asking him to perform his official duties that he has failed or refused to perform. It can also be issued against any public body, a corporation, an inferior court, a tribunal or government for the same purpose.

Prohibition: It literally means ‘to forbid’. It is issued by a higher court to a lower court or tribunal to prevent the latter from exceeding its jurisdiction or usurping a jurisdiction that it does not possess. Thus, unlike Mandamus that directs activity, the prohibition directs inactivity. The writ of prohibition can be issued only against judicial and quasi-judicial authorities. It is not available against administrative authorities, legislative bodies, and private individuals or bodies.

Certiorari: In the literal sense, it means ‘to be certified’ or ‘to be informed’. It is issued by a higher court to a lower court or tribunal either to transfer a case pending with the latter to itself or to squash the order of the latter in a case. It is issued on the grounds of excess of jurisdiction or lack of jurisdiction or error of law. Thus, unlike prohibition, which is only preventive, *certiorari* is both preventive as well as curative. Like prohibition, *certiorari* is also not available against legislative bodies and private individuals or bodies.

Quo Warranto: In the literal sense, it means ‘by what authority or warrant’. It is issued by the court to enquire into the legality of claim of a person to a public office. Hence, it prevents illegal usurpation of public office by a person.

Note: Rights outside Part III are:

- Art. 300A: Right to acquire property.
- Art. 326: Right to vote.

Part-IV: Directive Principles of State Policy [Article 36 to 51]

- The phrase ‘Directive Principles of State Policy’ denotes the ideals that the State should keep in mind while formulating policies and enacting laws. It includes the legislative and executive organs of the central and state governments, all local authorities and all other public authorities in the country.
- The Directive Principles are non-justiciable in nature, that is, they are not legally enforceable by the courts for

their violation. Therefore, the government cannot be compelled to implement them.

- They aim at providing social and economic justice of the people.

Views of Constitutional and political experts on ‘Directive Principles of State Policy’:

- **K.T. Shah:** ‘A cheque on a bank payable only when the resources of the bank permit.’

- **Nasiruddin:** ‘No better than the new year’s resolution which are broken on the second of January’.
- **T.T. Krishnamachari:** ‘A veritable dustbin of sentiments.’
- **K.C. Wheara:** Manifesto of aims and aspirations.
- **B.N. Rao:** Moral precepts for the authorities of the state. They have at least an educative value.
- **M.C. Chagla:** ‘If all these principles are fully carried out, our country would indeed to be a heaven on earth.’

Article 38: Article 38 says that the state shall promote the welfare of the people by securing social, economic and political welfare of the people and strive to minimise inequalities in income, status, facilities and opportunities.

Article 39: Article 39 says that the state shall strive to secure like the right to adequate means of livelihood for all citizens, and opportunities for healthy development of children.

Article 39 A: Article 39 A pledges equal justice and to provide free legal aid to the poor.

Article 40: Article 40 stipulates to organise village panchayats and endow them with necessary powers and authority to enable them to function as units of self-government.

Article 41: Article 41 secures the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement.

Article 42: Article 42 makes provision for just and humane conditions for work and maternity relief.

Article 43: Article 43 secures a living wage, a decent standard of life and social and cultural opportunities for all workers.

Article 43 A: Article 43 A takes steps to secure the participation of workers in the management of industries.

Article 47: Article 47 raises the level of nutrition and the standard of living of people and to improve public health.

Some of the articles of the Directive Principles reflect the Gandhian ideologies. They include:

Article 43: Article 43 promotes cottage industries.

Article 46: Article 46 promotes the educational and

economic interests of SCs, STs and other weaker sections of the society.

Article 47: Article 47 strives to prohibit the consumption of intoxicating drinks and drugs which are injurious to health.

Article 48: Article 48 strives to prohibit the slaughter of cows, calves and other milch and draught cattle.

Remaining parts of the Directive Principles are based on the ideology of liberalism. They are:

Article 44: Article 44 pledges to secure for all citizens a uniform civil code throughout the country.

Article 45: Article 45 provides for early childhood care and education for all children until they complete the age of six years.

Article 48: Article 48 pledges to organise agriculture and animal husbandry on modern and scientific lines.

Article 48 A: Article 48 A strives to protect and improve the environment and to safeguard forests and wild life.

Article 49: Article 49 strives to protect monuments, places and objects of artistic or historic interest which are declared to be of national importance.

Article 50: Article 50 pledges to separate the judiciary from the executive in the public services of the State.

Article 51: Article 51 says that the state shall strive to promote international peace and security and maintain just and honourable relations between nations; to foster respect for international law and treaty obligations, and to encourage settlement of international disputes by arbitration.

Difference between Fundamental Rights and Directive Principles of State Policy

	Fundamental Rights	Directive Principles of State Policy
1.	Negative obligation of the state	Positive obligation of the state
2.	Justiciable in country law	Non-justiciable in country law
3.	Foundation of political democracy	Foundation of social and economic democracy

Part-IV(a): Fundamental Duties [Article 51(A)]

In 1976, the Fundamental Duties were added in the Constitution on the recommendation of **Sardar Swaran Singh Committee** [42nd Constitutional Amendment Act].

- The fundamental duties are **11** in number.
- Ten duties were included in the Indian Constitution by the **42nd Amendment Act 1976** and the Eleventh duty was added by the **86th Amendment Act, 2002**.
- There is no provision in the Constitution for direct

enforcement of any of these duties nor any sanction to prevent their violation.

List of Fundamental Duties

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

1. to abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem;

2. to cherish and follow the noble ideals that inspired the national struggle for freedom;
3. to uphold and protect the sovereignty, unity and integrity of India;
4. to defend the country and render national service when called upon to do so;
5. to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities and to renounce practices derogatory to the dignity of women;
6. to value and preserve the rich heritage of the country's composite culture;
7. to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures;
8. to develop scientific temper, humanism and the spirit of inquiry and reform;
9. to safeguard public property and to abjure violence;
10. to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement; and
11. to provide opportunities for education to his child or ward between the age of 6 to 14 years. This duty was added by the 86th Constitutional Amendment Act 2002.

President

Articles 52 to 153 in Part V of the Constitution deal with the Union executive. The Union executive consists of the President, the Vice-President, the Prime Minister, the council of ministers and the attorney general of India. The President is the head of the Indian State. He is the first citizen of India.

According to Article 52, the President is the head of the union executive, and according to Article 53, all executive actions of the Government of India are formally taken in his name.

Article 54: Article 54 mentions the election of the President.

The President is elected not directly by the people but by members of electoral college consisting of:

- (i) The elected members of both the Houses of Parliament;
- (ii) The elected members of the legislative assemblies of the states; and
- (iii) The elected members of the legislative assemblies of the Union Territories of Delhi and Puducherry.

Article 55: According to Article 55, the number of votes which each elected member of the legislative assembly of each state and the Parliament is entitled to cast at such election is determined in the following manner:

1. Value of the vote of an MLA =

$$\frac{\text{Total population of state}}{\text{Total number of elected members in the state legislative assembly}} \times \frac{1}{100}$$

2. Value of the vote of an MP =

$$\frac{\text{Total value of votes of all MLAs of all states}}{\text{Total number of elected members of the Parliament}}$$

The President's election is held in accordance with the system of **proportional representation** by means of the **single transferable vote** and the voting is by secret ballot. Each member of the electoral college is given only one ballot paper.

The voter can indicate as many preferences as there are candidates in the fray.

Article 56: According to Article 56, the tenure of the President is 5 years.

Qualifications for election as President: A person to be eligible for election as President should fulfil the following qualifications:

- He should be a citizen of India.
- He should have completed 35 years of age.
- He should be qualified for election as a member of the Lok Sabha.
- He should not hold any office of profit under the Union government or any state government or any local authority or any other public authority.

Oath or affirmation by the President: The oath of office to the President is administered by the Chief Justice of India and, in his absence, the seniormost judge of the Supreme Court available.

Conditions of President's office

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

- He should not be a member of either House of Parliament or a House of the state legislature.
- He should not hold any other office of profit.
- He is entitled, without payment of rent, to the use of his official residence.
- He is entitled to such emoluments, allowances and privileges as may be determined by Parliament.
- His emoluments and allowances cannot be diminished during his term of office.

In 2008, the Parliament increased the salary of the President from Rs 50,000 to **Rs 1.50 lakh per month** and the pension to 50% of his salary per month.

The Presidents of India

1. Dr. Rajendra Prasad	January 26, 1950 to May 13, 1962
2. Sarvepalli Radhakrishnan	May 13, 1962 to May 13, 1967
3. Zakir Hussain (Died in office)	May 13, 1967 to May 3, 1969
4. Varahagiri Venkata Giri (Acting)	May 3, 1969 to July 20, 1969
5. Muhammad Hidayatullah (Acting)	July 20, 1969 to August 24, 1969
6. Varahagiri Venkata Giri	August 24, 1969 to August 24, 1974
7. Fakhruddin Ali Ahmed (Died in office)	August 24, 1974 to February 11, 1977
8. Basappa Danappa Jatti (Acting)	February 11, 1977 to July 25, 1977
9. Neelam Sanjiva Reddy (elected unopposed)	July 25, 1977 to July 25, 1982
10. Giani Zail Singh	July 25, 1982 to July 25, 1987
11. Ramaswamy Venkataraman	July 25, 1987 to July 25, 1992
12. Shankar Dayal Sharma	July 25, 1992 to July 25, 1997
13. Kocheril Raman Narayanan	July 25, 1997 to July 25, 2002
14. A. P. J. Abdul Kalam	July 25, 2002 to July 25, 2007
15. Smt. Pratibha Devi Singh Patil	July 25, 2007 to July 25, 2012
16. Pranab Mukherjee	July 25, 2012 till date

Note: Neelam Sanjiva Reddy was the only President **elected unopposed**. He is also **the youngest President so far**.

Term of President's Office: The President shall not, withstanding the expiration of his term, continue to hold office until his successor enters upon his office. The President shall hold office for five years in general. Removal of President shall be as follows:

- (i) President may resign by writing to Vice-President.
- (ii) President may, for violation of the Constitution, be removed from office by impeachment [**Art. 61**].

Note: In case of vacancy caused by resignation, death or impeachment, a new President should be elected within six months.

- In the above cases, the Vice-President acts as an acting President till the new President enters the office. During such period he receives the salary and the facilities of the Presidential post.

Impeachment of President: The President can be removed from office by a process of impeachment for 'violation of the Constitution'. The impeachment charges can be initiated by either House of Parliament. These charges should be signed by one-fourth members of the House (that framed the charges), and a **14 days' notice should be given to the President**.

Note: The President can defend himself by taking services of the Attorney-General of India or any other lawyer of his choice.

Powers and functions of the President

Executive powers

The executive powers and functions of the President are:

1. All executive actions of the Government of India are formally taken in his name.
2. According to article 75 he appoints the Prime Minister of India and according to Article 77 with consent of the Prime Minister he appoints the other ministers. They hold office during his pleasure.
3. He appoints the Attorney-General of India, the Comptroller and Auditor General of India, the Chief Election Commissioner and other Election Commissioners, the chairman and members of the Union Public Service Commission, the governors of states, the chairman and members of Finance Commission, and administrators of UTs and so on.

4. He can seek any information relating to the administration of affairs of the Union, and proposals for legislation from the prime minister.
5. He can appoint a commission to investigate into the conditions of SCs, STs and other backward classes.
6. He can appoint an inter-state council to promote Centre-state and inter-state cooperation.

Legislative powers

The President is an integral part of the Parliament of India, and enjoys the following legislative powers.

