General Knowledge Today

Prelims Polity-1: Constituent Assembly & Preamble

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Written / unwritten and codified / uncodified constitutions, Constituent Assembly – members, elections, meetings, committees, drafting Committee – members, Provisions of Constitution that came into immediate effect on 26 November 1949, contents of various parts and schedules, sources of various parts, Preamble – its relevance.

Note: Wherever the word 'he' is used in constitution, it is used to indicate person, a office holder regardless of the gender and should be viewed in broader sense as nothing sort of gender discrimination. Our documents follow the same pattern, so rather than using "He/she" repetitively, we have used the term 'he' for holders of various offices.

Introduction

The legal system of a country can be divided into two parts. First deals with the laws governing the state and the second deals with the laws by which the state governs. Constitutional law falls in the first category. It deals with the rules and norms from which the governmental organs draw their powers and functions. Thus constitutional law sets up machinery of the Government of a state and it defines the relations between different institutions and components of the government viz. executive, legislature and judiciary; and also the central, state / provincial and local governments.

Functions of the Constitution

The key functions of constitution are as follows:

- Providing basic rules which allow minimal coordination among various organs of government and society as a whole.
- Laying out fundamental principles according to government and its various organs are constituted and governed.
- Basic allocation of power among various organs of government.
- Giving certain powers to executive, judiciary and legislative and imposing certain limits on them
- Giving certain rights to citizens and laying out their duties
- Enabling the government to fulfill the aspirations of the society

First constitution of the world

Law is as old as our civilization. It is thought that Aristotle (circa. 350 BC) was the first to make a formal distinction between ordinary law and constitutional law; and he was the first one establishing ideas of constitution and constitutionalism. However, our own dharmshastras are even older to the Greek philosophers.

As far as written constitution is concerned, the first modern written Constitution is the "Fundamental Orders" of State of Connecticut in US. This is so famous that *Connecticut is called Constitution State in America.*

Similarly, the US Constitution came into force in 1789 and is first well known example of written constitution around the world. It was a trendsetter because written constitutions became popular after its adoption. This document had only 7 articles and is hailed for its simplicity and brevity. It has

been amended for 27 times up till now and *first 10 amendments are called Bill of Rights.*

What are written / unwritten and codified / uncodified constitutions?

Historically, of the key methods of classification of the constitution has been that if they are written or unwritten constitutions. Most countries have written constitutions for example India, Germany, France, US etc. Examples of unwritten constitution include *UK, New Zealand and Israel.*

We note here that difference between written and unwritten constitutions is of *degree* and *not of kind.* This implies that a written constitution has *proportionately more written and less unwritten elements* while an unwritten constitution has less written and more unwritten elements.

In fact unwritten constitution is a misnomer. The British constitution does not have document which can be called a "Constitution' but it is embodied in the written form, within statutes, court judgments, and treaties. Besides, parliamentary constitutional conventions and royal prerogatives are other written sources of the British Constitution.

A further difference between these two is that while written constitution is a product of deliberate human action, the unwritten constitution is a result of growth. The written constitution is drafted by an agency (such as constituent assembly); unwritten constitution is a combination of customs and conventions which are not drafted by anybody in particular. Moreover, although UK constitution is labeled as unwritten in a single document, most of its constitutional rules are actually written down in many legislations. Due to this, in recent times, it had become fashionable to classify the constitutions as codified and uncodified ones. A codified constitution is one that is contained in a **single document**, which is the single source of constitutional law in a state. An uncodified constitution is one that is not contained in a single document, consisting of several different sources, which may be written or unwritten. By this definition, India and US have codified constitutions. UK has an uncodified constitution because it is neither written nor its constitutional rules come from a single document.

Constituent Assembly

A constituent assembly is a body of representatives which is composed for drafting a constitution. In our times, we have recently seen how Nepal's constituent assembly has drafted its constitution recently. We note that *drafting the constitution is the only function of a constituent assembly*. Once the constitution is ready and adopted; the assembly is dissolved. Further, since members of constituent assembly are representatives (elected or unelected); it's a form of representative democracy.

Idea of Constituent Assembly

The idea of Constituent assembly of India was first put forward by **Manabendra Nath Roy** or MN Roy in 1934. In 1935, it became the official demand of INC. It was accepted in August 1940 in the

August Offer however, constituted under the Under Cabinet Mission plan 1946. It was first elected for undivided India but after partition, some of its members ceased to exist as a separate constituent assembly was created for Pakistan.

Elections of Members of Constituent Assembly

Members of Constituent Assembly were *indirectly* elected. During British Era, India had provincial assemblies like the current legislative assemblies of states. The members of the Constituent assembly were indirectly elected by the members of the provincial assemblies by *method of single transferable vote system of proportional representations*.

Number of members of Constituent Assembly

Initially, its total membership was kept 389. After partition, the Constituent Assembly of India had 299 representatives. These included 229 members from provinces and 70 from princely states. There were total nine women members also. The membership plan was roughly as per suggestions of the Cabinet Mission plan. The basis of divisions of seats was "population" roughly in 1:10 Lakh ratio.

First meeting of Constituent Assembly

The first meeting of the Constituent Assembly of India took place in Constitutional Hall, New Delhi, on 9th December 1946. Dr. Sachchidananda Sinha was the first president of the Constituent Assembly. In the first meeting, the assembly adopted an 'Objective Resolution' which later became the preamble of the constitution. It appointed various committees. The report of the committees formed the basis on which the first draft of the constitution was prepared. It reassembled on 14 August 1947 as Constituent Assembly for independent India.

After partition, Dr. Rajendra Prasad became the president of Constituent Assembly of Independent India. Professor **Harendra Coomar Mookerjee** was Vice President of the Constituent Assembly. While Dr. Rajendra Prasad later became President of India, Prof. HC Mookerjee became *first Governor of West Bengal*.

Objectives Resolution

The historic Objectives Resolution was moved by Jawaharlal Nehru on 13 December 1946. It defined the aims of the assembly and enshrined the aspirations and values behind the Constitution making. On the basis of the Objectives Resolution, India's Constitution gave institutional expression to the fundamental commitments: equality, liberty, democracy, sovereignty and a cosmopolitan identity. The preamble of the constitution of India is derived from Objectives Resolution.

Different committees of the Constituent Assembly

A number of committees were created by constituent assembly to perform different taks related to framing of constitution. Most important among them was drafting committee headed by Dr. B R Ambedkar, which had to draft the constitution. Chairman of other important committees were as

follows

- Rajendra Prasad was chairman of Committee on the Rules of Procedure Committee; Steering Committee: Rajendra Prasad, Finance and Staff Committee and Ad hoc Committee on the National Flag.
- Jawaharlal Nehru was chairman of Union Constitution Committee, Union Powers Committee and States Committee {this committee was there for negotiating with states}.
- Sardar Patel was chairman of Provincial Constitution Committee and Advisory Committee on Fundamental Rights, Minorities and Tribal and Excluded Areas

Some of the other committees and their chairmen were as follows:

1. Committee on the Functions of the Constituent Assembly – G.V. Mavalankar
2. Order of Business Committee – Dr. K.M. Munshi
3. House Committee – B. Pattabhi Sitaramayya
4. Special Committee to Examine the Draft Constitution – Alladi Krishnaswamy Ayyar
5. Credentials Committee – Alladi Krishnaswamy Ayyar

Other members of drafting Committee

The drafting committee of the constituent assembly was made of total seven members including chairman Dr. B R Ambedkar. The six other members were as follows:

1. N Gopalaswamy Ayyangar
2. Alladi Krishnaswamy Ayyar
3. Dr K M Munshi
4. Syed Mohammad Saadullah
5. N Madhava Rau (NMR was Diwan of Mysore state and had replaced B L Mitter who had resigned due to ill-health. He strongly opposed to the imposition of Hindi language as the lingua franca for India)
6. T T Krishnamachari (TTK had replaced D P Khaitan who died in 1948. He was one of the members of Nehru cabinet and served as Union Minister for two times)

We note here that there was one Muslim member in drafting committee while there was no lady in drafting committee out of nine ladies members of the constituent assembly.

Time, resources were used to draft India's constitution

The Constituent assembly set for total 11 sessions. The first session was held in December 1946. The draft constitution was published in January, 1948 and people of India were given eight months to input their feedback on this. The eleventh session was held between 14-26 November, 1949. The Constitution of India was adopted on 26 November, 1949 and the members appended their signatures to it on 24 January, 1950. Constitution of India came into force on 26 January, 1950. On

that day, the Constituent Assembly ceased to exist, transforming itself into the *Provisional Parliament of India* until a new Parliament was constituted in 1952 via general elections.

The constituent assembly took 2 years, 11 months and 17 days to frame the constitution. It spent Rs. 64 Lakh in the preparation. The final outcome of the almost three year's long process was the constitution document with **22 parts, 395 articles and 8 schedules**.

Provisions of Constitution that came into immediate effect on 26 November 1949

Though, the constitution came into force on 26 January 1950, some provisions relating to **Citizenship, Elections, provisional parliament, temporary & transitional provisions** were given immediate effect on 26 November 1949.

The articles which came into force on 26 November 1949 included articles 5, 6, 8, 9, 60, 324, 366, 372, 388, 391, 392, and 393. Out of them, citizenship was most important and had to immediately come into force to constitutionally handle the refugee crisis due to partition of India.

Parts, Schedules and Sources of Indian Constitution

Parts and Schedules

Originally the constitution contained 395 articles divided in 22 parts and 8 schedules. The numbering still remains the same but as and when the constitution is amended, new articles are added below original articles with suffix A, B, C etc. For example, when our constitution was amended for adjusting the Right to Education, a new Article 21A was inserted below Article 21. Further, some articles get repealed from time to time. For example, the article 2-A [Sikkim to be associated with Union], Article 31. [Compulsory acquisition of property] are some of the repealed articles of the constitution. Overall, there are around 450 articles currently in the constitution including those added by amendments and those repealed. This makes India's constitution to be lengthiest in the world.

Total parts of Indian Constitution

Currently, Indian Constitution has 26 Parts plus a preamble. Preamble is also considered to be a part of constitution of India. Parts 1 to Part 22 were original. Several amendments have added other parts such as IV-A, IX-A, IX-B etc. These 26 parts are as follows:

1. Part I – Union and its Territory
2. Part II – Citizenship.
3. Part III – Fundamental Rights
4. Part IV – Directive Principles of State Policy
5. Part IVA – Fundamental Duties
6. Part V – The Union

7. Part VI – The States
8. Part VII – States in the B part of the First schedule *(repealed)*
9. Part VIII – The Union Territories
10. Part IX – The Panchayats
11. Part IXA – The Municipalities
12. Part IXB – The Co-operative Societies.
13. Part X – The scheduled and Tribal Areas
14. Part XI – Relations between the Union and the States
15. Part XII – Finance, Property, Contracts and Suits
16. Part XIII – Trade and Commerce within the territory of India
17. Part XIV – Services Under the Union, the States
18. Part XIVA – Tribunals
19. Part XV – Elections
20. Part XVI – Special Provisions Relating to certain Classes
21. Part XVII – Languages
22. Part XVIII – Emergency Provisions
23. Part XIX – Miscellaneous
24. Part XX – Amendment of the Constitution
25. Part XXI – Temporary, Transitional and Special Provisions
26. Part XXII – Short title, date of commencement, Authoritative text in Hindi and Repeals.

As mentioned above, part VII stands repealed at presently, thus, there are total 25 parts of Constitution of India in force today.

Schedules of Constituion of India

Schedules are basically lists which categorize and tabulate various items related to constitutional matters. There are total 12 schedules in Indian Constitution as follows:

1. First Schedule: List of states and union territories
2. Second Schedule: Salaries of persons holdings various constitutional offices such as President, Vice President, CAG, Supreme Court Judges, Governor etc.
3. Third Schedule: Forms of Oaths which the persons elected / appointed on constitutional posts need to take.
4. Fourth Schedule: Allocation of seats in the Rajya Sabha
5. Fifth Schedule: Administration and control of Scheduled Areas
6. Sixth Schedule: Provisions made for the administration of tribal areas in Assam, Meghalaya,

Tripura, and Mizoram.