1. He can summon or prorogue the Parliament and dissolve the Lok Sabha. [Art. 85]
2. He can also summon a joint sitting of both the Houses of Parliament, which is presided over by the Speaker of the Lok Sabha. [Art. 108]
3. He can address the Parliament at the commencement of the first session after each general election and the first session of each year. [Art. 87]
4. He can send messages to the Houses of Parliament, whether with respect to a bill pending in the Parliament or otherwise.
5. He can appoint any member of the Lok Sabha to preside over its proceedings when the offices of both the Speaker and the Deputy Speaker fall vacant. Similarly, he can also appoint any member of the Rajya Sabha to preside over its proceedings when the offices of both the Chairman and the Deputy Chairman fall vacant.
6. He nominates 12 members of the Rajya Sabha from amongst persons having special knowledge or practical experience in literature, science, art and social service. [Art. 80(1)]
7. The President is empowered to nominate not more than two Anglo-Indian members to the Lok Sabha, if that community is not adequately represented in that House. [Art. 331]
8. His prior recommendation or permission is needed to introduce certain types of bill in the Parliament. For example, a bill involving expenditure from the Consolidated Fund of India, or a bill for the alteration of boundaries of states or creation of a new state.
9. When a bill is sent to the President after it has been passed by the Parliament, he can give his assent, withhold his assent or return the bill for reconsideration of the parliament. However, if the bill is passed again by the Parliament, with or without amendments, the President has to give his assent to the bill.
10. When a bill passed by a state legislature is reserved by the governor for consideration of the President, the President can give his assent, withhold it or direct the governor to return the bill (if it is not a money bill) for reconsideration of the state legislature. It should be noted here that it is not obligatory for the President to give his

assent even if the bill is again passed by the state legislature and sent again to him for his consideration.

11. According to **Article 123**, he can promulgate ordinances when the Parliament is not in session. An ordinance issued under Art. 123 must receive approval of Parliament (both the houses) within six weeks of reassembly of the parliament.

Oath and Resignation

Designation	Oath	Resignation
President	Chief Justice of India (CJI)	Vice-President
Vice-President	President	President
Governor	Chief Justice of High Court	President
PM	President	President
Chairman of Lok Sabha	No procedure of oath swearing	Deputy Speaker

Financial Powers

The financial powers and functions of the President are:

1. Money bills can be introduced in the Parliament only with his prior recommendation.
2. He causes to be laid before the Parliament the Union Budget.
3. No demand for a grant can be made except on his recommendation.
4. He can make advances out of the Contingency Fund of India to meet any unforeseen expenditure.
5. According to **Article 280**, he constitutes a Finance Commission after every five years to recommend the distribution of revenues between the Centre and the states.

Judicial Powers

The judicial powers and functions of the President are:

1. He appoints the Chief Justice and the judges of the Supreme Court and high courts.
2. He can seek advice from the Supreme Court on any question of law or fact. However, the advice tendered by the Supreme Court is not binding on the President.

Pardoning Power: The President has the power to grant pardons, reprieves, respites or remissions or punishments or to suspend, remit or commute the sentences of any person in all cases.

The President is the only authority to grant pardons in case of death sentence on the advice of council of ministers. [Art. 72]

Power of President under Article 72

Power	Feature
Pardon	Completely absolves the offender
Communication	Substitution of one form of punishment to a lighter form
Remission	Reducing the period of sentence without changing its character.
Respite	Awarding a lesser sentence in place of one originally awarded due to some special fact, e.g., pregnancy of a woman offender, physical disability of convict.
Reprieve	Stay of the execution of a sentence (especially that of death) for a temporary period

Diplomatic Powers: The international treaties and agreements are negotiated and concluded on behalf of the President. He represents India in international forums and affairs and sends and receives diplomats like ambassadors, high commissioners, and so on.

Military Powers: He is the supreme commander of the defence forces of India. In that capacity, he appoints the chiefs of the Army, the Navy and the Air Force.

Emergency Powers

The Constitution confers extraordinary powers on the President to deal with the following three types of emergencies:

- (i) National Emergency (Article 352)
- (ii) President’s Rule (Article 356 & 365)

(iii) Financial Emergency (Article 360)

Veto power of the President: A bill passed by the Parliament can become an act only if it receives the assent of the President. However, the President has the veto power over the bills passed by the Parliament, i.e. he can withhold his assent to the bills.

Absolute Veto

It refers to the power of the President to withhold his assent to a bill passed by the Parliament. The bill then ends and does not become an act. Usually, this veto is exercised in the following two cases:

- With respect to private members’ bills; and
- With respect to the government bills when the cabinet resigns (after the passage of the bills but before the assent by the President) and the new cabinet advises the President not to give his assent to such bills.

Suspensive Veto

The President exercises this veto when he returns a bill for reconsideration of the Parliament. However, if the bill is passed again by the Parliament with or without amendments and again presented to the President, it is obligatory for the President to give his assent to the bill. The President does not possess this veto in the case of money bills.

Pocket Veto

In this case, the President neither ratifies nor rejects nor returns the bill, but simply keeps the bill pending for an indefinite period. This power of the President not to take any action (either positive or negative) on the bill is known as pocket veto. There is no time limit for the President to give comment on bills under this veto.

Vice-President [Art. 63]

The Vice-President occupies the **second highest** office in the country. He is accorded a rank next to the President in the official warrant of precedence.

Election

He is elected by the members of an electoral college consisting of the members of both Houses of Parliament. Thus, this electoral college is different from the electoral college for the election of the President in the following two respects:

- It consists of both elected and nominated members of the Parliament.
- It does not include the members of the state legislative assemblies.

The Vice-President’s election, like that of the President’s election, is held in accordance with the system of proportional representation by means of the single transferable vote and the voting is by secret ballot.

Qualifications

To be eligible for election as Vice-President, a person should fulfil the following qualifications:

- He should be a citizen of India.
- He should have completed 35 years of age.
- He should be qualified for election as a member of the Rajya Sabha.
- He should not hold any office of profit under the Union government or any state government or any local authority or any other public authority.

Oath or affirmation

The oath of office to the Vice-President is administered by the President or some person appointed in that behalf by him.

Term of office

The Vice-President holds office for a term of five years from the date on which he enters upon his office. However, he can resign from his office at any time by addressing the resignation letter to the President. He can also be removed from the office before completion of his term. A formal impeachment is not required for his removal. He can be removed by a resolution of the Rajya Sabha passed by an absolute majority.

On the vacancy of the post of the Vice-President, whether by death, resignation or otherwise, the Deputy Chairman of the Rajya Sabha takes charge until a Vice-President is elected and takes charge.

Powers and functions

The functions of Vice-President are twofold:

1. He acts as the ex-officio Chairman of Rajya Sabha. In this capacity, his powers and functions are similar to those of the Speaker of Lok Sabha.

2. He acts as President when a vacancy occurs in the office of the President due to his resignation, removal, death or otherwise. He can act as President only for a maximum period of six months, within which a new President has to be elected. Further, 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.

While acting as President or discharging the functions of 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.

- If the offices of both the President and the Vice-President fall vacant by reason of death, resignation, removal etc the Chief Justice of India or in his absence the seniormost judge of the Supreme Court acts as President.
- For the first time, during the 15-day visit of Dr. Rajendra Prasad to the Soviet Union in June 1960, the then Vice-President **Dr. Radhakrishnan** acted as the President.
- For the first time, in 1969, when the President Dr. Zakir Hussain died and the Vice-President V.V. Giri resigned, the Chief Justice **Md. Hidayatullah** acted as President.

Prime Minister

In the scheme of parliamentary system of government provided by the Constitution, the President is the nominal executive authority and Prime Minister is the real executive authority. The President is the head of the State while Prime Minister is the head of the government.

Appointment of the Prime Minister

Article 75 says that the Prime Minister shall be appointed by the President. The President appoints the leader of the majority party in the Lok Sabha as the Prime Minister. But, when no party has a clear majority in the Lok Sabha, then the President may exercise his personal discretion in the selection and appointment of the Prime Minister.

Term

The term of the Prime Minister is not fixed and he holds office during the pleasure of the President. So long as the

Prime Minister enjoys the majority support in the Lok Sabha, he cannot be dismissed by the President. However, if he loses the confidence of the Lok Sabha, he must resign or the President can dismiss him.

Powers and functions of Prime Minister

The powers and functions of Prime Minister can be studied under the following heads:

- He recommends persons who can be appointed as ministers by the President.
- He can recommend dissolution of the Lok Sabha to the President at any time.
- He is the chairman of the Planning Commission, National Development Council, National Integration Council, Inter-State Council and National Water Resources Council.

The Prime Ministers of India

1. Jawaharlal Nehru	August 15, 1947 to May 27, 1964
2. Gulzarilal Nanda	May 27, 1964 to June 9, 1964
3. Lal Bahadur Shastri	June 9, 1964 to January 11, 1966
4. Gulzarilal Nanda	January 11, 1966 to January 24, 1966
5. Indira Gandhi	January 24, 1966 to March 24, 1977
6. Morarji Desai	March 24, 1977 to July 28, 1979
7. Chaudhary Charan Singh	July 28, 1979 to January 14, 1980
8. Indira Gandhi	January 14, 1980 to October 31, 1984
9. Rajiv Gandhi	October 31, 1984 to December 2, 1989
10. Vishwanath Pratap Singh	December 2, 1989 to November 10, 1990
11. Chandrashekhar	November 10, 1990 to June 21, 1991
12. P. V. Narasimha Rao	June 21, 1991 to May 16, 1996
13. Atal Behari Vajpayee	May 16, 1996 to June 1, 1996
14. H. D. Deve Gowda	June 1, 1996 to April 21, 1997
15. Inder Kumar Gujral	April 21, 1997 to March 19, 1998
16. Atal Behari Vajpayee	March 19, 1998 to May 22, 2004
17. Dr. Manmohan Singh	May 22, 2004 till date

Central Council of Ministers

As the Constitution of India provides for a parliamentary system of government modelled on the British pattern, the council of ministers headed by the prime minister is the real executive authority in our politico-administrative system.

The principles of parliamentary system of government are not detailed in the Constitution, but two Articles (74 and 75) deal with them in a broad, sketchy and general manner. Article 74 deals with the status of the council of ministers while Article 75 deals with the appointment, tenure, responsibility, qualification, oath and salaries and allowances of the ministers.

Constitutional provision

Article 74

- There shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President, who shall, in the exercise of his functions, act in accordance with such advice.

Article 75

- The Prime Minister shall be appointed by the President and the other ministers shall be appointed by the President on the advice of the Prime Minister.

- The total number of ministers, including the Prime Minister, in the Council of Ministers shall not exceed 15% of the total strength of the Lok Sabha. [**91st Constitutional Amendment Act, 2003**]
- The council of ministers shall be collectively responsible to the Lok Sabha.
- A person who is not a member of either House can also become a minister but he cannot continue as minister for more than six months unless he secures a seat in either House of Parliament (by election/nomination). [**Art. 75(5)**]

The council of ministers consists of three categories: **cabinet ministers, ministers of state, and deputy ministers.**

Cabinet Ministers: The cabinet ministers head the important ministries of the Central government like home, defence, finance and external affairs.

Ministers of State: The ministers of state can either be given independent charge of ministries/departments or can be attached to cabinet ministers.

Deputy Ministers: The deputy ministers are not given

independent charge of ministries/departments and always assist the Cabinet or State Minister or both. They are not members of the cabinet and do not attend cabinet meetings.

- Minister may be taken from members of either House and minister who is member of one House has the right to

speak and take part in the proceedings of the other House but cannot vote in the House of which he is not member. [Art. 88]

- If the Prime Minister resigns or passes away, the entire ministry goes out automatically.

Parliament

Parliament is the legislative organ of the Union government. [Articles 79 to 122 in Part V of the Constitution]

- **Article 79** provides that there shall be a Parliament for the Union which shall consist of **the President and two Houses** to be known as the council of states (Rajya Sabha or Upper House) and the House of the People (Lok Sabha or Lower House).
- Parliament has financial control over the executive.
- Parliament is the sole authority to raise the taxes.

Rajya Sabha

- The Rajya Sabha was first constituted on **3rd April 1952** and it held its first sitting on **13th May 1952**.
- The maximum strength of the Rajya Sabha is fixed at **250**, out of which, 238 are to be the representatives of the states and union territories and 12 are to be nominated by the President.

Representation of States: The Rajya Sabha represents the States and Union Territories of the Indian Union. The representatives of states in the Rajya Sabha are elected by the elected members of state legislative assemblies. The election is held in accordance with the system of proportional representation by means of the single transferable vote. The seats are allotted to the states in the Rajya Sabha on the basis of population.

Representation of Union Territories: The representatives of each Union Territory in the Rajya Sabha are indirectly elected by members of an electoral college specially constituted for the purpose. This election is also held in accordance with the system of proportional representation by means of the single transferable vote. Out of the seven Union Territories, only Delhi and Puducherry have representation in Rajya Sabha.

Nominated Members: The president nominates 12 members to the Rajya Sabha from people who have special knowledge or practical experience in art, literature, science and social service.

Duration of the Rajya Sabha

The Rajya Sabha (first constituted in 1952) is a continuing chamber, that is, it is a permanent body and not subject to

dissolution. However, **one-third of its members retire every second year**. Their seats are filled up by fresh elections and presidential nominations at the beginning of every third year. The **Representation of the People Act (1951)** provided that the term of office of a member of the Rajya Sabha shall be six years.

Chairman of the Rajya Sabha

The Vice-President of India is the ex-officio Chairman of the Rajya Sabha. During any period when the Vice-President acts as President or discharges the functions of the President, he does not perform the duties of the office of the Chairman of the Rajya Sabha.

Deputy Chairman of the Rajya Sabha

The Deputy Chairman is elected by the Rajya Sabha itself from amongst its members. The Deputy Chairman performs the duties of the Chairman's office when it is vacant or when the Vice-President acts as President or discharges the functions of the President.

Special Powers of the Rajya Sabha

Some resolutions can be initiated only in the Rajya Sabha, e.g.,

- (i) Any resolution seeking creation of one or more All-India Services.
- (ii) A resolution seeking the removal of the Vice-President. [Art. 67]
- (iii) A resolution seeking legislation on any subject of the state list. [Art. 249]

Qualifications for Election to the Rajya Sabha

- He should be a citizen of India.
- He should not be less than 30 years of age.
- He should not hold any office of profit.
- He must be a registered voter, an ordinary citizen in the state or Union territory from where he is intended to be chosen.

Note: UP has the largest number of Rajya Sabha seats (31) and Maharashtra second largest (19), while all the states of the North East, except Assam, have one seat each.

Lok Sabha

The maximum strength of the Lok Sabha is fixed at **552**. Out of this, 530 members are to be the representatives of the states, 20 members are to be the representatives of the Union Territories and 2 members are to be nominated by the President from the Anglo-Indian community.

At present there are **545** members in Lok Sabha, of which 530 are from states, 13 from UTs and 2 members are nominated by the President.

Note: The Parliament has frozen the representation of States and UTs in Lok Sabha at 543 till **2026 AD**.

Representation of States: The representatives of states in the Lok Sabha are directly elected by the people from the territorial constituencies in the states. The election is based on the principle of universal adult franchise.

Representation of Union Territories: The members of Lok Sabha from the Union Territories are also chosen by direct election.

Nominated Members: The President can nominate two members from the Anglo-Indian community if the community is not adequately represented in the Lok Sabha.

Duration of the Lok Sabha: Unlike the Rajya Sabha, the Lok Sabha is not a continuing chamber. Its normal term is **five years**, from the date of its first meeting after the general elections, after which it automatically dissolves. However, the President is authorised to dissolve the Lok Sabha at any time even before the completion of five years and this cannot be challenged in a court of law.

Note: The normal term of the Lok Sabha can be extended by an Act passed by Parliament itself during Emergency.

Speaker of the Lok Sabha: The Speaker is the Chief Presiding Officer of the Lok Sabha. The Speaker is elected by the Lok Sabha from amongst its members [**Art. 93**]. He has the responsibility to uphold the dignity and privileges of the House.

It should be noted here that, whenever the Lok Sabha is dissolved, the Speaker does not vacate his office and continues till the newly elected Lok Sabha meets.

Roles, Powers and Functions of the Speaker: The Speaker is the head of the Lok Sabha. He is the guardian of powers and privileges of the members, the House as a whole and its committees.

The Speaker of the Lok Sabha has the following powers and duties:

1. He maintains order and decorum in the House for conducting its business and regulating its proceedings.
2. He adjourns the House or suspends the meeting in absence of a quorum.
3. He decides whether a bill is a money bill or not.

Oath of Speaker: There is no procedure of oath swearing for the speaker.

Deputy Speaker of the Lok Sabha

Like the Speaker, the Deputy Speaker is also elected by the Lok Sabha itself from amongst its members. The Deputy Speaker remains in office usually during the life of the Lok Sabha. He performs the duties of the Speaker's office when it is vacant.

Pro tem Speaker

As provided by the Constitution, the Speaker of the last Lok Sabha vacates his office immediately before the first meeting of the newly elected Lok Sabha. Therefore, the President appoints a member of the Lok Sabha as the *Pro tem* Speaker. Usually, the seniormost member is selected for this. The President himself administers oath to the *Pro tem* Speaker. The *Pro tem* Speaker has all the powers of the Speaker. He presides over the first sitting of the newly elected Lok Sabha. His main duty is to administer oath to the new members.

Qualifications for Election as a Lok Sabha member

- He should be a citizen of India.
- He should not be less than 25 years of age.
- He should be a registered voter in any of the Parliamentary Constituencies in India.
- He should not hold any office of profit.

Note: 1. The Constitution provides that a Money Bill can only originate in Lok Sabha and cannot be introduced in Rajya Sabha.

2. **UP** has the largest number of Lok Sabha seats (**80**) followed by Maharashtra (48).

Sessions of Parliament

Summoning

The President from time to time summons each House of Parliament to meet. But, the maximum gap between two sessions of Parliament cannot be more than **six months**. In other words, the Parliament should meet at least twice a year. There are usually three sessions in a year:

- the **Budget Session** (February to May);
- the **Monsoon Session** (July to September); and
- the **Winter Session** (November to December).

The period between the prorogation of a House and its reassembly in a new session is called 'recess'.

Joint Sitting

Under Article 108, there is a Provision of Joint sitting of both the Houses of the Parliament.

- The Lok Sabha speaker presides over the joint sitting [**Art. 118(4)**].
- There are only three occasions in the history of Indian Parliament that the joint sessions of the Parliament took place. They are as follows:
 - (i) In May 1961, for **Dowry Prohibition Bill, 1959**.
 - (ii) In May 1978 for **Banking Services Commission**.
 - (iii) In 2002 for **POTA (Prevention of Terrorism Act)**.

The Lok Sabha Speakers of India

1. G.V.Mavlankar	15 May 1952 - 27 February 1956
2. M. A. Ayyangar	8 March 1956 - 16 April 1962
3. Sardar Hukam Singh	17 April 1962 - 16 March 1967
4. N. Sanjiva Reddy	17 March 1967 - 19 July 1969
5. G. S. Dhillon	8 August 1969 - 1 December 1975
6. Bali Ram Bhagat	15 January 1976 - 25 March 1977
7. N. Sanjiva Reddy	26 March 1977 - 13 July 1977
8. K.S. Hegde	21 July 1977 - 21 January 1980
9. Balram Jakhar	22 January 1980 - 18 December 1989
10. Rabi Ray	19 December 1989 - 9 July 1991
11. Shivraj Patil	10 July 1991 - 22 May 1996
12. P.A. Sangma	25 May 1996 - 23 March 1998
13. G.M.C. Balayogi	24 March 1998 - 3 March 2002
14. Manohar Joshi	10 May 2002 - 2 June 2004
15. Somnath Chatterjee	4 June 2004 - 30 May 2009
16. Meira Kumar	30 May 2009 till date

- Joint sitting of both Houses can be convened on two occasions:

- (i) For resolving any deadlock over the passage of a Bill.
- (ii) Special address by the President at the commencement of the first session after each general election of the Lok Sabha; First Session of each year (the Budget Session).

Note: Joint sitting cannot be called for resolving deadlock regarding “**Money Bill**” and “**Constitution Amendment Bill**”.

Prorogation

The presiding officer (Speaker or Chairman) declares the House adjourned *sine die*, when the business of a session is completed. Within the next few days, the President issues a notification for prorogation of the session. However, the President can also prorogue the House while in session.

Adjournment

This is a short recess within a session of the Parliament, called by the presiding officer of the House. Its duration may be from a few minutes to days together.

Adjournment *sine die*

When the House is adjourned without naming a day for reassembly, it is called adjournment *sine die*.

Note: Quorum is the minimum number of members required to be present in the House before it can transact any business. It is one-tenth of the total number of members in each House including the presiding officer. It means that the Quorum consists of 55 members in Lok Sabha and 25 members in Rajya Sabha.

- The Constitution has declared **Hindi and English** to be the languages for transacting business of the Houses. It can permit a member to address the House in his mothertongue.

Legislative procedures in Parliament

The legislative procedure is identical in both the Houses of Parliament. Every bill has to pass through the same stages in each House. **A bill is a proposal for legislation and it becomes an act or law when duly enacted.**

Bills introduced in the Parliament are of two kinds: **public bills** and **private bills** (also known as government bills and private members’ bills respectively). Though both are governed by the same general procedure and pass through the same stages in the House, they differ in various respects.

The bills introduced in the Parliament can also be classified into four categories:

1. Ordinary bills
2. Money bills
3. Financial bills
4. Constitution amendment bills

Ordinary Bills

- All the bills other Than Financial bills, Money bills and Constitution Amendment bills are ordinary bills.
- Such bills can be introduced in either House of Parliament without the recommendation of the President. These bills are passed by a simple majority in both the Houses.

Money Bills

Article 110 of the Constitution deals with the definition of money bills. It states that a bill is deemed to be a money bill if it contains 'only' provisions dealing with all or any of the following matters:

- The imposition, abolition, remission, alteration or regulation of any tax;
- The regulation of the borrowing of money by the Union government;
- The custody of the Consolidated Fund of India or the Contingency Fund of India, the payment of moneys into or the withdrawal of money from any such fund;
- The appropriation of money out of the Consolidated Fund of India;
- Declaration of any expenditure charged on the Consolidated Fund of India or increasing the amount of any such expenditure;
- The receipt of money on account of the Consolidated Fund of India or the public account of India or the custody or issue of such money, or the audit of the accounts of the Union or of a state.

If any question arises whether a bill is a money bill or not, the decision of the Speaker of the Lok Sabha is final. His decision in this regard cannot be questioned in any court of law or in either House of Parliament or even the President.

The Constitution lays down a special procedure for the passing of money bills in the Parliament. **A money bill can only be introduced in the Lok Sabha** and that too on the recommendation of the president. Every such bill is considered to be a government bill and can be introduced only by a minister.

After a money bill is passed by the Lok Sabha, it is transmitted to the Rajya Sabha for its consideration. The Rajya Sabha has restricted powers with regard to a money bill. It cannot reject or amend a money bill. It can only make the recommendations. It must return the bill to the Lok Sabha within **14 days**, whether with or without recommendations.

Financial Bills

Financial bills are those bills that deal with fiscal matters, that is, revenue or expenditure. However, the Constitution uses the term 'financial bill' in a technical sense. Financial bills are of three kinds:

1. **Money bills—Article 110**
2. **Financial bills (I)—Article 117 (1)**
3. **Financial bills (II)—Article 117 (3)**

This classification implies that money bills are simply a species of financial bills. Hence, all money bills are financial bills but all financial bills are not money bills. Only those financial bills are money bills which contain exclusively those matters which are mentioned in Article 110 of the Constitution. These are also certified by the Speaker of Lok Sabha as money bills. The financial bills (I) and (II), on the other hand, have been dealt with in Article 117 of the Constitution.

Constitution Amendment Bills

- Under **Article 368**, with the powers of Parliament to amend the Constitution, this Bill can be introduced in any of the two Houses without recommendation of the President.
- Such Bill must be passed by each House separately with a special majority.

Note: By the 24th Constitution Amendment Act, 1971, it is obligatory for the President to give his assent to the '**Constitutional Amendment Bill**'.

Important Committees of Parliament

Public Accounts Committee

- This committee was set up first in **1921** under the provisions of the Government of India Act of 1919 and has since been in existence.
- At present, it consists of **22 members** (15 from the Lok Sabha and 7 from the Rajya Sabha).
- The term of office of the members is **one year**. A minister cannot be elected as a member of the committee.
- The function of the committee is to examine the annual audit reports of the Comptroller and Auditor General of India (CAG), which are laid before the Parliament by the president.

Note: Since 1967 the Chairman of the Committee has been selected invariably from the **Opposition**.

Estimates Committee

- The first Estimates Committee in the post-Independence era was constituted in 1950 on the recommendation of **John Mathai**, the then finance minister.
- Originally, it had 25 members but in 1956 its membership was raised to **30**. All the 30 members are from the Lok Sabha only.
- These members are elected by the Lok Sabha every year from amongst its members.
- The term of office is **one year**. A minister cannot be elected as a member of the committee.
- The function of the committee is to examine the estimates included in the budget and suggest 'economies' in public expenditure.

Committee on Public Undertakings

This committee has **22 members** (15 from the Lok Sabha and 7 from the Rajya Sabha). The members are elected by the Parliament every year from amongst its members. The term of office of the members is **one year**. A minister cannot be elected as a member of the committee.