7. Seventh Schedule: Division of subjects for powers and responsibilities in union, state and concurrent lists.
8. Eighth Schedule: List of India's official languages.
9. Ninth Schedule: Validation of certain Acts and Regulations
10. Tenth Schedule: This is called anti-defection law
11. Eleventh Schedule: Lists of various subjects of Panchayat Raj
12. Twelfth Schedule : List of various subjects for Municipalities

Sources of Indian Constitution

Many call Indian constitution a copy paste work and a glaring example of plagiarism. Most parts of it have been copied from Government of India Act 1935. The chairman of drafting committee Dr. Ambedkar had said in this regard that – *"As to the accusation that the Draft Constitution has [re]produced a good part of the provisions of the Government of India Act, 1935, I make no apologies. There is nothing to be ashamed of in borrowing. It involves no plagiarism. Nobody holds any patent rights in the fundamental ideas of a Constitution...."*

Nobody holds copyright on ideas of constitution and our founding fathers chose to incorporate what they found most suitable in those days. The sources of various features in Indian Constitution are as follows:

Government of India Act 1935

- Federal Scheme (also from constitution of Canada)
- Office of Governor
- Judiciary
- Public Service Commission
- Emergency Provisions
- Administrative Details

British Constitution

- Parliamentary form of government
- The idea of single citizenship
- The idea of the Rule of law
- Institution of Speaker and his role
- Lawmaking procedure
- Procedure established by Law

United States Constitution

- Preamble

- Fundamental Rights
- Federal structure of government
- Electoral College
- Independence of the judiciary and separation of powers among the three branches of the government
- Judicial review
- President as supreme commander of armed forces
- Equal Protection under law

Irish Constitution

- Directive principles of state policy {Ireland itself borrowed it from Spain}

Australian Constitution

- Freedom of trade and commerce within the country and between the states
- Power of the national legislature to make laws for implementing treaties, even on matters outside normal Federal jurisdiction
- Concurrent List

French Constitution

- Ideals of Liberty, Equality and Fraternity

Canadian Constitution

- A quasi-federal form of government — a federal system with a strong central government
- Distribution of powers between the central government and state governments
- Residual powers retained by the central government

Constitution of the Soviet Union

- Fundamental Duties

Other Constitutions

- Emergency Provision Under article 356 Weimar Constitution(Germany)
- Amendment of Constitution, South Africa
- Due Procedure of Law, Japan

Many of the features can be said to have sourced / influenced / borrowed from multiple sources. For example, India has a federal scheme with strong centre. This feature was in GOI Act 1935 and also in Constitution of Canada. Similarly, Fundamental rights were not only influenced from US constitution but also the Universal declaration of Human rights. Further, the Constitution Declares the Indian State to be sovereign, democratic, republic and from 1977 secular and socialist. Each of these concepts is intertwined with the social and political history of civilization, battle of ideas and system of Governance. *The American Revolution, The French Revolution, The Russian Revolution and India's own freedom struggle contributed to these concepts.* The ideal of Republic cannot be said to be

borrowed from any one constitution.

Preamble

A preamble is an introductory and explanatory statement in a document that explains the document's purpose and underlying philosophy. The Preamble of our constitution reads as follows:

WE, THE PEOPLE OF INDIA, have 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 HERE BY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION.

The words Socialist, Secular, and Integrity were not in the original constitution and have been inserted by 42nd amendment act 1976. Thus, the express declaration that India is a secular state came only with the 42nd amendment. *Currently, the word "secular appears in constitution for two times – in Preamble and then in Article 25.*

The preamble indicates that the source of constitution is "we the people of India". It has been also called Political Horoscope of Indian Constitution (by KM Munshi), Soul of the Constitution (by Thakurdas Bhargav) and identity card of the constitution (by NA Palkhiwala).

Is preamble a borrowed feature?

In the legislative history of India, for the first time, the **Government of India Act 1919** (Montague Chelmsford Reforms) had a separate preamble. However, government of India Act 1935 had NO preamble. It is not incorrect to assume that idea of the Preamble was borrowed from the Constitution of USA.

Is preamble part of Constitution?

Yes. Preamble is a part of the constitution. In Berubari Case (1960), Supreme Court had held that Preamble is NOT a part of the constitution but later in Kesavanada Bharati Case (1973), the supreme Court gave an elaborate verdict which inter alia said that Preamble is Part of Constitution and is subject to the amending power of the parliament as any other provisions of the Constitution, provided the basic structure of the constitution is not destroyed. In the light of Kesavanad Bharti as well as other judgments, the following points about the constitution must be noted (for Civil Services Examination):

- Preamble is a Part of Constitution
- Preamble Indicates basic structure of the Constitution (SR Bommai Case)
- Preamble can be amended by Parliament using its amendment powers as per article 368. We note here that preamble has been amended **only once** so far through the 42nd Constitution Amendment Act 1976. The words **Secular, Socialist and Integrity** were added to the constitution.
- Preamble enshrines the ideas and philosophy of the constitution, and NOT the narrow objectives of the governments.
- It also does NOT provide any legal framework of constitutional law.
- *Preamble is neither a source of power nor a source of limitations.*
- *It neither provides any power nor imposes any duty.*
- *Its importance is in role to be played in* interpretation of statues, also in the interpretation of provisions of the Constitution.
- Constitution should be read and interpreted in the light of grand and novel vision expressed in the preamble.
- Preamble is neither enforceable not justifiable in a court of law. This implies that courts cannot pass orders against the government in India to implement the ideas in the Preamble.

What is relevance of Preamble?

The Preamble sets out the aims and aspirations of the people and these have been embodied in various provisions of the constitution. The Preamble of the Constitution contains the basic objectives of the Constitution such as:

- to secure to all its citizens social, economic and political justice
- liberty of thought, expression, belief, faith and worship
- equality of status and opportunity, and
- to promote among them fraternity so as to secure the dignity of the individual and the unity and integrity of the Nation.

The purpose of the Preamble is to clarify who has made the Constitution, what is its source, what is the ultimate sanction behind it; what is the nature of the polity which is sought to be established by the Constitution and what are its goals and objectives? It provides assurance of dignity of an individual and Ideals that the state should follow.

General Knowledge Today

Prelims Polity-2: Union & Its Territories, Citizenship

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Meaning of Union of India. Creation of New States and Alternation of Boundaries, Provisions Regarding acquisition and cessation of Territories, Citizenship act and various ways of getting and losing citizenship of India.

Part-I: Union and Its territories

Article 1(1) of the constitution of India says that "India, that is Bharat, shall be **Union** of States". The word Union was deliberately chosen in place of Federation to indicate that Indian Union is not the result of an agreement between states {which can be broken at whim} and its component states have no freedom to secede from it. Thus, while states can be broken, reorganized by alternation of boundaries, the country is a union which cannot be broken. Central Government can change the name, boundaries of the states without their permission also. That is why Dr. B R Ambedkar called India as an "*indestructible Union of destructible states*".

Creation of New States

The First schedule of the constitution has the list of all the states and union territories. A new state in India can be created by three different means as follows:

- Breaking / reorganizing an existing state(s)
- Giving status of full-fledged state to a union territory
- Acquiring a new territory

Breaking / reorganizing an existing state(s)

Article 3 empowers the parliament to create new states and alter the areas, boundaries or names of existing States by making suitable law.

Giving status of full-fledged state to a union territory

A union territory may be upgraded to a full-fledged state by making suitable law in parliament.

Acquiring a new Territory

Being a sovereign state, India like other sovereign states has inherent power to acquire the new territories. This implies that whenever a new territory is acquired (by war, international agreements etc) there is no need to make a law. However, its formal assimilation into the union has to be done by parliament by making suitable legislation as per Article 2.

Thus, all the three means to admit new states in Union need a law by the parliament. Such legislation of law also follows suitable changes in the First schedule of the constitution. However, such changes don't amount to be called as Constitution amendments (article 4)

Procedure of changing a name of state

Process for changing the name of a state can be initiated by state itself. However, by virtue of article 3, the parliament has power to change the name of a state even if such proposal does not come from the concerned state.

If initiated by state assembly

The state assembly would first pass a resolution for such change and this passed resolution would be sent to central government. Central Government will create a bill and this bill will be sent back to the state legislature to express its views in a stipulated time. The state legislature will need to give its

views within this time as fixed by president. Once this time is expired, the president will recommend to intrduce that bill in parliament. Once introduced, the bill will be passed, and president would give assent. Thus, the name of state would be changed. The example of such change is change in name of Orissa to Odisha. The Government of Orissa initiated this change in 2008 when it forwarded a resolution passed by the Legislative Assembly of Orissa to central government to change the name of state from Orissa to Odisha. This bill was passed as Orissa (Alteration of Name) Act, 2010.

Without a proposal of state

Article 3 empowers the parliament make changes in area, boundaries, territory, name of states even if such proposal does not come from the concerned state. For this purpose, the central government can simply get a bill passed in the parliament. However, constitution mandates that whenever such things need to be done, states must be given an opportunity to express their views. Thus, first central government will create a bill, but this bill can be introduced in parliament only by recommendation of the president. Before making such recommendation, President would send this bill to concerned state legislature and give it a fixed time to express its view on that matter. However, state's view has no actual impact for fate of such bill. Whether the state says yes or no, once the time given to it has passed, the President may recommend the bill to be introduced in any house of parliament. Once passed the name of state gets changed.

Thus, we can conclude that:

- Alternation of names, boundaries etc. of states is a prerogative of parliament and parliament has final say on this matter.
- Such a bill is introduced in parliament by prior recommendation of president {because states' interests may be involved here}
- States are asked to express their views in stipulated time but practically their view does not matter. Once that time is expired, parliament can enact the law even if they say no.

Legal process of ceding a territory to other country

Every country has some border disputes. Such disputes are solved by diplomacy or bargaining or by war. The process of forming news states and admitting new territories in the Union and the process of ceding territory to another country, both are done under article 3 however, the process of later is different from former. This difference arose due to the Supreme Court verdict in the Berubari Union case whereby the court mandated that Parliament of India is *not competent enough to cede a territory*. However, to make such an agreement effective, Parliament would need to enact an amendment of the Constitution. So, whenever India ceded a territory, parliament has amended the constitution. As a recent example, the recent *Land Boundary Act between India and Bangladesh* resulted in ceding some Indian territory to Bangladesh, and acquiring some Bangladeshi territory by India. For ceding the territory, India needed to enact the 100th Constitutional Amendment Act.

Part-II: CITIZENSHIP

Constitutional provisions of Citizenship

Provisions related Citizenship in the constitution were among those few which had been given immediate effect on 26 November 1949. Framing the correct provisions was not an easy task in an environment when millions of people were moving in and out of borders due to partition and when integration of princely states was a work in progress. Due to these, the constitution included only those citizenship related provisions which were urgently needed that time. The articles 5 to 9 were included in the constitution not as a permanent law but something to address the contemporary problems only. These provisions provided that:

- Any person living in India since or before January 26, 1945 was an Indian Citizen.
- Those who came to India from Pakistan before July 19, 1948 would automatically become Indian Citizens.
- Those who came to India from Pakistan after July 19, 1948, would become Indian citizens but they would need to register as prescribed by Indian Government.
- If a person had migrated to Pakistan but then decided to return back and live here in India permanently, would need to get a separate "permit".
- If a person is living abroad but either he was born in India or his parents / grandparents were born in undivided India, then he can be registered as citizen of India by the diplomatic or consular representatives in that country.

Thus, nature of provisions from Article 5 to 9 show that the objective of the constituent assembly was *not to make a permanent law for citizenship*. For enacting a detailed law on citizenship, the constitution gave plenary power to the parliament plenary powers via article 10 and 11.