The functions of the committee are:

- To examine the reports and accounts of public undertakings.
- To examine whether the affairs of the public undertakings are being managed in accordance with sound business principles and prudent commercial practices.

State Government

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.

Governor

- The governor is appointed by the president of India.
- The governor is the chief executive head of the state.
- The governor also acts as an agent of the central government. Therefore, the office of governor has a dual role.

Qualifications to be a Governor

- He should be a citizen of India.
- He should have completed the age of 35 years.
- He must not hold any office of profit.

Conditions of Governor's office

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

1. He should not be a member of either House of Parliament or a House of the state legislature. If any such person is appointed as governor, he is deemed to have vacated his seat in that House on the date on which he enters upon his office as the governor.
2. He should not hold any other office of profit.
3. He is entitled without payment of rent to the use of his official residence (the *Raj Bhavan*).
4. He is entitled to such emoluments, allowances and privileges as may be determined by Parliament.
5. When the same person is appointed as the governor of two or more states, the emoluments and allowances payable to him are shared by the states in such proportion as determined by the President.

Note: The salary and allowances of the governor are drawn from the **consolidated fund of the states**.

Like the President, the governor is also entitled to a number of privileges and immunities. He enjoys personal immunity from legal liability for his official acts. However,

after giving two months' notice, civil proceedings can be instituted against him during his term of office in respect of his personal acts.

The oath of office to the governor is administered by the chief justice of the concerned state high court and, in his absence, the seniormost judge of that court available.

Term of Governor's Office

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 Constitution does not lay down any grounds upon which a governor may be removed by the President.

Note: The normal tenure of a governor is **five years**.

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:

Executive Powers

1. All executive actions of the government of a state are formally taken in his name.
2. He appoints the chief minister and other ministers. They also hold office during his pleasure.
3. He appoints the advocate general of a state and determines his remuneration. The advocate general holds office during the pleasure of the governor.
4. He appoints the state election commissioner and determines his conditions of service and tenure of office. However, the state election commissioner can be removed only in like manner and on like grounds as a judge of a high court.
5. He appoints the chairman and members of the state public service commission. However, they can be removed only by the President and not by a governor.

6. He can recommend the imposition of constitutional emergency in a state to the president. During the period of President's rule in a state, the governor enjoys extensive executive powers as an agent of the President.
7. He acts as the chancellor of universities in the state. He also appoints the vice-chancellors of universities in the state.

Legislative Powers

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 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. Similarly, he can appoint any member of the state legislature council to preside over its proceedings when the offices of both Chairman and Deputy Chairman fall vacant.
4. 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.
5. He can nominate one member to the state legislature assembly from the Anglo-Indian Community.
6. When a bill is sent to the governor after it is passed by state legislature, he can:
 - Give his assent to the bill, or
 - Withhold his assent to the bill, or
 - Return the bill (if it is not a money bill) for reconsideration of the state legislature.

However, if the bill is passed again by the state legislature with or without amendments, the governor has to give his

assent to the bill, or reserve the bill for the consideration of the president.

7. He can promulgate ordinances when the state legislature is not in session.
8. He lays the reports of the State Finance Commission, the State Public Service Commission and the Comptroller and Auditor-General relating to the accounts of the state, before the state legislature.

Financial Powers

1. He makes the state budget to be 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

1. He can grant pardons, reprieves, respites and remissions of punishments 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.

Chief Minister

- The Chief Minister is appointed by the Governor.
- The relation between the Governor and his Ministers is similar to that between the President and his Ministers.

State Legislature

Articles 168 to 212 in Part VI of the Constitution deal with the organisation, composition, duration, offices, procedures, privileges, powers and so on of the state legislature.

Organisation of state legislature

- There is no uniformity in the organisation of state legislatures. Most of the states have unicameral system, while others have a bicameral system.
- At present (2009), only **six states** have two Houses (bicameral). These are **Andhra Pradesh, Uttar Pradesh,**

Bihar, Maharashtra, Karnataka and Jammu and Kashmir.

- In the states having bicameral system, the state legislature consists of the governor, the legislative council and the legislative assembly.
- The Constitution provides for the abolition or creation of legislative councils in states. Accordingly, the Parliament can abolish a legislative council or create it, if the legislative assembly of the concerned state passes a resolution to that effect.
- Such a specific resolution must be passed by the state assembly by a special majority, that is, a majority of the

total membership of the assembly and a majority of not less than two-thirds of the members of the assembly present and voting.

Legislative Assembly

- The legislative assembly consists of representatives directly elected by the people on the basis of universal adult franchise. Its maximum strength is fixed at **500** and minimum strength at **60**.
- The governor can nominate one member from the Anglo-Indian community, if the community is not adequately represented in the assembly.
- For the purpose of holding direct elections to the assembly, each state is divided into territorial constituencies. The demarcation of these constituencies is done in such a manner that the ratio between the population of each constituency and the number of seats allotted to it is the same throughout the state. The delimitation of constituencies is done after every census.

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 authorized to dissolve the assembly at any time to pave the way for fresh elections. Further, the term of the assembly can be extended during the period of national emergency by a law of Parliament for one year at a time.

Speaker of the Assembly

A Legislative Assembly has its Speaker and Deputy Speaker and the provisions relating to them are analogous to those relating to the corresponding officers of the Lok Sabha.

Note: The state Council of Ministers shall be collectively responsible to the state Legislative Assembly.

Legislative Council

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**. (Exception: Jammu and Kashmir, 36)

Of the total number of members of a legislative council,

- 1/3 are elected by the members of local bodies in the state like municipalities, district boards, etc.,
- 1/12 are elected by graduates of three years standing and residing within the state,
- 1/12 are elected by teachers of three years' standing in the state, not lower in standard than secondary school,
- 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

- The remaining 1/6 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.
- The members are elected in accordance with the system of proportional representation by means of a single transferable vote.

Duration of the 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.

- A legislative council has its Chairman and Deputy Chairman and provisions relating to them are analogous to those relating to the corresponding officer of Rajya Sabha.

Membership of state legislature

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

- He must be a citizen of India.
- He must not hold any office of profit under the govt.
- He must be not less than 30 years of age in the case of the legislative council and not less than 25 years of age in the case of the legislative assembly.
- He must possess other qualifications prescribed by Parliament.

Legislative procedure in state legislature

Ordinary Bills

Bill in the Originating House: An ordinary bill can originate in either House of the state legislature. Such a bill can be introduced either by a minister or by any other member. The bill passes through three stages, viz. **first reading, second reading and third reading**. After the bill is passed by the originating House, it is transmitted to the second House for consideration and passage. A bill is deemed to have been passed by the state legislature only when both the Houses have agreed to it. In case of a unicameral legislature, a bill passed by the legislative assembly is sent directly to the governor for his assent.

Assent of the Governor: Every bill, after it is passed by the assembly or by both the Houses in case of a bicameral legislature, is presented to the governor for his assent. There are four alternatives before the governor:

- he may give his assent to the bill;
- he may withhold his assent to the bill;
- he may return the bill for reconsideration of the House or

- Houses; and
- he may reserve the bill for the consideration of the President.

Assent of the President: When a bill is reserved by the governor for the consideration of the President, the President may either give his assent to the bill or withhold his assent to the bill or return the bill for reconsideration of the state legislature. When a bill is so returned, the House or Houses have to reconsider it within a period of six months. The bill is presented again to the presidential assent after it is passed by the House or Houses with or without amendments.

Money Bills

The Constitution lays down a special procedure for the passing of Money Bills in the state legislature. This is as follows:

- A Money Bill cannot be introduced in the legislative council. It can be introduced in the legislative assembly

only and that too on the recommendation of the governor. Every such bill is considered to be a government bill and can be introduced only by a minister.

- After a Money Bill is passed by the legislative assembly, it is transmitted to the legislative council for its consideration. The legislative council has restricted powers with regard to a Money Bill. It cannot reject or amend a Money Bill. It can only make recommendations and must return the bill to the legislative assembly within 14 days.
- If the legislative council does not return the bill to the legislative assembly within 14 days, the bill is deemed to have been passed by both Houses at the expiry of the said period in the form originally passed by the legislative assembly.
- Finally, when a Money Bill is presented to the governor, he normally gives his assent to it as it is introduced in the state legislature with his prior permission.

Judiciary in India

Supreme Court

Articles 124 to 147 in Part V of the Constitution deal with the Supreme Court. The Indian Constitution has established an integrated judicial system with the Supreme Court at the top and the high courts below it. Under a high court, there is a hierarchy of subordinate courts, that is, district courts and other lower courts. The Parliament has the power to regulate the Supreme Court.

Organisation of the Supreme Court

At present, the Supreme Court consists of **31 judges** (one chief justice and thirty other judges). Originally, the strength of the Supreme Court was fixed at **eight** (one chief justice and seven other judges).

Appointment of Judges: The judges of the Supreme Court are appointed by the President. The chief justice 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 chief justice and such other judges of the Supreme Court and the high courts as he deems necessary.

First Chief Justice of India	Hiralal J. Kania (Jan. 26, 1950 to Nov. 6, 1951)
Present Chief Justice of India	S.H. Kapadia (12th May 2010 till date)

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.

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.
- 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: The Constitution seeks to ensure the independence of Supreme Court Judges in various ways. A Judge of the Supreme Court cannot be removed from office except by an order of the President passed after an address in each House of Parliament supported by a majority of the total membership of that House and by a majority of not less than two-thirds of members present and voting, and presented to the President in the same Session for such removal on the ground of proved misbehaviour or incapacity. A person who has been a Judge of the Supreme Court is debarred from

practising in any court of law or before any other authority in India.

Salaries and allowances: A judge of the Supreme Court gets a salary of Rs 1,00,000 per month and the use of an official residence free of rent. The salary of the Chief Justice is Rs 1,10,000 per month. (According to the Sixth Pay Commission Revision, 2008)

Jurisdiction and powers of the Supreme Court

The Constitution has conferred a very extensive jurisdiction and vast powers on the Supreme Court. It is not only a federal court but also the final interpreter and guardian of the Constitution and guarantor of the fundamental rights of the citizens.

Original Jurisdiction

As a federal court, the Supreme Court decides the disputes between different units of the Indian federation. It resolves the disputes 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.

Writ Jurisdiction

The Constitution has constituted the Supreme Court as the guarantor and defender of the fundamental rights of the citizens. 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.

Appellate Jurisdiction

The Supreme Court is primarily a court of appeal and hears appeals against the judgements of the lower courts. The Appellate Jurisdiction of the Supreme Court is threefold: (i) **Constitutional Matters**, (ii) **Civil Matters**, (iii) **Criminal Matters**.

Appeal by Special Leave: The Supreme Court is authorised to grant in its discretion special leave to appeal from any judgement in any matter passed by any court or tribunal in the country (except military tribunal and court martial).

Advisory Jurisdiction

The Constitution (Article 143) authorises 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.

In the first case, the Supreme Court may tender or may refuse to tender its opinion to the President. But, in the second

case, the Supreme Court 'must' tender its opinion to the President.

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 violative of the Constitution, they can be declared as illegal, unconstitutional and invalid (null and void) by the Supreme Court. Consequently, they cannot be enforced by the Government. Judicial review is needed for the following reasons:

- To uphold the principle of the supremacy of the Constitution.
- To maintain federal equilibrium (balance between Centre and states).
- To protect the fundamental rights of the citizens.

High Court

The high court occupies the top position in the judicial administration of a state. **Articles 214 to 231** in Part VI of the Constitution deal with the organisation, independence, jurisdiction, powers, procedures and so on of the high courts. 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.

At present, there are **24 high courts** in the country. Out of them, three are common high courts. Delhi is the only Union Territory that has a high court of its own (since 1966).

Three new High Courts for NE

The Centre has constituted three new High Courts in the northeast — **Meghalaya, Manipur and Tripura** — taking the total number of High Courts in the country from **21 to 24**.

According to Law Ministry sources, the strength of judges in each High Court will be as follows: Tripura 4 (including the Chief Justice), and Meghalaya and Manipur: three each (including the Chief Justice).

Organisation of High Court

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.

Appointment of Judges: The judges of a high court are appointed by the President. The chief justice is appointed by the President after consultation with the Chief Justice of India and the governor of the state concerned. In case of a common high court for two or more states, the governors of all the states concerned are consulted by the President.

Qualifications of Judges: A person to be appointed as a judge of a High Court should have the following qualifications:

- He should be a citizen of India.

The High Court: Seats and Jurisdiction

Name	Year of Establishment	Territorial Jurisdiction	Seat
Allahabad	1866	Uttar Pradesh	Allahabad (Bench at Lucknow)
Andhra Pradesh	1954	Andhra Pradesh	Hyderabad
Bombay	1862	Maharashtra, Goa, Dadra and Nagar Haveli,	Mumbai (Benches at Nagpur, Daman and Diu, Panaji and Aurangabad)
Kolkata	1862	West Bengal	Kolkata (Circuit Bench at Port Blair)
Chhattisgarh	2000	Bilaspur	Bilaspur
Delhi	1966	Delhi	Delhi
Guwahati	1948	Assam, Manipur, Meghalaya, Nagaland, Tripura, Mizoram and Arunachal Pradesh	Guwahati (Benches at Kohima, Aizawl, Imphal, Shillong, Agartala and Itanagar)
Gujarat	1960	Gujarat	Ahmedabad
Himachal Pradesh	1971	Himachal Pradesh	Shimla
Jammu and Kashmir	1928	Jammu and Kashmir	Srinagar and Jammu
Jharkhand	2000	Jharkhand	Ranchi
Karnataka	1884	Karnataka	Bengaluru
Kerala	1958	Kerala	Ernakulam
Madhya Pradesh	1956	Madhya Pradesh	Jabalpur (Benches at Gwalior and Indore)
Madras	1862	Tamil Nadu and Puducherry	Chennai (Bench at Madurai)
Odisha	1948	Odisha	Cuttack
Patna	1916	Bihar	Patna
Punjab and Haryana	1966	Punjab and Haryana	Chandigarh
Rajasthan	1949	Rajasthan	Jodhpur (Bench at Jaipur)
Sikkim	1975	Sikkim	Gangtok
Uttarakhand	2000	Uttarakhand	Nainital

- The first-ever impeachment initiated against a judge, **V Ramaswami**, who retired as an SC judge in 1994, failed after the motion collapsed on the floor of the Lok Sabha in 1993.
- On August 18, 2011, **Justice Soumitra Sen** become the first judge to be impeached by Rajya Sabha. The Upper House had approved the motion with an overwhelming majority of 189 votes in favour and 17 against.
- The Lok Sabha dropped the impeachment proceedings against Justice Sen after he resigned just days after the Rajya Sabha impeached him.
- Another such motion had been initiated against **Justice PD Dinakaran** but he resigned as the Chief Justice of the Sikkim High Court on July 19, 2011, a day ahead of the hearing of the three-member inquiry committee appointed by the Rajya Sabha Chairman.

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

The Constitution has not prescribed a minimum age for appointment 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.

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:

- He holds office until he attains the age of 65 years.
- 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 a high 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 the 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 (i.e., 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 misbehaviour or incapacity.

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Transfer of Judges: The President can transfer a judge from one high court to another after consulting the Chief

Justice of India. On transfer, he is entitled to receive in addition to his salary such compensatory allowance as may be determined by Parliament.

Subordinate Courts

The state judiciary consists of a high court and a hierarchy of sub-ordinate courts, also known as **lower courts**. They function below and under the high court at district and lower levels.

Constitutional provisions

Articles 233 to 237 in Part VI of the Constitution make the following provisions to regulate the organization of subordinate courts and to ensure their independence from the executive.

Appointment of district judges

The appointment, posting and promotion of district judges in a state are made by the governor of the state in consultation with the high court. A person to be appointed as district judge should have the following qualifications:

- He should not already be in the service of the Central or the state government.
- He should have been an advocate or a pleader for seven years.
- He should be recommended by the high court for appointment.

Appointment of other judges

Appointment of persons (other than district judges) to the judicial service of a state are made by the governor of the state after consultation with the State Public Service Commission and the high court.

Control over subordinate courts

The control over district courts and other subordinate courts including the posting, promotion and leave of persons belonging to the judicial service of a state and holding any post inferior to the post of district judge is vested in the high court.

Interpretation

The expression 'district judge' includes judge of a city civil court, additional district judge, joint district judge, assistant district judge, chief judge of a small-cause court, chief presidency magistrate, additional chief presidency magistrate, sessions judge, additional sessions judge and assistant sessions judge.

Local Self-Governance

Panchayati Raj

- The Panchayati Raj System is the **first tier** or level of democratic government.
- The term Panchayati Raj in India signifies the system of rural local self-government. It was constitutionalised through the **73rd Constitutional Amendment** Act of 1992.
- The development of the village was the immediate problem faced by our country after independence. Hence the **Community Development Programme** was launched in 1952 with a view to carrying out the integral rural development work.
- **Rajasthan** was the first state to set up Panchayati Raj System in 1959 followed by Andhra Pradesh.

Main Provisions of 73rd Amendment Act

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

- 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.
- Reservation of 1/3 seats (both members and chairpersons) for women in Panchayats at all the levels.
- The Act provides for a three-tier system of the Panchayati Raj in the states namely:
 - (i) **Gram Panchayat** at the Village level.
 - (ii) **Panchayat Samiti** at the Block level.
 - (iii) **Zila Parishad** at the District level.

Part IX of the Constitution mentions the compulsory provisions for the Panchayati Raj Institutions:

Compulsory Provisions for Panchayati Raj Institutions

1. Organisation of Gram Sabha in a village or group of villages.
2. Establishment of Panchayats at the village, intermediate and district levels.
3. **21 years** to be the minimum age for contesting elections to Panchayats.
4. Reservation of seats (both members and chairpersons) for SCs and STs in Panchayats at all the three levels.
5. Reservation of **one-third seats** (both members and chairpersons) for women in Panchayats at all the three levels.

6. 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.
7. Establishment of a **State Election Commission** for conducting elections to the Panchayats.
8. Constitution of a **State Finance Commission** after every five years to review the financial position of the panchayats.

Organisational Structure

(i) Gram Panchayat at the Village level

- The members of the Gram Panchayat are elected by the Gram Sabha. The **Pradhans** (Presidents) of the Gram Sabha are the ex-officio members of the Gram Panchayat.

Note: **Gram Sabha** means a body consisting of persons registered in the electoral rolls relating to a village comprised within the area of Panchayat at the village level.

(ii) Panchayat Samiti at the Block level

- The Panchayat Samiti has many Gram Panchayats under it.
- All the Presidents of the Panchayats within the Block are the *ex officio* members of the 'Panchayat Samitis'.

(iii) Zila Parishad at the District level

- Zila Parishad is an apex body under the Panchayati Raj. It co-ordinates the activities of the various Panchayat Samitis.
- Zila Parishad actually makes developmental plans at the district level.
- With the help of Panchayat Samitis, it also regulates the money distribution among all the Gram Panchayats.

Committees on Panchayati Raj

Balwant Rai Mehta Committee

- In January 1957, the Government of India appointed a committee to examine the functioning of the Community Development Programme (1952).
- One of its major recommendations was a **three-tier Panchayati Raj System**.

Ashok Mehta Committee

- In December 1977, the Government of India appointed a committee on Panchayati Raj Institutions under the chairmanship of Ashok Mehta.
- It recommended the three-tier system of the Panchayati Raj should be replaced by a two-tier system.

LM Singhvi Committee

- In 1986, Rajiv Gandhi Government appointed a committee on the 'Revitalisation of Panchayati Raj Institutions for Democracy and Development under the chairmanship of L.M. Singhvi.

Urban Local Governance

The term 'Urban Local Government' in India signifies the governance of an urban area by the people through their elected representatives.

74th Amendment of 1992

This act has added a new **Part IX-A** to the Constitution of India. It consists of provisions from **Articles 243-P to 243-ZG**. In addition, the act has also added a new **Twelfth Schedule** to the Constitution.

- The Amendment has added 18 new Articles relating to urban local bodies in the Constitution.
- The institutions of self government are called by a general name "Municipalities".

Three Types of Municipalities: The act provides for the constitution of the following three types of municipalities in every state:

- A *nagar panchayat* for a transitional area, that is, an area in transition from a rural area to an urban area.
- A *municipal council* for a smaller urban area.
- A *municipal corporation* for a larger urban area.

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.

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).

Duration of Municipalities: The act provides for a five-year term of office for every municipality. However, it can be dissolved before the completion of its term.

Powers and Functions: The state legislature may endow the municipalities with such powers and authority as may be

necessary to enable them to function as institutions of self-government.

Major function of municipalities: The preparation and implementation of plans for economic development and social justice

Finances: The state legislature may (a) authorise a municipality to levy, collect and appropriate taxes, duties, tolls and fees; (b) assign to a municipality taxes, duties, tolls and fees levied and collected by state government; (c) provide for making grants-in-aid to the municipalities from the consolidated fund of the state.

District Planning Committee: Every state shall constitute, at the district level, a district planning committee to consolidate the plans prepared by panchayats and municipalities in the district.

Metropolitan Planning Committee: Every metropolitan area shall have a metropolitan planning committee to prepare a draft development plan.

Types of urban government**Municipal Corporation**

Municipal corporations are created for the administration of big cities like Delhi, Mumbai, Kolkata, Hyderabad, Bangalore and others. They are established in the states by the acts of the concerned state legislatures, and in the union territories by the acts of the Parliament of India.

A municipal corporation has three authorities, namely, the **council**, the **standing committees** and the **commissioner**. It consists of the councillors directly elected by the people. The council is headed by a **mayor**. He is assisted by a deputy mayor. He presides over the meetings of the council. The standing committees are created to facilitate the working of the council, which is too large in size.

Municipality

The municipalities are established for the administration of towns and smaller cities. Like a municipal corporation, a municipality also has three authorities, namely, the council, the standing committees and the chief executive officer.

It consists of the councillors directly elected by the people. The council is headed by a president/chairman. He is assisted by a vice-president/vice-chairman. He presides over the meetings of the council. The standing committees are created to facilitate the working of the council.

Union Territories

Articles 239 to 241 in Part VIII of the Constitution deal with the union territories. Even though all the union territories belong to one category, there is no uniformity in their administrative system.

Every union territory is administered by the president acting through an administrator appointed by him. An administrator of a union territory is an agent of the president and not head of state like a governor. The president can specify the designation of an administrator; it is Lieutenant Governor in the case of Delhi, Puducherry and Andaman and Nicobar Islands and Administrator in the case of Chandigarh, Dadra and Nagar Haveli, Daman and Diu and Lakshadweep.

The Parliament can make laws on any subject of the three lists (including the State List) for the union territories. This power of Parliament also extends to Puducherry and

Delhi, which have their own local legislatures but the legislative assembly of both (Delhi and Puducherry) can also make laws on any subject of the State List and Concurrent List. This means that the legislative power of Parliament for the union territories on subjects of the State List remain unaffected even after establishing a local legislature for them.

Special provisions for Delhi

The **69th Constitutional Amendment Act of 1991** provided a special status to the Union Territory of Delhi, redesignated it as the National Capital Territory of Delhi and designated the administrator of Delhi as the lieutenant governor. It created a legislative assembly and a council of ministers for Delhi. Previously, Delhi had a metropolitan council and an executive council.

Centre-State Relations

The Constitution of India, being **federal** in structure, divides all powers (legislative, executive and financial) between the Centre and the states. Though the Centre and the states are supreme in their respective fields, the maximum harmony and coordination between them is essential for the effective operation of the federal system. Hence, the Constitution contains elaborate provisions to regulate the various dimensions of the relations between the Centre and the states. The Centre-state relations can be studied under three heads:

- Legislative relations.
- Administrative relations.
- Financial relations.

Legislative relations

Articles 245 to 255 in Part XI of the Constitution deal with the legislative relations between the Centre and the states. Besides these, there are some other articles dealing with the same subject.

Like any other Federal Constitution, the Indian Constitution also divides the legislative powers between the Centre and the states with respect to both the territory and the subjects of legislation.

Distribution of legislative subjects

The Constitution provides for a three-fold distribution of legislative subjects between the Centre and the states, viz., List-I (the Union List–100 subjects), List-II (the State List–61 subjects) and List-III (the Concurrent List–52 subjects) in the **Seventh Schedule**. Its provisions include:

- The Parliament has exclusive powers to make laws with respect to any of the matters enumerated in the Union List like defence, banking, foreign affairs, currency, atomic energy, insurance, communication, inter-state trade and commerce, census, audit and so on.
- The state legislature has “in normal circumstances” exclusive powers to make laws with respect to any of the matters enumerated in the State List like public order, police, public health and sanitation, agriculture, prisons, local government, fisheries, markets, theatres, gambling and so on.
- Both the Parliament and the state legislature can make laws with respect to any of the matters enumerated in the Concurrent List like criminal law and procedure, civil procedure, marriage and divorce, population control and family planning, electricity, labour welfare, economic and social planning, etc.