Citizenship Act 1955

India has single citizenship and there is no dual citizenship *except for minors where the second nationality was involuntarily acquired.* A citizen of India is a citizen of all Indian territories. This feature is a unitary feature in contrast with the double citizenship prevailing in several countries. For example in USA, a citizen of US at the same time is also a citizen of California or other states.

The single citizenship also reflects the social and political conditions created at that time by partition. During communal riots, large number of Hindus and Muslims migrated to and from Pakistan. At that time, it was necessary to respond to situation created by lots of refugees. At the same time, many people who lived abroad applied for Indian Citizenship because now they had decided to live in newly freed country. All these factors had made the matter of citizenship very complicated.

How one can become Indian Citizen?

Constitution of India did not codify permanent laws for citizenship and put this onus on parliament.

Using the powers of article 10 and 11, the parliament enacted Citizenship Act 1955 which has been amended from time to time. This act mentions four ways in which a person may be Indian citizen viz. by birth, by descent, by registration and by naturalization. Citizenship by birth and descent are called natural citizens. Summary of these provisions are as follows:

Citizenship by Birth

Every person born in India on or after Jan 26, 1950 is a citizen of India provided his / her father is not an enemy alien or representative of a diplomatic mission.

Citizenship by Descent

A person born outside India on or after Jan 26, 1950 shall be a citizen of India by descent if his father or mother is a citizen of India at the time of his birth; provided such birth is registered in any of Indian consulates.

Citizenship by Registration

A person can acquire citizenship by registering themselves with prescribed authority. Such categories of persons are:

- Persons of Indian origin residing outside the territories of undivided India
- Those persons of Indian origin who are ordinarily residents in India and have been so resident for 6 months immediately before making application for registration
- Women who are married to citizens of India
- Children of Indian citizens
- Adult citizens of commonwealth country or republic of Ireland

Citizenship by Naturalization

A foreign citizen not covered by any of the above methods can get Indian citizenship on application of Naturalisation to the Government of India; with the following conditions

- Belongs to a country where the citizens of India are allowed to become subjects or citizens of that country by naturalization.
- Renounces the citizenship of his country and intimated the renunciation to the Government of India.
- Has been residing in India or serving the government for 12 months before the date of making application for naturalization.
- Possess a good character
- Posses working knowledge of Indian Languages
- Intends to reside in India after naturalization.

Further, Government of India can waive any or all of the above conditions in case of a person who has rendered distinguished service in the cause of Philosophy, science, literature, arts, world peace etc.

Citizenship by incorporating a new territory

If a new territory becomes a part of India, the government of India specifies the persons of that territory who shall be citizens of India.

Commonwealth Citizenship

Every person who is born in commonwealth country, by virtue of that citizenship enjoys the status of Commonwealth Citizenship in India. The act empowers the government of India to make provisions of reciprocity for the enforcement of all or any rights of Citizens of India on citizens of commonwealth countries.

How a person can lose Nationality?

The Citizenship Act envisages three situations under which a citizen of India may lose his Indian nationality. Section 9 deals with the automatic termination of citizenship and Section 10 deals with the deprivation of citizenship.

- ***By Renunciation:*** If any citizen of India who is also a national of another country renounces his citizenship through declaration of in the prescribed manner, he ceases to be Indian Citizen.
- ***By Termination:*** Any person who acquired Indian Citizenship by naturalization, registration or otherwise, has voluntarily acquired citizenship of another country at anytime between January 26, 1950 to December 30,1955, shall have ceased to be an Indian Citizen.
- ***Deprivation:*** Section 10 of the Citizenship Act 1955 empowers the government to deprive a citizen of his citizenship by issuing an order. However this power may not be used in case of every citizen. It applies only to those, who acquired Indian Citizenship. This might be because of obtaining citizenship on false documentations etc.

Important Notes on Citizenship

1. Most constitutional and statutory posts in India are reserved for Indian Citizens. Here, we need to note that no such Post is reserved only for naturally born citizens. A person who has aquired Indian Citizenship by available means is also eligible for such posts, unless otherwise mentioned.
2. ONLY central government has been given power to deprive a person from his / her citizenship.
3. NRIs are Indian Citizens. The concepts such as OCI and PIO don't confer citizenship.

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Part-III: Fundamental Rights

Fundamental Rights are certain secured and guaranteed rights, which are generally considered inherent in man and cannot be taken away by the state. The fundamental rights are also called the natural rights which command higher sanctity than other rights such as legal rights. The fundamental rights under the constitution can be classified under the following six groups:

- Right to equality – Article 14 to 18
- Right to freedom – Article 19 to 22
- Right against exploitation – Article 23 and 24
- Right to freedom of religion – Article 25 to 28
- Cultural and educational rights – Article 29 and 30
- Right to constitutional remedies- Article 32 to 35

Article 31 stands repealed.

First demand of fundamental rights

The first explicit demand for the fundamental rights came in the form of the "*Constitution of India Bill, 1895*" which was created under guidance of Bal Gangadhar Tilak. This bill popularly called "**Swaraj Bill 1895**" spoke about freedom of speech, right to privacy, right of franchise etc. After that numerous drafts had been created. In the Madras session of 1927, a resolution was adopted to draft a "Swaraj Constitution" for India. The Motilal Nehru Report of 1928 *demanded inalienable fundamental rights* for the people of India. It was basically inspired by the **American bill of rights,** which had a great impact on the thinking of Indian Leaders. The Nehru report was discarded by Simon Commission.

Advisory Committee on Fundamental Rights

The Constituent Assembly had appointed an advisory committee on fundamental rights headed by Sardar Vallabhbhai Patel on January 24, 1947. This advisory committee dealt with the rights of citizens, minorities, tribal and excluded areas.

Sapru Committee recommendations on Fundamental Rights

The Sapru committee report was published in 1945. This committee recommended that the Fundamental Rights "must" be included in the Constitution of India. This committee divided fundamental rights into two parts viz. Justifiable Rights and Non-justifiable rights. The **Justifiable rights** were those enforceable by a court of law. These enforceable rights were **incorporated in the Part III** of the Constitution. The non-justifiable rights were incorporated as a directive to the state to take all measures to provide those rights to individuals without any guarantee. They were incorporated in the part IV of the constitution and were called Directive Principles of State Policy.

What is definition of state as per article 12?

Article 12 defines the "state" which includes:

- Government and Parliament of India
- Government and the Legislature of each of the States
- All local or other authorities within the territory of India or under the control of the Government of India.

The words "other authorities" and "under the control" are ambiguous and led to numerous litigations in the Supreme Court. Thus, this article has been subject to judicial interpretation from time to time. Various Supreme Court judgments have established that:

- Definition of state is inclusive and may include other bodies than executive, legislature of union and states which have been enumerated explicitly in the article 12.
- Any such authority which has power to make any law, pass any order, make an regulation, bye-laws etc. come under definition of state. Thus Panchayats, municipalities, district boards and other statutory, constitutional bodies come within the definition of state.
- Statutory and non-statutory bodies that get financial resources from government , have deep pervasive control of government and with functional characters as such as ICAR, CSIR, ONGC, IDBI, Electricity Boards, NAFED, Delhi Transport corporation etc. come under the definition of state.
- Statutory and Non-statutory bodies which are not substantially generally financed by the government don't come under definition of state. Examples are *autonomous bodies*, Cooperatives, NCERT etc.
- Judiciary is NOT state. Many opine that the judiciary should be included in the definition of the state.

Rationale behind Fundamental Rights against state

The conflict between individuals and state is as old as our history. The individuals need personal liberty and state has the power to decide those liberties. Thus, if the state has absolute power to cut down those liberties of an individual, it would be tyranny. Thus, the individuals need constitutional protection against the state. The rights which are given to the citizens by way of fundamental rights are a guarantee *against state action as distinguished from violation by the ordinary law of land.* Thus, Fundamental rights are against the state for the protection of individual.

Fundamental Rights against state and individuals

Fundamental rights are binding upon not only the State and agencies of State but also upon individuals/organizations. For example, if untouchability or any sort of discrimination is practiced by any individual then that individual indulging in such practices is punishable under the law of the land. Article 12 gives the definition of State as including not only the executive and legislative organs of the Union and the States but also local bodies and other authorities. Even the act of any individual

may become an act of the State if it is enforced or aided by any of the authorities mentioned above. Certain Fundamental Rights are also available against private individuals like Article 15(2) [equality with regard to access to and use of places of public resort], Article 17 [prohibition of traffic in human beings], Article 18(3)-(4) [prohibition of acceptance of foreign title], Article 23 [prohibition of traffic in human beings] and Article 24 [prohibition of employment of children in hazardous employment].

Self-executory rights

All fundamental rights are justifiable and enforceable under court. There are certain rights in Indian constitution which don't need any legislation to make them enforceable. For example there is no need to enact a separate legislation to make the Right to Equality enforceable. These are called self executory. At the same time, there are certain rights which are imperfect in just being inscribed to the constitution and need further legislation to make them enforceable. Such rights are Art. 17 (untouchables) Article 21A (right to free & compulsory education); Article 23 (traffic in human beings; and Article 24 (child labour).

Difference between legal rights and fundamental rights

The legal rights are protected by an ordinary law, but they can be altered or taken away be the legislature by changing that law. *Fundamental Rights are protected and Guaranteed by the Constitution and they cannot be taken away by an ordinary law enacted by the legislature*. If a legal right of a person is violated, he can move to an ordinary court, but *if a fundamental right is violated the Constitution provides that the affected person may move to High court or Supreme Court.* Here we should note that the **Rights to Property** was a fundamental right before 1978. The Constitution (Forty-fourth Amendment) Act, 1978, taken away the Right to property (Article 31) as a Fundamental Right and was made a legal right under new Article 300 A.

- An ordinary right generally imposes a corresponding duty on another individual (and, state in some cases) but a fundamental right is a right which an individual possess against the state.
- Fundamental rights are protected against invasion by the executive, legislature and the judiciary. All fundamental rights are limitations on legislative power. Laws and executive actions which abridge or are in conflict with such rights are void and ineffective.
- Our constitution guarantees the right to move the Supreme Court for the enforcement of fundamental rights. Thus the remedy itself is a fundamental right. This distinguishes it from other rights.
- The Supreme Court is the guardian of fundamental rights.

Further, all constitution rights not fundamental rights e.g. right not to be subjected to taxation without authority of law (art. 265), right to property (art. 300a), and freedom of trade (art. 301). A fundamental right cannot be waived. An ordinary legal right can be waived by an individual.

What is Doctrine of Severability?

Article 13 of the constitution says that a law is void if it is inconsistent with the Fundamental Rights. A void statute is devoid of any legal force and courts take no notice of such a statute. The same article makes clear that in future, the State shall not make any law which takes away the Fundamental Rights given by Part III. The law here does not only include the legislation but also an ordinance, order, bye-law, rule, regulation, notification. This means that state cannot make any law which takes away the fundamental rights of the individuals.

Importance of article 13 is that it has provided basis for judicial review of all legislations in India, past as well as future. All laws whether made by a legislature or by a delegated authority and all executive acts *must respect and conform to the fundamental rights.* The ordinances promulgated by the president under art.123 or by the governor under art. 213 must also not be inconsistent with the implement the fundamental rights. Article 13 impose an obligation on the state to respect and implement the fundamental rights and at the same time confers a power on the courts to declare a law/act void if it infringes a fundamental right. Art.13, thus, provides teeth to the fundamental rights and makes them justifiable i.e. enforceable in the courts.

However, the article also says that a law is void only "*to the extent of the inconsistency or contravention*" with the relevant Fundamental Right. This implies that an act may not be void as a whole but only a part of it may be void and if that part is severable from the rest which is valid, and then the rest may continue to stand and remain operative. This is called "Doctrine of Severability." The Act will then be read as if the invalid portion was not there. If, however, it is not possible to separate the valid from the invalid portion, then the whole of the statute will have to go.