Parliamentary legislation in the state field

The Constitution empowers the Parliament to make laws on any matter enumerated in the State List under the following five extraordinary circumstances:

- If the Rajya Sabha declares that it is necessary in the national interest that Parliament should make laws on a matter in the State List, then the Parliament becomes competent to make laws on that matter. [**Art. 249**]
- The Parliament acquires the power to legislate with

respect to matters in the State List, while a proclamation of national emergency is in operation. [Art. 250]

- When the legislatures of two or more states pass resolutions requesting the Parliament to enact laws on a matter in the State List, then the Parliament can make laws for regulating that matter. [Art. 252]
- The Parliament can make laws on any matter in the State List for implementing the international treaties, agreements or contentions.
- When the President's rule is imposed in a state, the Parliament becomes empowered to make laws with respect to any matter in the State List in relation to that state.

Centre's control over state legislation

Besides the Parliament's power to legislate directly on the state subjects under exceptional situations, the Constitution empowers the Centre to exercise control over the state's legislative matters in the following ways:

- The governor can reserve certain types of bill passed by the state legislature for the consideration of the President.
- Bills on certain matters enumerated in the State List can be introduced in the state legislature only with the previous sanction of the President.
- The President can direct the states to reserve money bills and other financial bills passed by the state legislature for his consideration during a financial emergency.

Administrative relations

- The executive powers of the states should be so exercised as to ensure compliance with the laws of the Union Parliament (Art. 256) and not impede or prejudice the executive powers of the Union (Art. 257).
- Under Art. 258(2), the Parliament is given power to use the State machinery to enforce the Union laws.

- The Centre can deploy military and paramilitary forces in a state even against the wishes of the state government.
- Under Art. 263, the President is empowered to constitute a Council to resolve the dispute.

Financial relations

- **Articles 268 to 293** in Part XII of the Constitution deal with Centre-state financial relations.
- Practically, the states have little power in taxation and are heavily dependent on the centre for financial resources.
- **Article 268:** Duties levied by the Union but collected and appropriated by states under which stamp duties and duties on medicinal and toilet preparation are mentioned.
- **Article 268(A):** Service tax levied by the Centre but collected and appropriate by the Centre and the state in the manner determined by the Parliament.

Grants-in-aid

Besides sharing of taxes between the Centre and the states, the Constitution provides for grants-in-aid to the states from the Central resources. There are two types of grants-in-aid, viz, statutory grants and discretionary grants:

Statutory Grants: Article 275 empowers the Parliament to make grants to the states which are in need of financial assistance.

Discretionary Grants: Article 282 empowers both the Centre and the states to make any grants for any public purpose, even if it is not within their respective legislative competence.

Important committees on Centre-State Relations

1. The Administrative Reforms Commission
2. Rajamannar Committee Report
3. Sarkaraia Commission
4. Punchhi Commission

Inter-State Relations

The Constitution of India has made the following provisions for ensuring harmonious inter-state relations:

- Adjudication of inter-state water disputes.
- Coordination through inter-state councils.
- Freedom of inter-state trade, commerce and intercourse.

Inter-state water disputes

- Under Art. 262 Parliament has constituted the Inter-State Water Disputes Tribunal for adjudication of disputes between States for the waters of any inter-State river or river valley.

- Inter-State river water disputes are excluded from the jurisdiction of all Courts including the Supreme Court.

Inter-State Council

- **Article 263** contemplates the establishment of an Inter-State Council for effective coordination between the states and between Centre and states.
- The Inter State Council is chaired by the **Prime Minister** and has all the Chief Ministers of the States and UTs having legislatures, Lt. Governors/ Administrators of the

Union Territories, and six Union Ministers nominated by the Prime Minister.

- The Sarkaria Commission recommended the constitution of a **permanent inter-State council** for co-ordination among states and with the Union.
- Inter-State Council meets thrice a year.

Inter-state trade and commerce

Articles 301 to 307 in Part XIII of the Constitution deal with the trade, commerce and intercourse within the territory of India.

Article 301 declares that trade, commerce and intercourse throughout the territory of India shall be free. The freedom guaranteed by Article 301 is a freedom from all restrictions, except those which are provided for in the other provisions (Articles 302 to 305). These are explained below:

- Parliament can impose restrictions on the freedom of trade, commerce and intercourse between the states or within a state in public interest.
- The legislature of a state can impose reasonable restrictions on the freedom of trade, commerce and intercourse with that state or within that state in public interest. But, a bill for this purpose can be introduced in the legislature only with the previous sanction of the president.
- The legislature of a state can impose on goods supplied from other states or the union territories any tax to which similar goods manufactured in that state are subject.
- The freedom (under Article 301) is subject to the nationalisation laws (i.e., laws providing for monopolies in favour of the Centre or the states).

Emergency Provisions

The Emergency provisions are contained in Part XVIII of the Constitution, from **Articles 352 to 360**. These provisions enable the Central government to meet any abnormal situation effectively.

The Constitution stipulates three types of emergencies:

- **National Emergency** (Article 352).
- **President's Rule** (Article 356).
- **Financial Emergency** (Article 360).

National Emergency

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**. A proclamation of national emergency may be applicable to the entire country or only a part of it.

Note: Originally, the Constitution mentioned 'internal disturbance' as the third ground for the proclamation of a National Emergency, but the expression was too vague and had a wider connotation. Hence, the 44th Amendment Act of 1978 substituted the words 'armed rebellion' for 'internal disturbance'.

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. If approved by both the Houses of Parliament, the emergency continues for **six months**, and can be extended to an indefinite period with an approval of the Parliament for every six months.

Revocation of proclamation

A proclamation of emergency may be revoked by the President at any time by a subsequent proclamation. Such a proclamation does not require the parliamentary approval. Further, the President must revoke a proclamation if the Lok Sabha passes a resolution disapproving its continuation.

Effects of national emergency

1. 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, viz. executive, legislative and financial.

- (i) **Executive:** During national emergency, the state governments are brought under the complete control of the Centre.
- (ii) **Legislative:** During a national emergency, the Parliament becomes empowered to make laws on any subject mentioned in the State List.
- (iii) **Financial:** While a proclamation of national emergency is in operation, the President can modify the constitutional distribution of revenues between the centre and the states. This means that the president can either reduce or cancel the transfer of finances from Centre to the states.

2. Effect on the life of the Lok Sabha and state assemblies:

While a proclamation of National Emergency is in operation, the life of the Lok Sabha may be extended beyond its normal term (five years) by a law of Parliament for one year at a time (for any length of time).

3. **Effect on the Fundamental Rights: Article 358** deals with the suspension of the Fundamental Rights guaranteed by Article 19, while **Article 359** deals with the suspension of other Fundamental Rights (except those guaranteed by Articles 20 and 21).

Note: The fundamental rights guaranteed under Art. 20 & 21 cannot be suspended even when a national emergency is in force.

- Proclamation of emergency under Art. 352 has been done three times till date.
- The first proclamation of emergency was due to **China's attack** on 26th October 1962.
- The second proclamation of emergency was on 3rd December 1971 as **Pakistan had declared war against India**.
- The third proclamation of emergency was done on 26th June 1975 on the ground of "**internal disturbance**".
- The emergency proclaimed in 1962 was revoked in 1968 and the latter two proclamations were together revoked in 1977.

President's Rule

Grounds of imposition

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 state. This is popularly known as 'President's Rule'.

The President's Rule can be proclaimed under Article 356 on two grounds—one mentioned in Article 356 itself and another in Article 365:

- **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.
- **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. If approved by both the Houses of Parliament, the President's Rule continues for six months. It can be extended for a maximum period of **three years** with the approval of the Parliament every six months.

Consequences of 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.
- It should be noted that President's Rule doesn't dilute the powers of the concerned High Court.

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. Once approved by both the Houses of Parliament, the Financial Emergency continues indefinitely till it is revoked. This implies two things:

- There is no maximum period prescribed for its operation; and
- Repeated parliamentary approval is not required for its continuation.
- A proclamation of Financial Emergency may be revoked by the President at anytime by a subsequent proclamation. Such a proclamation does not require the parliamentary approval.

Major effects of Financial Emergency

- Any such direction may include a provision requiring (a) the reduction of salaries and allowances of all or any class of persons serving in the state; and (b) the 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.

Special Status of Jammu and Kashmir

Article 370 in Part XXI of the Constitution grants a special status to it. Accordingly, all the provisions of the Constitution of India do not apply to it. It is also the only state in the Indian Union which has its own separate Constitution.

Accession of J&K to India

With the end of the British paramountcy, the State of Jammu and Kashmir (J&K) became independent on 15 August 1947. Initially its ruler, **Maharaja Hari Singh**, decided not to join India or Pakistan and thereby remain independent. However, he ultimately signed under the '**Instrument of Accession of Jammu and Kashmir to India**' and under it the state surrendered only three subjects: defence, external affairs and communications to the Dominion of India. Article 370 was incorporated in the Constitution of India and became operative on 17 November 1952.

The important features of the special state are as follows:

1. Contrary to the case with the other states, the residuary power lies with the legislature of the Jammu and Kashmir (and not the Parliament).

2. The state has its own Constitution. This also implies that 'dual citizenship' principle is followed in this state.
3. Part-IV (Directive Principles of State Policy) and Part-IV(A) (Fundamental Duties) are not applicable to the state.
4. The National Emergency proclaimed only on the ground of war or external aggression shall have automatic extension to the state of J&K. This means that the National Emergency proclaimed on the ground of armed rebellion shall not have automatic extension to J&K.
5. Financial Emergency (Art 360) cannot be imposed on the state.
6. Art. 19(1) and 31(2) have not been abolished for this state and hence "**right to property**" still stands guaranteed to the people of J&K.
7. The Parliament is not empowered to make laws on the subjects of state list (7th schedule) for the state of J&K under any circumstance.
8. The Governor of the state is to be appointed only after consultation with the Chief Minister of that state.

Political Parties

A recognised political party has been classified either as a "national party" or a "state party". A recognition to a party is granted by the "**Election Commission of India**".

Conditions for Recognition as a National Party

A party is recognized as a national party if any of the following conditions is fulfilled:

1. If it wins 2% of seats in Lok Sabha at a general election;

and these candidates are elected from three states; or

2. If it secures 6% of valid votes polled in any four or more states at a general election to the Lok Sabha or to the legislative assembly; and in addition, it wins four seats in the Lok Sabha from any state or states; or
3. If it is recognized as state party in your states.

Note: There are six national parties in India.

Name of the Party	Symbol reserved
1. Indian National Congress	Hand
2. Bharatiya Janta Party	Lotus
3. Communist Party of India	Ears of corn and sickle
4. Communist Party of India (Marxist)	Hammer, sickle and star
5. Bahujan Samaj Party	Elephant (In all states/UTs except in the state of Assam, where its candidates will have to choose a symbol from out of the list of free symbols specified by the Commission)
6. Nationalist Congress Party	Clock

Important Government Bodies

Election Commission

- The Election Commission is a permanent, 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.
- Elections are conducted according to the constitutional provisions supplemented by laws made by Parliament.
- The major laws are **Representation of the People Act, 1950**, which mainly deals with the preparation and revision of electoral rolls, and the **Representation of the People Act, 1951**, which deals in detail with all aspects of conduct of elections and past election disputes.
- The electoral system in India is borrowed from the one operating in **Great Britain**.
- Presently, the Election Commission consists of one Chief Election Commissioner (CEC) and two Election Commissioners.

Note: 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.

- By an ordinance of 1993, the power of Election Commissioners have been made equal to those of the Chief Election Commissioner.
- The Commission works under the overall supervision of the Chief Election Commissioner.
- The tenure of the CEC and the Election Commissioners has been fixed as **six years**, subject to the maximum age limit of 65 years (whichever is earlier).
- The Chief Election Commissioner and the Election Commissioners are placed at par in matters of salary and allowances and they are the same as those of a judge of Supreme Court.
- The Chief Election Commissioner is not eligible for reappointment.
- The Election Commission is not concerned with the elections to Panchayats and municipalities in the states.
- The elections to the Panchayats and the municipalities in the states are conducted by '**State Election Commissions**'.

Note: The '**Indrajit Gupta Committee**' to study the demand for the state funding of Elections was set up in May 1998.

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.
2. The Election Commissioner cannot be removed from office except on the recommendation of the Chief Election Commissioner.

Powers and functions

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 determine the code of conduct to be observed by the parties and the candidates at the time of elections.
7. To advise the President on matters relating to the disqualification of the members of Parliament.
8. To advise the governor on matters relating to the disqualification of the members of state legislature.
9. To cancel polls in the event of rigging, booth capturing, violence and other irregularities.
10. 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.

First Election Commissioner	Sukumar Sen
Present Chief Election Commissioner	Shahabuddin Yaqoob Quraishi (30 July 2010 till date)

Union Public Service Commission

- The first Public Service Commission was set up on **October 1st, 1926**.
- However, its limited advisory functions failed to satisfy the people's aspirations and the continued stress on this aspect by the leaders of our freedom movement resulted in the setting up of the **Federal Public Service Commission** under the Government of India Act 1935.
- Under this Act, for the first time, provision was also made for the formation of Public Service Commissions at the provincial level.

The Constituent Assembly, after independence, saw the need for giving a secure and autonomous status to Public Service Commissions both at Federal and Provincial levels for ensuring unbiased recruitment to Civil Services. With the promulgation of the new Constitution for independent India on 26th January, 1950, the Federal Public Service Commission was accorded a constitutional status as an autonomous entity and given the title – **Union Public Service Commission**.

- The UPSC has been established under **Article 315** of the Constitution of India. The Commission consists of a Chairman and ten Members.
- 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.
- It is an independent constitutional body.

Main function of the UPSC

- Recruitment to services and posts under the Union through conduct of competitive examinations.

State Public Service Commission

- A state public service commission consists of a chairman and other members appointed by the governor of the state. But they can be removed only by the President.
- It is an independent constitutional body.
- 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.

Main function of the SPSC

- To conduct examinations for appointments to the services of the state.

Joint State Public Service Commission

- The Constitution makes a provision for the establishment of a Joint State Public Service Commission (JSPSC) for two or more states.
- A JSPSC can be created by an act of Parliament on the request of the state legislatures concerned. Thus, a JSPSC is a statutory and not a constitutional body.
- The chairman of JSPSC is appointed by the President.

Finance Commission

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.

Main functions of Finance Commission

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. Determination of the factors that should govern the grants-in-aid to the states by the Centre.

The commission submits its report to the President. He lays it before both the Houses of Parliament along with an explanatory memorandum as to the action taken on its recommendations.

Finance Commissions appointed so far

Finance Commission	Year of Establishment	Chairman	Operational Duration
First	1951	K.C. Neogy	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. Shellet	1979-84
Eighth	1983	Y. B. Chavan	1984-89
Ninth	1987	N.K.P. Salve	1989-95
Tenth	1992	K.C. Pant	1995-2000
Eleventh	1998	A.M. Khusro	2000-2005
Twelfth	2003	C. Rangarajan	2005-2010
Thirteenth	2007	Vijay Kelkar	2010-2015

National Commission for SCs

On the 89th Amendment of the Constitution coming into force on 19th February, 2004, the **National Commission for Scheduled Castes** has been set up under Article 338 on the bifurcation of the erstwhile National Commission for Scheduled Castes and Scheduled Tribes to oversee the implementation of various safeguards provided to Scheduled Castes under the Constitution.

Main Function of the Commission

To investigate and monitor all matters relating to the safeguards provided for the Scheduled Castes under the Constitution or under any order of the Government and to evaluate the working of such safeguards.

Note: The present chairman of NCSC is Mr. **P.L. Punia** (since October 15, 2010 till date).

National Commission for STs

The **National Commission for Scheduled Tribes (NCST)** was established by amending Article 338 and inserting a new Article 338A in the Constitution through the Constitution (89th Amendment) Act, 2003.

Main Function of the Commission

- To investigate and monitor matters relating to safeguards

provided for STs under the Constitution or under other laws or under Govt. order, to evaluate the working of such safeguards.

- Union and every State Govt. to consult the Commission on all major policy matters affecting Scheduled Tribes.

Comptroller and Auditor General

- The Constitution of India (**Article 148**) provides for an independent office of the Comptroller and Auditor General of India (CAG).
- It is the supreme audit institution of India.
- He is the head of the **Indian Audit and Accounts Department** and the guardian of the public purse and controls the entire financial system of the country at both the levels—the Centre and the state.

Appointment and term

- The CAG is appointed by the President of India. He holds office for a period of six years or up to 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.

Main function of the CAG

1. He audits the accounts related to all expenditure from

the Consolidated Fund of India and consolidated fund of each state.

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 the accounts of any other authority when requested by the President or Governor. For example, the audit of local bodies.

Note: He submits his audit reports relating to the accounts of the Centre to President and relating to the accounts of a state to governor.

First CAG of India	V. Narahari Rao (1948-1954)
Present CAG of India	Vinod Rai (since 7 Jan 2008 till date)

Attorney General of India

- **Art. 76** states that the President shall appoint a person who is qualified to be appointed as a judge of the Supreme Court to be the Attorney General of India.
- He is the first legal officer of the Govt. of India.
- The term of office of the AGI is not fixed by the Constitution of India.
- He holds office during the pleasure of the President and receives remuneration as the President may determine.
- Although he is not a member of either House of Parliament, he enjoys the right to attend and speak in the Parliamentary deliberations and meeting (of both the Lok Sabha and the Rajya Sabha), without a right to vote.
- He advises the Government of India on any legal matter.
- He performs any legal duties assigned by the President of India.

- He discharges any functions conferred on him by the Constitution or the President.
- In the performance of his official duties, the Attorney General has the right of audience in all courts in the territory of India.
- He is entitled to all the privileges and immunities as a Member of Parliament.

First AGI of India	M.C. Setalvad (1950-1963)
Present AGI of India	Goolam Essaji Vahanvati (since 2009 till date)

Note: 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. He is appointed by the Governor of the state.

Planning Commission

- The Planning Commission was established in **March 1950** by an executive resolution of the Government of India, (i.e.. Union cabinet) on the recommendation of “Advisory Planning Board” constituted in 1946, under the chairmanship of **K.C. Niyogi**.
- The Planning Commission is a non-constitutional body.
- The Prime Minister is the *ex officio* chairman of the Planning Commission, which works under the overall guidance of the **National Development Council**.
- The Deputy Chairman and the full-time members of the Commission, as a composite body, provide advice and guidance to the subject divisions for the formulation of five year plans, state plans, monitoring plan programme, projects and schemes.

First chairman of Planning Commission	Pt. J.N. Nehru
First deputy chairman of Planning Commission	Gulzarilal Nanda

National Development Council

- The National Development Council (NDC) was established in **August 1952** by an executive resolution of the Government of India on the recommendation of the first five year plan.
 - It is a non-constitutional body.
 - It is listed as an advisory body to the **Planning Commission** and its recommendations are not binding.
 - The NDC is composed of the following members:
 - (1) Prime Minister of India—as its Chairman.
 - (2) All Union Cabinet ministers.
 - (3) Chief ministers of all states.
 - (4) Administrators of all Union Territories.
 - government and the Planning Commission in the field of planning.
 - To review the working of the national plan.
 - To recommend measures for achievement of the targets set out in the national plan.
- Note:** The Draft Five Year Plan prepared by the Planning Commission is first submitted to the Union Cabinet. After its approval, it is placed before the NDC, for its acceptance. Then, the Plan is presented to the Parliament for its approval. Therefore, **the NDC is the highest body below the Parliament responsible for policy matters with regard to planning for social and economic development.**

Main functions of NDC

- To act as a bridge between central government, state

National Human Rights Commission

- The National Human Rights Commission (NHRC) is a statutory 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.
- The NHRC consists of a Chairman and four members. The Chairman should be a retired Chief Justice of India.
- The Chairman and members are appointed by the President.
- Chairman—Hon’ble Justice Shri **K.G. Balakrishnan** (7th June, 2010 to 11th May, 2015).

National Commission for Women

- The National Commission for Women was set up as a statutory body in **January 1992** to review the Constitutional and legal safeguards for women.
- The first Commission was constituted on 31st January 1992 with Mrs **Jayanti Patnaik** as the Chairperson.
- All the members of the Commission are nominated by the Central government.
- Present Chairman of the Commission—Ms. **Mamta Sharma** (since 2nd August 2011 till date).

Function of the Commission

- Investigate and examine all the matters relating to the safeguards provided for women under the Constitution.

Central Vigilance Commission (CVC)

- The Central Vigilance Commission is the main agency for preventing corruption in the Central government.
- It was established in 1964 by an executive resolution of the Central government on the recommendation of the “**Santhanam Committee**”.
- In September 2003, the Parliament enacted a law conferring statutory status on the CVC.
- The CVC is a multi-member body consisting of a Central Vigilance Commissioner and not more than two vigilance commissioners. They are appointed by the President of India.

Nittor Srinivasa Rau was the first Chief Vigilance Commissioner of India.

National Commission for Minorities

- In 1992, the Parliament enacted the National Commission for Minorities Act.
- Under this act, a National Commission for Minorities was established in 1993 with a statutory status. This commission replaced the erstwhile non-statutory Minorities Commission, which was established in 1978.
- The new Commission consists of a chairman, a vice-chairman and five members nominated by the Central government for a term of three years.
- The Central government notified five communities, namely, **Muslims, Sikhs, Christians, Buddhists and Zoroastrians (Parsis)** as religious minorities at the national level.
- The Commission evaluates the progress of the development of minorities under Union and states.

National Commission for Backward Classes

- “Backward Classes” means such backward classes of citizens other than the Scheduled Castes and the Scheduled Tribes as may be specified by the Central Government in the lists.
- In 1993, a National Commission for Backward Classes was established as permanent statutory body.
- It consists of **five members** (including the chairman) nominated by the Central government for a term of three years.

Functions of the Commission

1. The Commission shall examine requests for inclusion of any class of citizens as a backward class in the lists and hear complaints of over-inclusion or under-inclusion of any backward class in such lists and tender such advice to the Central Government as it deems appropriate.
2. The advice of the Commission shall ordinarily be binding upon the Central Government.

- Note:** 1. The first Backward Classes Commission was appointed in 1953 under the chairmanship of **Kaka Kalelkar**.
2. The second Backward Classes Commission was appointed in 1979 with **BP Mandal** as chairman. It submitted its report in 1980. Its recommendations

were also lying unattended till 1990 when the **VP Singh Government** declared reservation of 27 percent government jobs for the OBCs.

3. The present commissioner of National Commission for Backward Classes is **Justice M.N. Rao** (since June 7, 2010).

Amendment of the Constitution

Article 368 in Part XX of the Constitution deals with the powers of Parliament to amend the Constitution and its procedure.

Procedure for amendment

The procedure for amendment to the Constitution:

- An amendment to the Constitution can be initiated only by the introduction of a bill for the purpose in either House of Parliament and not in the state legislatures.
- The bill can be introduced either by a minister or by a private member and does not require prior permission of the President.
- After the President's assent, the bill becomes an Act (i.e., a constitutional amendment act) and the Constitution stands amended in accordance with the terms of the Act.

Types of amendment

The Constitution can be amended in three ways:

1. Amendment by simple majority of the Parliament,
2. Amendment by special majority of the Parliament, and
3. Amendment by special majority of the Parliament and the ratification of half of the state legislatures.

1. By simple majority of Parliament

A number of provisions in the Constitution can be amended by a simple majority of the two Houses of Parliament outside the scope of **Article 368**. These provisions include, among others, creation or reorganization of states, abolition or creation of legislative councils in states, Second Schedule related to pay and privileges to some constitutional posts, conferment of more powers to the Supreme Court, use of official languages, citizenship, etc.

2. By special majority of Parliament

The majority of provisions in the Constitution need to be amended by a special majority of the Parliament, that is, a majority (that is, more than 50 per cent) of the total membership of each House and a majority of two-thirds of the members of each House present and voting.

The provisions which can be amended by this way includes: (i) Fundamental Rights; (ii) Directive Principles of State Policy; and (iii) All other provisions which are not covered by the first and third categories.