Right to Equality

Difference between equality of law and equal protection of law

Article 14 of the Constitution of India says that State shall not deny to any person *equality before the law* or the *equal protection of the laws* within the territory of India. Both of these differ subjectively.

- Equality before law means that no one is above the law of the land. Thus it has slightly negative connotation. It means that law does not discriminate on the basis of birth, position, gender or other personal attributes. Thus, privileged, underprivileged and unprivileged are equal before law.
- Equal protection of law means that law provides equal opportunities to all those who are in similar circumstances or situations. This concept is slightly positive in connotation.

Both Equality before law and Equal protection of law aim to establish the "Equality of Status and Opportunity" as embodied in the Preamble of the Constitution. Further, because all persons are not, by nature, attainment or circumstances in the same positions; article 14 provides that state can treat

different persons in differently if circumstances justify such treatment. This is called *Doctrine of Reasonable classification* and it says that protective discrimination is also a facet of equality.

Article 15 and 16 and basis of reservations

Article 15 (1) and (2) prohibit the state from discriminating any citizen on ground of *any religion, race, caste, sex, place of birth or any of them.* These articles provide that there shall be no restriction on any person on any of the above bases to access and use the public places such as shops, restaurants, hotels, places of public entertainment etc. or use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public.

From article 15(3) onwards, the constitution starts protective discrimination. Article 15(3) empowers the state to make special provisions for women and children. Article 15(4) empowers the state to make special provisions for advancement of socially and educationally backwards or SC/STs. Article 15(5) goes one step further and empowers the state to make reservation in admission into education institutions including private schools or colleges whether or not aided by government. Only minority educational institutions (such as Madarsas) have been left out of this provision. Thus, article 15(3) and 15(4) are foundational bricks of reservation in the country.

Coming to article 16, the articles 16 (1) and (2) give a general rule that there shall be equal opportunity for all citizens in government jobs. However, article 16(3), 16(4), 16(4-A) and 16 (4-B) provide further strength to all sorts of discrimination among the people on account of their unequal status.

- Article 16(3) allows the state to make any law making residence qualifications necessary in the case of government jobs, thus making the domicile provisions stronger.
- Article 16(4) allows the state to make reservation for any backward class of citizens which in the opinion of the state is not adequately represented in services. This opens door for OBC reservations.
- Article 16(4-A) empowers the state to make reservation in Promotions also for SCs, STs and OBCs.

Abolition of Untouchability

Abolition of untouchability has been included among fundamental rights under article 17. This is one of the few fundamental rights available against individuals. To make untouchability law further strong, parliament passed Untouchability (offences) Act in 1955 which came into force 1st June, 1955. This act was further amended and renamed in 1976 as Protection of Civil Rights Act, 1955.

This act lays down that whatever is open to general public should be open to the members of the scheduled castes. No shopkeeper can refuse to sell them; no person may refuse to render any service

to any person on the ground of untouchability. The act made provision for imprisonment and fine.

Abolition of Titles

Article 18 prevents the state from confirming any title except military and academic distinction. Article 18 prohibits the Indian citizens from receiving titles from any foreign state. The foreign nationals holding the office of profit under the state may accept titles from the foreign government with the consent of President. In a true democracy, there is no space for artificial distinctions among the same society. Titles such as *Rai Bahadur, Sawai, Rai Sahab, Zamindar, taluqdar* etc were prevalent in medieval and British India. All these titles were abolished by article 18 of the constitution.

Right to Freedom

Articles 19 to 22 of the Indian Constitution deal with the different facets of the Fundamental Rights. These four articles form a charter of personal liberties, which provides the backbone of the chapter on Fundamental Rights. Of these, Article 19 is the most important and it may rightly be called the key-article embodying the "basic freedoms" under the Constitution, guaranteed to all citizens.

What are the Six basic freedoms guaranteed by constitution?

Article 19 embodies the six basic freedoms. Originally, these freedoms were seven as right to property was also included them. This freedom was taken off from fundamental rights and was put as a constitutional right under article 300-A via 44th amendment act. The six freedoms are as follows:

1. to freedom of speech and expression;
2. to assemble peaceably and without arms;
3. to form associations or unions *or cooperative societies*
4. to move freely throughout the territory of India;
5. to reside and settle in any part of the territory of India;
6. to practice any profession, or to carry on any occupation, trade or business.

The words *or cooperative societies* have been inserted via 97th amendment Act 2011.

Freedom of Speech under Article 19(1)

Freedom of speech right to express one's opinion freely without any fear. Freedom of speech and expression is not absolute. As of now, there are eight restrictions viz. Security of the state; Friendly relations with foreign states; Public Order; Decency or morality; Contempt of Court; Defamation; Incitement to offence and Sovereignty and integrity of India. These eight restrictions were embodied in their current form in first amendment, necessitated by Romesh Thapar v. State of Madras (1950) case.

Media and Freedom of Speech

The Constitution does not make any special / specific reference to the Freedom of Press or any other media. The freedom of press is regarded as a 'species of which freedom of expression is a genus." The

Supreme Court has laid emphasis in several cases o the importance of maintaining freedom of press in a democratic society. The press seeks to advance public interest by publishing facts and opinions without which a democratic electorate cannot make responsible judgments.

Freedom of Assembly under Article 19(2)

Everybody has right to hold meetings and take out processions, which should be unarmed and peaceful. This right may be restricted in the interest of the public order or sovereignty and integrity of the country. There are various tools to handle unlawful or armed assemblies. The Section 144 (Code of Criminal Procedure) can be imposed by the government which makes assembly of five or more people an unlawful assembly in certain areas. Section 129 (Code of Criminal Procedure) authorizes police to disperse any unlawful assembly which may cause disturbance to public peace.

Freedom of Association, Union and Cooperatives

The constitution declares that all citizens will have the right to form associations or unions or cooperatives. The word "cooperatives" has been added via 97th amendment act.

Freedom of Movement

The freedom of movement is guaranteed by the constitution and citizens can move from one state to another and anywhere within a state. A person free to move from any point to any point within the country's territories. There are certain exceptions such as Scheduled Tribes areas and army areas.

Freedom of Residence

An Indian Citizen is free to reside in any state except Jammu & Kashmir. Again this is subject to certain restrictions.

Freedom of Trade & occupation:

The constitution of India guarantees each of its citizen to do trade, occupation or business anywhere in the country.

Safeguards available to a person accused of Crimes (Article 20)

Article 20 has taken care to safeguard the rights of persons accused of crimes. Persons here means the citizens, non-citizens as well as corporations. *Please note that this article cannot be suspended even during an emergency in operation under article 359. Article 20 also constitutes the limitation on the legislative powers of the Union and State legislatures.*

Ex-Post facto Law

Article 20 (1) says that 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 charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence. This is called **Ex-Post facto Law**. It means that legislature can not make a law which provides for punishment of acts which were committed prior to the date when it cam into force. This means that a new law can not punish an old act.

Doctrine of Double Jeopardy

Article 20(2) says that no person shall be prosecuted and punished for the same offence more than once. This is called **Doctrine of Double Jeopardy**. The objective of this article is to avoid harassment, which must be caused for successive criminal proceedings, where the person has committed only one crime. There is a law maxim related to this – *nemo debet bis vexari*. This means that no man shall be put twice in peril for the same offence.

There are two aspects of Doctrine of Jeopardy viz. autrefois convict and autrefois acquit. Autrefois convict means that the person has been previously convicted in respect of the same offence. The autrefois acquit means that the person has been acquitted on a same charge on which he is being prosecuted.

Please note that Constitution bars double punishment for the same offence. The conviction for such offence does not bar for subsequent trial and conviction for another offence and it does not matter the some ingredients of these two offences are common.

Self Incrimination Law

Article 20(3) of the constitution says that **no person accused of any offence shall be compelled to be a witness against himself**. This is based upon a legal maxim which means that No man is bound to accuse himself. The accused is presumed to be innocent till his guilt is proved. It is the duty of the prosecution to establish his guilt.

Protection of Life and Personal Liberty (Article 21)

Article 21 says that no person shall be deprived of his life or personal liberty except according to procedure established by law. This article protects the right of life and personal liberty not only from executive action but also from the legislative action. This right extends to citizens as well as non-citizens.

In context with this article, the Supreme Court has held that Part III of the constitution should be given widest possible interpretation and a fundamental right is not necessarily that one, which is specified in an article. Even if it is not specified in an article, but if it is integral part of a named fundamental right or partakes the same basic nature and character as that of a fundamental right.

This article gives way an array of several human rights which are called **Implied Fundamental Rights.**

Implied Fundamental Rights

The interpretation of the Article 21 by the Supreme Court has opened a new chapter of human rights jurisprudence. In several cases, the court has held the following as implied fundamental rights, though not all of them have been specifically mentioned. These all are called Implied Fundamental Rights.

1. Right to Speedy Trial
2. Right to Travel Abroad
3. Right to Dignity
4. Right to Privacy
5. Right to Clean Environment
6. Right to Livelihood
7. Right to marriage
8. Right against torture
9. Right against Bondage
10. Right to legal aid
11. Right to Food.

In the same way, Supreme Court has also held that Freedom of speech and expression guaranteed under Article 19(1) includes the right to know, right to information and right to reply.

It must be noted here that

- Right to life does not include Right to Die or Right to get killed i.e. mercy killing.
- Capital Punishment has not been held violative of Article 14, 19 and 21
- Hanging as a mode of execution is also fair and just as per supreme court.
- The Supreme Court has held that right to live also include Right to live with dignity.

Procedure established by law versus due process of law

This article in the original drafted constitution used the words "no person is to be deprived of his life or liberty without due process of law". The drafting committee changed it to "No person shall be deprived of his life or personal liberty except according to procedure established by law" giving the reason that liberty should be qualified by the word personal, so that unnecessary interpretation may be avoided. The expression "Procedure established by law" is more definite phrase and this phrase finds the place in the Japanese Constitution of 1946. It implies that life and personal liberty of a person cannot be encroached upon arbitrarily without the proper sanction and provision of law.

Rape as violation of right to life

Right to life includes the right to live with human dignity. Women also have the right to life and liberty. Their honour and dignity cannot be outraged or violated. They also have the right to lead an honourable and peaceful life. In *Bodhisattawa Gautham v. Subhira Chakroborthy*, it was held that rape is a crime not only against the person, but also against the entire society. It destroys the entire psychology of a woman and pushes her into deep emotional crisis. It is crime again basic human rights and it violates right to life.

Article 22: Safeguards against Arrest

What rights have been guaranteed by constitution to arrested persons?

Article 22(1) and (2) ensure the following four safeguards for a person who is arrested:

- He is not to be detained in custody without being informed, as soon as may be, of the grounds of his arrest [Article 22 (1)].
- He shall not be denied the right to consult, and to be defended by, a legal practitioner of his choice [Article 22 (2)].
- A person arrested and detained in custody is to be produced before the nearest magistrate within a period of twenty-fours of his arrest excluding the time necessary for the journey from the place of arrest to the magistrate's court [Article 22 (2)].
- No such person is to be detained in custody beyond this period without the authority of a magistrate [Article 22(2)].

A person needs to be informed before he is arrested to enable him to prepare his defence and move to court for bail etc. Failure to inform the person arrested of the reasons of his arrest would entitle him to be released. If information is delayed, there must be some reasonable grounds justified by circumstances.

What is preventive detention?

The Article 22(1) and 22(2) make provisions to provide certain safeguards to arrested persons. However, Article 22(3) says that the above safeguards are not available to the following:

- If the person is at the time being an enemy alien.
- If the person is arrested under certain law made for the purpose of "Preventive Detention"

Article 23: Prohibition of traffic in human beings and forced labour

Article 23 prohibits the traffic in human beings and forced labor such as *begar. Begar is unpaid labour and considered as modern form of slavery. The parliament passed* Immoral Traffic (Prevention) Act 1956 and Bonded Labour System (Abolition) Act 1976 to give legal teeth to this constitutional provision. Bonded labour is a kind of forced labour which is either underpaid or unpaid.

Prohibition of Child Labour: Article 24

Article 24 mandates that no child below age of 14 years shall be employed to work in any factory or mine or engaged in any other hazardous employment.

Right to Freedom of Religion: Article 25-28

Article 25 to 28 of the constitution of India guarantees the right of Freedom of religion. Some important notes for Prelims are as follows.

- India is a secular state and by 42nd amendment, Preamble states this explicitly.
- Prohibition of discrimination on grounds of religion is one of the conditions set already in

article 15. However, article 25 to 28 make these rights more explicit and clear.

- Article 25 mandates that *subject to public order, morality and health,* all persons enjoy the freedom of conscience and have the right to entertain any religious belief and propagate it. The condition of public order, morality and health has been put to make it clear that freedom of religion is not absolute. Use of loudspeakers, cracking on Diwali, use of loudspeakers for Ajan has come under scrutiny of Supreme Court.
- Article 26: gives every religious group a right to establish and maintain institutions for religious and charitable purposes, manage its affairs, properties as per the law. This guarantee is available to only Citizens of India and not to aliens.
- Article 27: This Article mandates that no citizen would be compelled by the state to pay any taxes for promotion or maintenance of particular religion or religious institutions.
- Article 28: This Article mandates that no religious instruction would be imparted in the state funded educational institutions.

Implications of Article 25 & 26 not being absolute

- Use of loudspeakers is not an integral part of the religions so the government can restrict on the use of loudspeakers for *Ajan* and *Bhajan Kirtans.*

- Followers of no religions have right to stop the processions of other religions on the ground that it is a nuisance.
- State may abolish "Cow Slaughter" as sacrifice of Cow on *Bakrid* is not an essential part of the religion.
- Possessing a *Kirpan* is an essential part of professing Sikkism and it is protected right of Sikhs. (Article 25 Explanation I)
- The Aligarh Muslim University was established under an act of parliament so muslims can NOT claim to run this university as per provisions of Article 26 & Article 29.
- None of the rights guarantee that a *Brahmin* only can perform rituals of Hinduism.
- Article 25 protects the right to perform rituals; however, Supreme Court has interpreted that state may regulate the economic, financial, political, or other activity which may not be a direct part of religion. Management of temples has been taken over by state in many states of India as per this provision.

Cultural & Educational Rights: Article 29-30

Both Article 29 and Articles 30 guarantee certain right to the minorities. Article 29 protects the interests of the minorities by making a provision that any citizen / section of citizens having a distinct language, script or culture have the right to conserve the same. Article 30 provides an absolute right to the minorities that they can establish their own linguistic and religious institutions

and at the same time can also claim for grant-in-aid without any discrimination. Madarsas enjoy this right in India.

Article 32: Right to Constitutional Remedies

Article 32 provides the right to Constitutional remedies which means that a person has right to move to Supreme Court (and high courts also) for getting his fundamental rights protected. While Supreme Court has power to issue writs under article 32, High Courts have been given same powers under article 226. Further, the power to issue writs can also be extended to any other courts (including local courts) by Parliament via making a law for local limits of jurisdiction of such courts. Kindly note that Court Martial i.e. the tribunals established under the military law have been exempted from the writ jurisdiction of the Supreme Court and the high courts via article 33.

Importance of Article 32

- Article 32 was called the "*soul of the constitution and very heart of it*" by Dr. Ambedkar. Supreme Court has included it in basic structure doctrine. Further, it is made clear that right to move to Supreme Court cannot be suspended except otherwise provided by the Constitution. This implies that this right suspended during a national emergency under article 359.
- Article 32 makes the Supreme Court the defender and guarantor of the fundamental rights. Further, power to issue writs comes under *original jurisdiction of the Supreme Court*. This means that a person may approach SC directly for remedy rather than by way of appeal.
- Article 32 can be invoked only to get a remedy related to fundamental rights. It is not there for any other constitutional or legal right for which different laws are available.

Comparison of Supreme Court and High Court in Issuing writs

Similarities

- Power of issuing writs comes under original jurisdiction (to hear the matter at first instance) of both Supreme Court and High Courts. An aggrieved person has option to move any of them.

Differences

- While Supreme Court has power to issue writs via article 32, High Courts have this power via article 226.
- While Supreme Court has power to issue writs for enforcement of ONLY Fundamental rights, High Courts can issue writs for enforcement of fundamental rights as well as any other matter also. Thus, High Court has a wider jurisdiction from Supreme Court in matter of issuing writs.
- Supreme Court can issue a writ against any person or authority within the territory of India while high court can issue such writ under its own territorial jurisdiction. Thus, High court's writ jurisdiction is narrower in terms of territorial extent.

- Supreme Court cannot refuse to exercise its writ jurisdiction mainly because article 32 itself is a fundamental right and supreme court is guarantor or defender of fundamental rights. However, for high courts, exercising the power to issue writs is discretionary.

Meaning and Types of Writs

Anything that is issued under an authority is a writ. Orders, warrants, directions etc. issued under authority are examples of writs. There are several kinds of writs such as habeas corpus, mandamus, prohibition, quo warranto and certiorari. Each of them has different meaning and different implications. In India, both Supreme Court and High Court have been empowered with Writ Jurisdiction. Further, Parliament by law can extend power to issue writs to any other courts (including local courts) for local limits of jurisdiction of such courts.

Habeas Corpus

Habeas Corpus literally means 'to have the body of'. Via this writ, the court can cause any person who has been detained or imprisoned to be **physically brought** before the court. The court then examines the reason of his detention and if there is no legal justification of his detention, he can be set free. Such a writ can be issued in following example cases:

- When the person is detained and not produced before the magistrate within 24 hours
- When the person is arrested without any violation of a law.
- When a person is arrested under a law which is unconstitutional
- When detention is done to harm the person or *is malafide.*

Thus, Habeas corpus writ is called bulwark of individual liberty against arbitrary detention. A general rule of filing the petition is that a person whose right has been infringed must file a petition. But Habeas corpus is an exception and anybody on behalf of the detainee can file a petition. Habeas corpus writ is applicable to preventive detention also. This writ can be issued against both public authorities as well as individuals.

Mandamus

Mandamus means "we command". This writ is a command issued by court to a public official, public body, corporation, inferior court, tribunal or government asking them to perform their duties which they have refused to perform. Due to this, Mandamus is called a "wakening call" and it awakes the sleeping authorities to perform their duty. Mandamus thus demands an activity and sets the authority in action. Mandamus cannot be issued against the following:

- a private individual or private body.
- if the duty in question is discretionary and not mandatory.
- against president or governors of state
- against a working chief justice
- to enforce some kind of private contract.

A petition for writ of mandamus can be filed by any person who seeks a legal duty to be performed by a person or a body. Such a filing person must have real or special interest in the subject matter and must have legal right to do so.

Prohibition

The writ of prohibition means that the Supreme Court and High Courts may prohibit the lower courts such as special tribunals, magistrates, commissions, and other judiciary officers who are doing something which exceeds to their jurisdiction or acting contrary to the rule of natural justice. For example if a judicial officer has personal interest in a case, it may hamper the decision and the course of natural justice.

Difference between Mandamus and Prohibition

- While Mandamus directs activity, Prohibition directs inactivity.
- While Mandamus can be issued against any public official, public body, corporation, inferior court, tribunal or government; prohibition can be issued only against judicial and quasi-judicial authorities and NOT against administrative authorities, legislative bodies

Certiorari

Certiorari means to "certify". It's a writ that orders to move a suit from an inferior court to superior court. It is issued by a higher court to a lower court or tribunal either to transfer a case pending with that to itself or squash its order. This is generally done because superior court believes that either the inferior court had no jurisdiction or committed an error of law. Thus, certiorari is a kind of curative writ.

Quo warranto

Quo warranto means "by what warrant"? This writ is issued to enquire into legality of the claim of a person or public office. It restrains the person or authority to act in an office which he / she is not entitled to; and thus stops usurpation of public office by anyone. This writ is applicable to the public offices only and not to private offices.

Fundamental Rights of Armed Forces and Police Forces

Article 33 & 34 empower the Parliament *to restrict, modify or abrogate* the fundamental rights to the members of armed forces, para-military forces, police forces, members of intelligence agencies or similar services. This is required to make the proper discharge of their duties which are sensitive and urgent in nature. This power is available only with parliament and not state legislatures. Further, such an act cannot be challenged in a court on ground of its being of violative of fundamental rights. Further, court martial (tribunals under the military law) have been exempted from the writ jurisdiction of the Supreme Court and the high courts under article 33.

Using these powers, the parliament enacted various laws such as Army Act (1950), Navy Act (1950), Air Force Act (1950), Police Forces (Restriction of Rights) Act, 1966 etc.

Parliament has also the power to indemnify any person or the acts done by such person in the service of the State, if such acts are done by him during the enforcement of martial law in any area within the territory of India.

Suspension of Fundamental Rights

Following are the instances when fundamentals rights get suspended:

- During national emergency, all the basic freedoms guaranteed by article 19 automatically get suspended. During emergency, President can suspend all other fundamental rights also except Article 20 (protection in respect of conviction for offences) and Article 21 (Protection of life and personal liberty). Such suspension needs parliamentary approval.
- Article 33 empowers the Parliament to restrict or abrogate the application of the fundamental rights in relation to the armed forces, paramilitary forces, police etc.

Right to Education

At present, there are five articles in the constitution of India which have Children as their special focus. These articles are Article 21A, 24, 39 & 45 and 51A (k). Thus special provisions for children find place in our constitution in Fundamental Rights, Directive Principles as well as Fundamental Duties.

- **Article 21A:** The Right to Education inserted in constitution via 86th amendment act.
- **Article 24:** No child below the age of 14 years shall be employed to work in any factory or mine or engaged in hazardous employment.
- **Article 39 (f):** The State shall, in particular, direct its policy towards securing—
- (f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.
- **Article 45 :** The State shall endeavour to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years.
- **Article 51A (k):** who is a parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years.

The 86th amendment Act 2002 had amended Fundamental Rights, Directive Principles as well as Fundamental Duties as follows:

Fundamental Rights

A new article 21-A was inserted which says that state shall provide free and compulsory education to all children of the age of *six to fourteen years* in such manner as the State may, by law, determine"

Change in DPSP:

Article 45 was changed and it now states that "State shall endeavor to provide early childhood care and education for all children until they complete *the age of six years*".

Fundamental Duties

A clause under article 51-A as 51-A (k) was added which says "who is a parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years.".

As per the above amendments, the 86th Amendment Act came up with the following:

- It made Right to Education a Fundamental Right for Children from Age 6-14.
- It made education for all children **below 6 years** a Directive Principle for State Policy (DPSP).
- It made the opportunities for education to child a Fundamental duty of the parents of the children.

Thus, RTE act gives a constitutional guarantee that every child of the age group of 6-14 years shall have right to free and compulsory Education. No child is liable to pay any kind of fee/ capitation fee/ charges. A collection of capitation fee invites a fine up to 10 times the amount collected. This right includes the rights of disadvantage groups including physically handicapped children also. Kindly note that the Madarsas & Vedic Pathshalas have been clearly kept out of the purview of RTE act.

Directive Principles of State Policy

The fundamental rights and the directive principles find common origin in the Sapru Report of 1945, which had divided the fundamental rights into two parts viz. Justifiable and non-justifiable rights. While justifiable rights were incorporated in the Part III; non-justifiable rights were incorporated as directive principles to the state without any guarantee to be enforced via court.

Thus, the directive principles are guidelines by the constitution to the state as defined in article 12 (central, state, local government and bodies). Basic idea is that the "state" should keep these principles while framing laws, policies, ordinances etc.

Sources of DPSP

India borrowed the DPSP from Irish Constitution of 1937 which itself had borrowed it from Spanish Constitution. Further, the Government of India Act had some "instruments of Instructions" which became the immediate source of DPSP.