3. By special majority of Parliament and consent of states

Those provisions of the Constitution which are related to the federal structure of the polity can be amended by a special majority of the Parliament and also with the consent of half of the state legislatures by a simple majority. The following provisions can be amended in this way:

- Election of the President and its manner.
- Extent of the executive power of the Union and the states.
- Supreme Court and high courts.
- Distribution of legislative powers between the Union and the states.
- Any of the lists in the Seventh Schedule.
- Representation of states in Parliament.
- Power of Parliament to amend the Constitution and its procedure (Article 368 itself).

Ingredients of 'Basic Structure'

The present position is that the Parliament under Article 368 can amend any part of the Constitution including the Fundamental Rights but without affecting the 'basic structure' of the Constitution. However, the Supreme Court is yet to define or clarify as to what constitutes the 'basic structure' of the Constitution.

Official Language

- Part XVII of the Constitution deals with official language in **Art. 343 to 351**.
- **Hindi** in Devanagari script is the official language of the Union. The form of numerals to be used for official purposes of the Union is the international form of Indian numerals { **Article 343 (1)** of the Constitution }. In addition to Hindi language, English language may also be used for official purposes. (**Section 3 of the Official Languages Act**)
- Business in Parliament may be transacted in English or in Hindi. However, the Hon'ble Chairman of the Rajya Sabha or the Hon'ble Speaker of the Lok Sabha may permit any Member to address the House in his/her mothertongue under special circumstances (**Article 120** of the Constitution).
- The official language commission was appointed in 1955 under Shri **B.G. Kher** as chairman.
- Subsequently, the Parliament enacted the **Official Language Act** in 1963.
- The act provides for the continued use of English (even after 1965), in addition to Hindi, for all official purposes of the Union and also for the transaction of business in Parliament.
- Further, this act was amended in 1967 to make the use of English, in addition to Hindi, compulsory in certain cases.
- The languages included in the 8th schedule of the Constitution are: **Assamese, Bengali, Gujarati, Hindi, Kannada, Kashmiri, Konkani, Malayalam, Manipuri, Marathi, Nepalese, Oriya, Punjabi, Sanskrit, Sindhi, Tamil, Telugu, Urdu, Maithili, Santhali, Dogri and Bodo**.

Glossary of Constitutional Terms

Question Hour

The first hour of every parliamentary sitting is slotted for this. During this time, the members ask questions and the ministers usually give answers. The timing is from 11 to 12 noon. The questions are of three kinds, namely, starred, unstarred and short notice.

A **starred question** (distinguished by an asterisk) requires an oral answer and hence supplementary questions can follow.

An **unstarred question**, on the other hand, requires a written answer and hence, supplementary questions cannot follow.

A **short notice question** is one that is asked by giving a notice of less than ten days. It is answered orally.

Zero Hour

It is an Indian innovation and has been in existence since 1962. The zero hour starts immediately after the question hour, i.e., 12 noon to 1 pm. The members raise any issue of public importance on very short or even without notice.

Motions

The House expresses its decisions or opinions on various issues through the adoption or rejection of motions moved by either ministers or private members.

Calling Attention Motion: It is introduced in the Parliament by a member to call the attention of a minister to a matter of urgent public importance, and to seek an authoritative statement from him on that matter.

Adjournment Motion: It is introduced in the Parliament to draw attention of the House to a definite matter of urgent public importance, and needs the support of 50 members to be admitted. It involves an element of censure against the government and hence Rajya Sabha is not permitted to make use of this device.

No-Confidence Motion: The Lok Sabha can remove the ministry from office by passing a no-confidence motion. The motion needs the support of 50 members to be admitted.

Guillotine: Certain "Demands for Grants" of various ministers are accepted by the Lok Sabha without any discussion. This is basically done due to paucity of time.

Closure is the Parliamentary procedure by which a debate is closed and a measure under discussion brought up for an immediate vote.

Consolidated Fund of India (CFI)

- The existence of the Consolidated Fund of India (CFI) flows from **Article 266** of the Constitution. All revenues received by Government, loans raised by it, and also its receipts from recoveries of loans granted by it from the Consolidated Fund. All expenditure of Government is incurred from the Consolidated Fund of India and no amount can be drawn from the Consolidated Fund without authorisation from Parliament.

Contingency Fund of India

- **Article 267** of the Constitution authorises the Contingency Fund of India, which is an imprest placed at the disposal of the President of India, to facilitate Government to meet urgent unforeseen expenditure pending authorization from Parliament. Parliamentary approval for such unforeseen expenditure is obtained *post facto*, and an equivalent amount is drawn from the Consolidated Fund to recoup the Contingency Fund.

Public Account

- Moneys held by Government in Trust as in the case of Provident Funds, Small Savings collections, income of Government set apart for expenditure on specific objects like road development, primary education, Reserve/Special Funds etc. are kept in the Public Account. Public Account funds do not belong to Government and have to be finally paid back to the persons and authorities who deposited them. Parliamentary authorisation for such payments is, therefore, not required, except where amounts are withdrawn from the Consolidated Fund with the approval of Parliament and kept in the Public Account

for expenditure on specific objects, in which case, the actual expenditure on the specific object is again submitted for vote of Parliament for drawing from the Public Account for incurring expenditure on the specific object.

Table of Precedence (published on July 26, 1979)

1. President
2. Vice President
3. Prime Minister
4. Governors of States within their respective States
5. Former Presidents
6. Deputy Prime Minister
7. Chief Justice of India
8. Speaker of the Lok Sabha
9. Cabinet Ministers of the Union
10. Chief Ministers of States within their respective States
11. Deputy Chairman, Planning Commission
12. Former Prime Ministers (amendment made after July 26, 1979) (leaders of opposition in the Rajya Sabha and the Lok Sabha)

Important Amendments to the Constitution

1st Constitutional Amendment (1951)

- Right to equality, Right to liberty and Right to property were restricted in public interest.
- The Land Reform Acts were put into Ninth Schedule to make them out of jurisdiction of the Courts.
- The sessions of legislatures, appointment of judges and provision of seats were also affected.

7th Constitutional Amendment (1956)

- State reorganisation in 14 States and 6 Union Territories. Reallocation of seats in the House of the People, the Council of States and the State legislatures.
- Provision for the appointment of acting and additional judges and jurisdiction of High Courts.
- Provisions for Union Territories.
- Special provisions for the States of Andhra Pradesh, Punjab, and Bombay.

15th Constitutional Amendment (1963)

- Provision for the re-employment of the retired judge of the High Courts.
- Extension to the jurisdiction of the High Courts.

20th Constitutional Amendment (1966)

- Provisions regarding appointment to District Judges.

27th Constitutional Amendment (1971)

- Reorganisation of North-Eastern States.

42nd Constitutional Amendment (1971)

- It is also known as Mini Constitution.
- The words 'Secular', 'Socialist' and 'Integrity' added in the Preamble.
- The validity of the Constitutional Amendment can not be questioned in any Court - 368 (4)
- Extension of the Directive Principles of State Policy.
- Primacy given to the Directive Principles of State Policy over the Fundamental Rights.
- Fundamental Duties added.
- Restriction on the Fundamental Rights widened.
- The power of Judicial Review of the Courts was restricted.
- The duration of the House of the People and the Legislative Assemblies of the State extended to 6 years.
- Provisions were made for the participation of the workers in the management of industries.
- Provisions for the protection of environment, forests and wildlife.
- Provisions for the protection of the children and the youth against exploitation.
- No quorum shall be required for conducting the meeting

of the House of the People and the Legislative Assemblies of the States.

- The Right of the Supreme Court to examine the validity of the laws of the State under Art. 32A abolished.
- The Jury System was given importance in the functioning of the Courts.
- The President shall be bound by the advice of the Council of Ministers.
- The Central Government was given the power to send Central Forces in any State or part of State to control the law and order in that State and the control of such forces shall rest with the Central Government.
- Emergency Provisions : (a) National Emergency may be proclaimed in a part of the Territory of India; (b) The one time duration of the President rule in a State under Art. 356 was extended from 6 months to one year.
- Some subjects — protection of the forest and the wildlife, education, weight and measures, population control and judicial administration — shifted to the Concurrent List.
- Provisions for the establishment of the administrative tribunals for public servants.

44th Constitutional Amendment (1978)

- The Fundamental Right to Property was abolished.
- The term of the Lok Sabha and the Legislative Assemblies of the States reduced to 5 years.
- The disputes relating to the qualifications of the members of the Parliament and the State Legislature shall be decided by the President and the Governors, respectively.
- The provisions regarding quorum in the legislatures was changed to as these were before the 42nd Amendment.
- It was provided that disputes relating to the election of the President and the Vice-President shall be decided by the Supreme Court and those of the election of the member of the Parliament and the State legislature shall be decided by the High Courts.
- A national emergency shall not be proclaimed except on the written recommendation of the cabinet.

52nd Constitutional Amendment (1985)

- It added Tenth Schedule of the Constitution containing the modes for disqualification in case of defection from the Parliament or State Legislature.

61st Constitutional Amendment (1988)

- The minimum age limit prescribed to get the Voting Right was reduced to 18 years from 21 years.

65th Constitutional Amendment (1990)

- The National Commission for the Scheduled Castes and the Scheduled Tribes was given a Constitutional Status.

69th Constitutional Amendment (1991)

- The Union Territory of Delhi was named as the National Capital Territory of Delhi. It also provided for a 70-member State Assembly for Delhi.

73rd Constitutional Amendment (1992)

- Provisions relating to the Constitution, elections, finance and functions of the Panchayati Raj bodies.

74th Constitutional Amendment (1992)

- Provisions relating to the Constitution, election, finance and functions of the municipalities.

75th Constitutional Amendment (1994)

- Provisions for the establishment of a Special Administrative Tribunal for the speedy disposal of the disputes between the householders and the tenants.

83rd Constitutional Amendment (2000)

- It provides that no reservation in Panchayats need to be made in favour of the Scheduled Castes in Arunachal Pradesh wholly inhabited by the tribal population.

84th Constitutional Amendment (2001)

- Creation of the new States of Chhattisgarh, Uttaranchal and Jharkhand.

85th Constitutional Amendment (2001)

- It provided for consequential seniority in the case of promotion by virtue of rule of reservation for the Government Servants belonging to the SCs & STs with retrospective effect from June 1995.

86th Constitutional Amendment (2002)

- It made elementary education a fundamental right for the children of age of 6 to 14 years.
- It changed the subject matter of Art. 45 in Directive Principles.
- It added a new Fundamental Duty under Art. 51 A.

87th Constitutional Amendment (2003)

- It provided for the readjustment and rationalization of territorial constituencies in the States on the basis of the population figures of 2001 Census and not 1991 Census.

88th Constitutional Amendment (2003)

- It made a provision for service tax by inserting Art. 268 A. Taxes on services are levied by the Centre but their proceeds are collected as well as appropriated by both the Centre and the States in accordance with the principles formulated by the Parliament.

89th Constitutional Amendment (2003)

- It bifurcated the National Commission for SCs and STs into two separate bodies, namely National Commission for SCs (Art. 338) and National Commission for STs (Art. 338A)

90th Constitutional Amendment (2003)

- It provided for maintaining the erstwhile representation of the STs and non STs in the Assam Legislative Assembly from the Bodoland Territorial Areas District [Art. 332(6)].

91st Constitutional Amendment (2003)

- The total number of ministers including the Prime Minister in the central Council of Ministers shall not exceed 15% of the total strength of the Lok Sabha [Art. 75 (1A)].
- A member of either House of Parliament belonging to any political party who is disqualified on the ground of defection shall also be disqualified to be appointed as a minister. [Art. 75 (1B)].
- The total number of ministers including the Chief Ministers in the Council of the Ministers in a State shall not exceed 15% 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 [Art. 164 (1A)].
- The provision of the Tenth Schedule (Anti-Defection Law) pertaining to exemption from disqualification in case

of split by 1/3rd members of the legislature party has been deleted. It means that the defectors have no more protection on grounds of splits.

92nd Constitutional Amendment (2003)

- It included four more languages in the eighth Schedule, viz. Bodo, Dogri (Dongri), Mathilli (Maithili) and Santhali. With this, the total number of constitutionally recognised languages increased to 22.

93rd Constitutional Amendment (2003)

- It empowered the State to make special provisions for the socially and educationally backward classes or the SCs or STs in educational institutions including private educational institutions (whether aided or unaided by the State), except the minority educational institutions [clause (5) in Art. 15].

K KUNDAN