Key Features

DPSPs are not enforceable in a court of law. They were made non-justifiable keeping in view that the state may not have resources to implement them. All of them are novel principles which call upon the state to provide a welfare government which can bring live ideals of the constitution. The directive principles are as follows:

Social, Political and Economic Justice

Article 38 directs the state to secure a social order with economic, political and social justice for the promotion and welfare of the people. Article 38(2) says that state shall strive to minimize the inequalities of income, status, facilities, opportunities etc.

Principles of Policy

Article 39 says that while framing policies, state would strive to provide adequate means of livelihood, equal pay for equal work, resource distribution, safety of citizens and healthy development of Children.

Free Legal aid

Article 39-A says that then state will try to make legal system fair and would provide free legal aid by means of some scheme or law etc.

Organization of Panchayats

Article 40 says that the state shall take steps to organize Panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self government. The 73rd and 74th amendments of the constitution later culminated as constitutionally backed framework for this DPSP.

Welfare Government

Article 41 says that state shall (within its limits of economic capacity & development) will make effective provisions for securing right to work, education etc. and to Public Assistance in case of unemployment, old age, sickness, disablement or any other case of undeserved want. This article is used as a guiding principle for various social sector schemes such as social assistance programme, right to food security, old age pension scheme, schemes for sick and disabled, MGNREGA etc.

Securing just and humane work and maternity relief

Article 42 says that state shall make provisions for securing just and humane conditions for work and for maternity relief.

Fair wages and decent standard of life

Article 43 says that the state will endeavor to secure by suitable legislations or economic organizations or in other way to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure & social cultural opportunities and in particular promote cottage industries on an individual or cooperative basis in rural areas.

Worker's participation in management

Article 43 A says that the state shall take steps, by suitable legislation or in any other way, *to secure the participation of workers in the management of undertakings, establishments* or other organizations engaged in any industry. Government had launched various schemes on workers participation in PSUs to fulfill this directive.

Promotion of Cooperatives

Article 43-B inserted by 97th amendment act in 2011 says that state shall endeavor to promote voluntary formation, autonomous functioning, democratic control and professional management of the co-operative societies.

Uniform Civil Code

Article 44 says that the State shall endeavor to secure for the citizens a **uniform civil code** throughout the territory of India.

Infant and Child Care

Article 45 says that State shall endeavor to provide early childhood care and education for all children until they complete the age of six years. The ICDS programme and other related schemes try to achieve this ideal.

Protection of SCs, STs, weaker sections from exploitation

Article 46 says The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.

Nutrition, Standard of living and public health

Article 47 says that the State shall regard the raising of the *level of nutrition* and *the standard of living of its people* and the *improvement of public health* as among its primary duties and, in particular, the State shall endeavor to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health. Most of the social development programmes such as National Health Mission, Mid Day Meal scheme, ICDS etc. which target the women, children, weaker sections of the society are inspired by Articles 45, 46 and 47.

Scientific agriculture and animal husbandry

Article 48 says that the State shall endeavor to organize agriculture and animal husbandry on modern and scientific lines and shall, in particular, take steps for preserving and improving the breeds, and prohibiting the slaughter, of cows and calves and other milch and draught cattle.

Environment and wildlife Protection

Article 48A says that shall endeavor to protect and improve the environment and to safeguard the forests and wild life of the country.

Protection of monuments and places and objects of national importance

Article 49 says that state will be obliged to protect every monument or place or object of artistic or historic interest, declared by or under law made by Parliament to be of national importance, from spoliation, disfigurement, destruction, removal, disposal or export, as the case may be.

Separation of judiciary from executive

Article 50 says that State shall take steps to separate the judiciary from the executive in the public services of the State.

Promotion of international peace and security

Article 51 says that state shall endeavor to promote international peace and security, maintain just and honorable relations between nations, foster respect for international law and treaty obligations in the dealings of organized peoples with one another; and encourage settlement of international disputes by arbitration.

Gandhian Principles as DPSP

Most of the DPSPs reflect the ideology of socialism and welfare state. Some of them are directly inculcating the Gandhian principles for example:

- Article 40: Organization of village Panchayats
- Article 43: Promotion of cottage industries
- Article 46: Promotion and protection of interests of educational and economic interests of SCs, STs, and other weaker sections of the society and to protect them from social injustice and exploitation
- Article 47: Prohibition of consumption of intoxicating drinks and drugs which are injurious to health
- Article 48: Prohibition of slaughter of cows, calves and other milch and draught cattle and to improve their breeds

DPSPs added by Amendments of Constitution

42nd Amendment 1976

Four Directive Principles were added by 42nd amendment as follows:

- To secure opportunities for healthy development of children (Article 39)
- To promote equal justice and to provide free legal aid to the poor (Article 39 A)
- To take steps to secure the participation of workers in the management of industries (Article 43 A)
- To protect and improve the environment and to safeguard forests and wild life (Article 48 A).

44th Amendment 1978

The 44th Amendment Act of 1978 added article 38(2) which said that state shall, in particular, strive to minimize the inequalities in income, and endeavor to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations.

97th amendment 2011

Article 43-B inserted by 97th amendment act in 2011 says that state shall endeavor to promote voluntary formation, autonomous functioning, democratic control and professional management of the *co-operative societies*.

Further, the 86th amendment changed the subject of article 45 and brought it among fundamental rights as article 21-A for children of 6-14 age. The same article was now a directive principle to state

to take care of the children below 6 years.

Significance of DPSP

The directive principles place an ideal before the legislator of India which shows that light while they frame the policies & laws. They are basically a code of conduct for the legislature and administrators of the country. The show the path to the leaders of the country which takes the country to achieve the ideal of the constitution embodied in the Preamble "Justice, Social, Economic, Political; liberty, equality and fraternity".

The Distinction between Fundamental Rights and Directive Principles

- The basic objective of the fundamental rights is to protect an individual from encroachment of his basic rights. The basic objective of the directive principles is to create a "welfare" state.
- The fundamental rights limit the state action towards an individual while the directive principles are positive instruction to the state to establish a just socioeconomic and political order.
- The Fundamental rights are justifiable i.e. a person can approach the court on their infringement, the directive principles are non-justifiable and one cannot approach to the court if they are not enforced by the state.

- The Fundamental rights are directly guaranteed by the Constitution, but the directive principles are only some guidelines and they require legislation for their implementation. For example Panchayati Rat Act was passed to implement the directive of article 40.

Amendment of DPSP

The Directive Principles of State Policy are subject to amendments via Article 368 only.

Comparison of Fundamental Rights and Directive Principles

Following are the key comparisons of FRs and DPSPs:

- While most FRs have some negative connotation i.e. they prohibit the state from doing something, the DPSP direct the state for doing something.
- While FRs are enforceable in court, DPSPs are not enforceable in court.
- While objective of FRs is to establish political democracy, objective of DPSPs is to establish a social and economic order.
- While FRs have legal sanction, DPSPs have moral sanction rather.
- While FRs are individualistic, DPSPs are collectivistic i.e. they promote the welfare of entire community.
- FRs don't need separate legislations as such because they are enforceable in court. To implement DPSPs, government needs to make separate laws.

Conflict between Fundamental Rights and Directive Principles

The conflict between fundamental rights and DPSPs has been subject to numerous litigations in the Supreme Court. After the Minerva Mills Case, Supreme Court gave the view that there is no conflict

between the Fundamental Rights and the DPSP and they were complimentary of each other. There was no need to sacrifice one for the sake of the other. If there is a conflict it should be avoided as far as possible.

Fundamental Duties

The 42nd amendment Act 1976 added a new part in the constitution part IVA. It incorporated the fundamental duties by inserting a new article 51A below article 51. The objective of incorporating the fundamental duties is to place before the country a code of conduct, which the citizens are expected to follow. The Fundamental duties are as follows:

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

Fundamental Duties v/s Directive Principles

The fundamental duties were included in the constitution by the 42nd amendment act 1976. They are inspired by the "Constitution of USSR". As the directive principles are addressed to the state, the fundamental duties are addressed to the Citizens. The citizens enjoying the fundamental rights must respect the ideals of the constitution, to promote harmony and spirit of the brotherhood.

Swaran Singh Committee

Sardar Swaran Singh committee was constituted by Indira Gandhi soon after emergency was imposed in the country. The objective of this committee was to study the question of amending the constitution in the light of past experiences and recommend the amendments. The 42nd amendment

act which is also called "Mini Constitution" which amended many articles and even the Preamble was a result of the recommendations of Sardar Swaran Singh committee. The 10 fundamental duties were also added as per the recommendations of Sardar Swaran Singh committee.

General Knowledge Today

Prelims Polity-4: Union Legislature and Executive

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Union Legislature and Executive

Most of the modern democracies follow the Montesquieu Model of Separation of Powers in which government is divided into three estates viz. executive, legislature and judiciary. Further, the ***press / media*** is sometimes called fourth estate because it has considerable influence upon public opinion. While main function of the legislature is to make laws and control finances, main function of executive is to execute or implement the laws. Judiciary is mainly responsible for administration and interpretation of law. For India:

- The Union Legislature is Parliament with its two houses viz. Lok Sabha (Lower House) and Rajya Sabha (Upper House)
- The Union Executive is President, Vice President, Council of Ministers and Attorney General.
- The Union Judiciary is only Supreme Court.

Articles 52 to 78 in Part V of the Constitution deal with the Union executive.

President of India

India's president is head of the Indian state, first citizen of India and supreme commander of the Indian armed forces.

Qualification to become President of India

Article 58 of the constitution lays down the qualifications of a president in India. These qualifications are:

- He should be a citizen of India,
- He must have completed the age of 35 years
- *He must be qualified to become a Lok Sabha member.*
- He should not hold any office of profit under Union or state government.

Election Process

The president is elected for a term of 5 years. He may terminate his own term by writing a resignation *addressed to Vice president.* He can be removed from the office ONLY by impeachment. He is eligible to re-elect for the same office for *unlimited times.* The president is not elected by the people directly. A president is elected by an electoral college which is made of:

- Elected members of parliament (MPs from Lok Sabha as well as Rajya Sabha).
- Elected members of State legislative members, including that if NCT of Delhi and Pondicherry

Members of legislative councils in the states where there are bicameral legislatures can NOT participate in election of President. Further, nominated members of Lok Sabha and Rajya Sabha don't participate in election of President.

Proportional Representation

With a view to ensure uniformity of the representation of different states and parity between the Union and the states, the constitution in article 56 provides an ingenious method. The formula for value of vote for an MLA is as follows:

$$\text{Value of Vote of MLA} = \frac{\text{Population of the state}}{\text{Elected members of the legislative assembly}} \times \frac{1}{1000}$$

The formula for value of the vote for an MP is as follows:

$$\text{Value of Vote of MP} = \frac{\text{Total Number of the Votes assigned to all elected MLAs}}{\text{Total Number of elected MPs}}$$

This is called system of proportional representation. In this, the MPs and MLAs *do not have one vote each but their votes are equal to the average number of people they represent*. Since MPs represent the whole country they have more votes, and MLAs have fewer votes than MPs as they represent only the people in their states. MPs in the Lok Sabha and Rajya Sabha have 708 votes each {as per Census 1971}. Compared to this, MLAs have about 100 or 200 votes, depending on the size of their states.

MLAs from Uttar Pradesh have largest number of votes. The value of vote of each Member of the Legislative Assembly of Uttar Pradesh is 208 and that **of Sikkim is** 7.

The population of the States for the purposes of calculation of value of votes for the Presidential Election shall mean the population as ascertained at the 1971-census.

Process of Election

The elections of President are conducted by Election Commission. By convention, the Secretary General, Lok Sabha and the Secretary General, Rajya Sabha is appointed as the Returning Officer by rotation. The value of votes is predetermined as mentioned above. The MPs and MLA cast vote on the ballot paper / machine by marking their preference to the candidates. Once all the votes have been cast, the total valid votes are multiplied by the value of each vote and that total is credited to the candidate as the total value of votes secured. To win the election, the candidate needs to secure a quota of votes which is arrived at by dividing the total value of valid votes by 2 and adding one to the quotient, ignoring the remainder, if any.

For example, assuming the total value of valid votes polled by all candidates is 1,00,001. The quota required for getting elected is:

$$\frac{100,001}{2} + 1 = 50,000.50 + 1 \text{ (ignore .50)}$$

$$= 50001$$

If any candidate has secured the above quota of votes, he/ she is declared elected. If none of them secures the above data then **Returning Officer** proceeds further to second round of counting during which the candidate having lowest value of votes of first preference is excluded and his votes are distributed among the remaining candidates according to the second preference marked on these ballot papers. The other continuing candidates receive the votes of excluded candidate at the same value at which he/she received them in the first round of counting. The Returning Officer will go on excluding the candidates with lowest number of votes in subsequent rounds of counting till either one of the continuing candidates gets the required quota or till only one candidate remains in the field as the continuing candidate and shall declare him/her as elected.

Dispute in the Presidential election

All doubts or disputes arising out of election of the president are decided by the Supreme Court which is the only authority to try an election petition regarding President's election. A petition regarding the dispute in election can be filed by any of the **presidential candidates** or any 20 **or more electors** as joint petitioners. Petition should be filed within 30 days of declaration of the result. Further, if election of a person as President is declared void by the Supreme Court, the acts done by him before the date of such judgement of Supreme Court don't become null / void and continue to remain in force.

President in Office: Conditions

Although *Parliament of India is made of President, Lok Sabha and Rajya Sabha*, yet President is not a member of any house of the parliament or any state legislature. If a presidential candidate is a MP or MLA, he will need to vacate the seat once elected. Further, he should not hold any office of profit.

Salary and Emoluments

The president of India is entitled to rent free accommodation, allowances and privileges which are decided by parliament by law. The salary and allowances of the president are charged from Consolidated Fund of India. The original constitution provided Rs. 10,000 per month salary for president. In 1998 it was raised to Rs. 50,000. In 2008 the salary was raised to Rs. 1.5 Lakh per month.

Oath and Affirmation

Before taking charge, the President has to subscribe to an oath which inter alia included the oath to *preserve, protect and defend the constitution*. In this sense, President takes oath as guardian of Indian Constitution. However, there are several other provisions which put several restrictions on the way president performs his duties. For example, any amendment of the constitution which might transgress the basic features or transgress the basic aspirations of the people, then article 368 as amended by 24th amendment says that president will give assent to such bill. However, such an act can come to Supreme Court for scrutiny and Supreme Court can nullify that act. Due to this, it is

Supreme Court which is real guardian of the Constitution.

Impeachment of President

As per Article 61, President of India can be impeached on ground of *violation of the Constitution.* However what amounts to violation of the Constitution has not been defined. The process of impeachment can begin in any of Lok Sabha or Rajya Sabha. The charges for impeachment should be signed by 1/4 members of the house in which the process begins and a notice of 14 days should be given to the President. The impeachment bill has to be passed by *majority of not less than two-thirds of the total membership of the House {special majority}.* One passed in that house, the bill reaches to another house, which shall investigate the charges. President has right to appear and be represented in case of such investigations. If other house also sustains those charges, then it would again need to pass the bill by special majority and thus president stands removed from the office on which the bill is passed in other house. Since it is a bill for removal of president himself, no presidential assent is needed here.

- It worth note here that the nominated members of Lok Sabha and Rajya Sabha don't participate in *election but* ***participate in impeachment*** of president.
- The elected members of legislative assemblies of the states though participate in election of the President, but have no role to play in his impeachment.
- The nominated members of state assemblies and elected as well as nominated members of legislative councils of the bicameral houses in states participate in neither election nor impeachment of president.

No president of India has been impeached so far.

Vacancy in Office of the President

A vacancy in office of the president may occur due many reasons such as

- Expiry of his tenure of five years
- Resignation or impeachment
- Death or any other disqualification.

The election to fill a vacancy arising out of expiration of the term of president must be completed before expiration of his / her term. If there is a delay, the president continues to hold the office, until his / her successor takes charge.

If any vacancy arises out of death/ resignation / removal, it must be filled within 6 months. During the vacancy in the office of president, Vice president would be discharging the duties of a president. *If Vice President is also NOT available, Chief Justice of India will discharge the function of the president. If Chief Justice of India is also unavailable, then senior most judge of the Supreme Court will discharge this function.* Any person (vice president / chief justice of India/ senior most Judge of Supreme Court)

while discharging the duties of the president shall be entitled to all powers and privileges of the president.

Example: In 1969, when President Dr Zakir Hussain died, Vice-President VV Giri worked as acting president. However, VV Giri resigned soon to contest election of the President. Due to this, Chief Justice of India, M Hidayatullah worked as the officiating President from 20 July, 1969 to 24 August, 1969.

President to occupy office for more than one term

Only Dr. Rajendra Prasad has occupied the office of President for two terms.

Presidents to die in office

So far, only two presidents viz. Dr Zakir Hussain and Fakhruddin Ali Ahmed have died during their term of office

Powers of President of India

President of India is the head of the government and supreme commander of armed forces. His powers can be classified into several heads such as executive powers, legislative powers, financial powers, judicial powers, Diplomatic powers, Military powers as well as emergency powers.

Executive powers

Article 53(1) vests the executive power of the union in the president. All executive actions of the Government of India and all contracts and assurances of the property are made by the Government of India are formally taken in the name in president.

Appointments made by president

President of India makes appointment to other constitutional officers and other important members of union government. These include:

- Prime Minister
- Other ministers on advice of Prime Minister
- Chief Justice of India
- Other Judges of Supreme Court on advice of the Chief Justice
- Chief Justice and other judges of high courts
- Chairman and other members of UPSC and Joint Public Service Commissions
- Attorney General of India
- Comptroller and Auditor General of India
- Chief Election Commissioner and other members of election commission
- Governors of states
- Administrators of Union Territories
- Chairman and members of National Commission of Scheduled Caste
- Chairman and members of National Commission of Scheduled Tribes
- Finance Commission chairman and members

- Central Chief Information Commissioner
- Central Vigilance Commissioner
- Chairperson of National Human Rights Commission
- Union Lokpal Chairman and its members on recommendation of selection committee

At the same time, also note that:

- Chairperson of National Commission of Women is *not* appointed by President but by Central Government.
- Solicitor General is *NOT* appointed by President. His appointment is done by Central Government.
- *The chairman and member of state public service commissions are although appointed by Governor, the removal of any of them (chairman or members) will be done by president.*

Role of Council of Ministers in Executive Powers

The executive powers vested in the president have to be exercised in accordance with the advice of the Council of Minister as per Article 74(1). However, he has the power to send back the advice to council of Ministers for reconsideration. If the council of Ministers adheres to the previous advice, the president has to act as per this advice. This is the reason that real executive powers are with the Central Government.

Further, Article 74 (2) says that what advice was tendered by minister to the president shall not be inquired into in any court. Thus, relation between president and council of ministers are confidential and cannot be questioned in a court. Further, constitution also mentions some duties of the Prime Minister towards President in article 78. These are:

- To communicate to the President all decisions of the Council of Ministers Regarding the administration and legislation of India.
- To furnish such information as the President may call for.
- To submit for the Consideration of the Council of Ministers as desired by the President.

Legislative Powers of President

President as part of Parliament

The parliament is composed of president, Lok Sabha and Rajya Sabha, thus president of India is a inseparable part of Indian Parliament despite not being member of any house.

Power to summon, prorogue two houses of parliament

President has power to summon or prorogue {Prorogue means discontinuing without dissolving. It refers to end of a session of parliament) the two houses of parliament. After a prorogation, the house must be summoned within 6 months. The President may dissolve the Lok Sabha. (Rajya Sabha is never dissolved). After the general Elections, president addresses both the houses of the parliament. He may address either house or a joint sitting.

Nomination of MPs

President nominated 2 members of Anglo Indian Community in the Lok Sabha (Article 331). He also nominates 12 members of Rajya Sabha if they excel in Art, Literature, Science, Social Science, Culture etc. (Article 80)

Giving assent to bills

The bills passed by the parliament become acts only after assent of president. When a bill is send to President after it is passed in parliament, President has the following options:

- can either give his assent (he must give assent in case of Constitution Amendment bill)
- withhold his assent *if it is not a Constitution amendment bill*
- Return the bill to the parliament for reconsideration *if it is not a money bill*

When Parliament passes again a bill sent to it with or without amendments, the president has to give assent to that bill.

The bills passed by state legislatures are sent to governor for assent. Governor has been given power to reserve a bill for consideration of president, provided such bill is not a money bill of that state. When the governor sends such bill to president, president has the following options:

- give his assent to the bill
- withhold his assent to the bill
- Direct the governor to return the bill for reconsideration of the state legislature. If the state legislature again passes the bill with or without amendments; and if the governor again sent to president, it is *NOT obligatory for president to give assent to such bill*.

Pocket veto

In case of an ordinary bill or a bill got introduced by a private member and passed by both houses, the president can just keep the bill in his pocket and forget it. When president neither gives assent nor returns the bill, it is also called "**Pocket Veto**". Pocket Veto is applicable to only ordinary bills. This is also called **Absolute Veto.**

President's Assent in case of Constitution Amendment Bills

Before 24th amendment 1971, President could withhold assent to a Constitution amendment bill. After this amendment, it has been made clear that once passed by parliament, president has to give his assent. Thus, while president cannot block a constitution amendment bill, such bill are subject to judicial scrutiny and can be nullified by Supreme Court if they are violative of basic structure doctrine.

The President may either give or withhold his assent to a Money Bill. Under the Constitution, a Money Bill cannot be returned to the House by the President for reconsideration.

President's assent in case of Money Bills

Money bills can be introduced in the Parliament only with prior recommendation of President. Due

to this President can agree to that bill or withhold his assent but can NOT return a money bill to the house for reconsideration.

The bills that need prior recommendation of President

The bills that need prior recommendation of the president for introduction in parliament are as follows:

- Any bill that seeks to alter the boundaries of the states and names of the states. (Article 3)
- Money Bill (as per Article 110)
- Any bill which affects the taxation in which the states are interested (Article 274)
- State Bills which impose restriction upon freedom of trade (Article 304).

Judicial Powers / Power to Pardon

Article 72 says that the President shall have the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence. The meaning of these terms is as follows:

- **Pardon:** Complete pardon
- **Reprieve:** Temporary suspension of sentence
- **Respite:** awarding less sentence

- **Remission:** Reducing amount of sentence
- **Commutation:** Changing one punishment to another

Comparison of Pardoning Power of President and Governor

Governor also has powers to pardon under article 161. However, while president can grant pardon to a person awarded death sentence; governor does not enjoy this power. *Governor can commute death sentence to some other kind of sentence.*

Role of Union Government and Supreme Court in Pardoning Power

Power to grant pardon is not absolute and is exercised by the President on the advice of Council of Ministers like any other powers. Further, the power to pardon is subject to judicial review and Supreme Court retains the power of judicial review even on matters which has been vested by the Constitution solely in the Executive.

Military Powers of President

Article 53 vests the supreme command of the Armed Forces of India in the President. President of India can declare war or conclude peace, under the regulation by the parliament.

Diplomatic Powers of President

India is represented on International forum by President of India. He sends and receives ambassadors.

All international treaties and agreements are concluded on behalf of the President subject to ratification by the parliament.

Emergency Powers

President has been conferred upon by extraordinary powers in case of national emergency (Article 352), President's rule (Article 356 & 365) and financial emergency (article 360).

Ordinance Making Powers of President

Parliament is not always in session and when it becomes necessary to have a law on some urgent public matter, the constitution via article 123 provides the power to the president to issue ordinances if he is satisfied with the circumstances of issuing such ordinance. Ordinances are promulgated when parliament is not in session.

The ordinance has similar effect to an act of parliament. However, every ordinance must be laid before both houses of the parliament *within 6 weeks* from the reassembling of the parliament. If it is not placed in parliament within 6 weeks from reassembly, it becomes invalid. If it does not get approval of parliament, it becomes invalid. However, it may be withdrawn by the president.

Maximum Possible Life of an Ordinance

An ordinance is in force as long as parliament does not meet. But, there cannot be a gap of more than 6 months between two meetings of parliament. Further, a time of 6 weeks is given after the parliament reassembles. So, 6 months + 6 weeks $=7^{1/2}$ month is maximum possible life of an ordinance.

Reports and Statements get by President to be laid before parliament:

- Annual Financial Statement
- Reports of Auditor General
- Annual report of UPSC and JPSCs
- Reports of Finance Commission
- Reports of Special officers of SC & ST
- Report of the Special officers of Linguistic Minorities and Backward Classes

Vice-President of India

The officer of Vice-President is second highest public office in India. Vice-President has second rank in the order of precedence. However, practically, his office has been created to provide political continuity of the Indian state. He works as acting president when president is not available. His main function is in the form of *ex-officio* Chairman of Rajya Sabha. Thus, in this context, India's Vice President is equivalent to speaker of Lok Sabha.

Eligibility to become Vice-President of India

As per article 66, the candidate contesting for election of Vice-President of India should fulfill the below conditions:

- He must be a citizen of India
- He must have completed age of 35 years

- He cannot hold an office for profit.
- *He must be qualified to become a member of Rajya Sabha.*

Thus, while presidential candidate should be qualified to become a member of Lok Sabha, Vice-presidential candidate should be qualified to become a member of Rajya Sabha. In reality it does not make much difference because minimum age for Lok Sabha MP is 25 years and that of Rajya Sabha MP is 30 years. This condition has been already overridden because both presidential and vice-presidential candidates should have completed 35 years.

Election, term of office, removal, Oath

Like Presidential election, election of vice president is held via system of proportional representation by means of the single transferable vote {indirect election}. However, Vice President is elected by Lok Sabha and Rajya Sabha MPs. The MLAs or MLCs have no role to play here. This sounds to be an anomaly but it is justified by giving logic that Vice President works as president of the whole country in rare occasions when President is not available. In normal circumstances, his work is to preside the Rajya Sabha.

Joint Sitting in Election of Vice-President

The original constitution laid down the method of election of Vice President of India by members of both Houses of Parliament *assembled at a joint meeting*. However, later it was felt that the requirement that both houses should assemble at a joint sitting for the election of the Vice-President, is *unnecessary and has practical difficulties*. So, this difficulty was removed via 11th amendment in 1961. Since then, the method of voting is same as that in case of election of President.

Doubts and Disputes in election

The doubt and dispute arising out of election of President and / or Vice President can be challenged in the Supreme Court.

Term and removal

The term of office of the Vice President is five years. The term may end earlier by resignation which should be addressed to the President. The term may also terminate earlier by removal. *The Vice President can be removed by* ***a resolution*** *by the members of the Rajya Sabha*. To move such resolution, a 14 days' notice is to be given. Such a resolution, though passed by the Rajya Sabha only, but must be agreeable to the Lok Sabha. There is no need of impeachment of Vice President for removal.

Functions of Vice President

Vice President is the *executive Chairman of the Rajya Sabha* and cannot hold any other office of the profit. However, during the period when he/ she acts as the officiating President of India, he / she shall *not act as chairman of the Rajya Sabha and shall not be entitled to the salary or allowances payable to the chairman of the Rajya Sabha.* Article 65 says that in case the President is unable to discharge his/ her duties for reasons such as illness, resignation, removal, death or otherwise, the Vice President

shall carry out functions of the President. In such case, he/ she shall be entitled for the salary, allowance and all privileges of the President.

Notable points about President and Vice-President

- While office of President is designed on British model, office of Vice-President of India is designed on lines of American Vice-President.
- While presidential candidate should be qualified to be a Lok Sabha MP, Vice-Presidential candidate should be qualified to be a Rajya Sabha MP.
- While the president takes the oath of office to ***preserve, protect and defend the Constitution***, Vice President takes oath of *true faith and allegiance to the Constitution*.

Council of Ministers & Prime Minister

Articles 74 & 75 of the constitution of India deal with the Council of Ministers and Prime Minister. These articles have below provisions.

- **Article 74(1):** 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. The president may require the council of ministers to reconsider such advice and president shall act in accordance with such advice reconsidered.
- **Article 74(2):** What advice was tendered to the president cannot be inquired into any court.
- **Article 75(1):** 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.
- **Article 75(2):** The Ministers shall hold office during the pleasure of the President.
- **Article 75(3):** The Council of Ministers shall be collectively responsible to the House of the People.
- **Article 75(4):** Before a Minister enters upon his office, the President shall administer to him the oaths of office and of secrecy according to the forms set out for the purpose in the Third Schedule
- **Article 75(5):** A Minister must be a member of any of the houses within 6 months.
- **Article 75(6):** Parliament will decide the salary and allowances of the Ministers and until parliament decides, so shall be as specified in the Second Schedule.

Constitutional position of Prime Minister

While President is the nominal executive authority *(de jure* executive), Council of Ministers headed by Prime Minister is the real executive authority *(de facto* executive). Further, while President is the head of the state, Prime Minister is the head of the government.

The Council of Ministers is Real Executive

Council of Ministers (CoM) is *real executive* because President acts in accordance with the advice

tendered by it. The president may ask the CoM to reconsider the advice, but if the it decides to stick to the previous advice, the president acts as per this reconsidered advice. Advice tendered to the president by the Council of Ministers cannot be inquired by anybody or any court of law.

Ministers shall hold office during the pleasure of the president

All the ministers are appointed by the president on the advice of the Prime Minister. It is the Prime Minister who allocates the portfolio to other ministers. The prime Minister may call for the resignation of any minister at any time. In case the minister refuses, the prime minister may advice the President to dismiss the minister. This is also called the "Rule of Individual Responsibility". This individual responsibility powerful weapon of the President in the hands of the Prime Minister. Losing confidence of the Prime Minister leads to *dismissal by the President.*

Principle of Collective Responsibility

Council of Ministers is collectively responsible to "Lok Sabha". This means that if the Ministry loses the confidence of the "Lok Sabha", all ministers *including those who are from Rajya Sabha* have to go. The entire ministry is obliged to resign. This means that ministers fall and stand together. This is called "*Rule of Collective Responsibility*".

A Minister must be an MP

A Minister (including Prime Minister) must be a member of any of the house of Parliament. If at the time of appointment a minister or PM is not a member of any house, he must attain membership of any of them within 6 months.

Maximum numbers of Ministers

The total number of Ministers, including the Prime Minister, in the Council of Ministers cannot exceed the 15% of total numbers of members in Lok Sabha. Since the maximum strength of Lok Sabha is fixed 552 in constitution, there can be maximum 82-83 members in Council of Ministers.

Appointment of Prime Minister

There is no specific procedure for appointment of Prime Minister in constitution. However, convention is that President appoints the leader of majority party in Lok Sabha as Prime Minister. However, in case of a hung parliament, President exercises his discretion in selection and appointment of Prime Minister. In this case, prime minister is given time to seek vote of confidence in the house in a stipulated time (generally a month, decided by president).

Other important notes on Prime Minister

- The term of Prime Minister is not fixed. Like any other minister, he holds office during the pleasure of the president. However, it does not mean that he can be junked by President any time. President cannot dismiss him until he enjoys confidence in Lok Sabha.
- Prime Minister allots and changes when necessary the portfolio of the ministers. He presides the Council of Ministers and Union Cabinet.
- *Resignation or death of the Prime Minister would dissolve the entire Council of Ministers.*

- Prime Minister sets the agenda of the Lok Sabha along with the Speaker
- Prime Minister advises the President as regard to the summoning and proroguing of the Parliament
- Prime Minister is answerable to the Parliament for all policy decisions of his Government and his Ministers
- Prime Minister can recommend the President to dissolve the Lok Sabha if he feels so

Bodies of which Prime Minister is Chairman

- Union Cabinet
- Erstwhile Planning Commission and National Development Council
- NITI aayog
- National Integration Council
- Inter-state Council
- National Water Resources Council
- Prime Minister National Relief Fund

Types of Ministers

There are three types of ministers viz. Cabinet Ministers, Ministers of State, Deputy Ministers. Cabinet ministers are of highest rank and they hold key ministries. However, salary of a cabinet minister is same as that of a minister of state. Usually, minister of state assists the cabinet minister in his functions. At the same time, state ministers can be given independent charge also. In such situation, a state minster performs same functions as cabinet ministers.

Difference between Cabinet and Council of Ministers

- Cabinet is made of Cabinet Ministers, while Council of Ministers is made of all ministers. Thus, the later is bigger than former. Both are headed by Prime Minister.
- Cabinet meets as a body regularly to perform government business and make decisions. Such frequency of meeting and collective work is not seen in CoM.
- While constitution has detailed provisions about CoM, the term cabinet appears only once in article 352 and that too was inserted via 44th amendment act.

Attorney General of India

Article 76 Provides for an Attorney General of India. Attorney General is Indian government's chief legal advisor and its primary lawyer in the Supreme Court of India.

Qualification to become AG

The person must be a person qualified to be appointed as a **Judge of** the Supreme Court. The following are pre-qualifications for a Judge of the Supreme Court:

- Citizen of India
- Minimum five years service as a Judge of a High Court or 10 years an advocate of a High

Court

- A distinguished jurist in the opinion of the president.

Appointment and remuneration

As per article 76(1) President of India appoints Attorney General for a term which is decided by President. The attorney general holds the office during the pleasure of the President. The Attorney General represents the government but is also allowed to take up private practice, provided the other party is not the state. *Because of this he is not paid salary but a retainer to be determined by the President.* The Attorney General gets a retainer equivalent to the salary of a judge of a Supreme Court. This retainer is paid from Consolidated Fund of India.

Functions

The Attorney General is the first law officer of the government of India and acts as top advocate for Union Government. He is responsible for giving advice to President / Government of India upon such legal matters and to perform such other duties of legal character which are assigned to **him by the President**.

Attorney general has right of audience in all courts within the territory of India. He has also the right to speak and take part in proceedings of both the houses of parliament including joint sittings. However, he cannot vote in parliament. Further, attorney general can also be made a member of any parliamentary committee but in the committee also, he has no power to vote.

Attorney General has all the powers and privileges that of a member of parliament.

Private Practice

Attorney General is not a full time Government servant. He is an advocate of the government and is allowed to take up private practice, provided the other party is not the state. Further, he can not defend the accused persons in criminal matters without permission of the government.

Attorney General versus Advocate General

- Attorney General is the highest law officer of the country, while the Advocate General is the highest law officer of a State in India.
- Attorney general is appointed by President, Advocate general is appointed by the Governor of the state (article 165).
- The advocate general holds the office during the pleasure of the Governor and his remuneration is decided by Governor of the state in question.

Attorney General versus Solicitor General

While the Attorney General is highest law officer of the country, solicitor general is the second highest law officer. A Solicitor General assists the Attorney General of India. The Solicitor General is himself/ herself is assisted by four Additional Solicitors Generals. The job of Solicitor General of India is confined to appearing in the courts on behalf of Union of India.

Attorney General Versus Law Minister

If there is a need to seek advice on legal matters, Law Minister is superior to Attorney General. In fact all references are made by the law ministry to the Attorney General.

India's Attorney General Versus UK's Attorney General

In Britain the **Attorney General is a member of the Cabinet.** In India Attorney General is not a member of the cabinet and in cabinet, there is a Minister of law. Though the Attorney General has privilege to address both the houses of the parliament and enjoys same immunities and privileges as other MPs in India.

Comptroller and Auditor General

As per article 148, Comptroller and Auditor General is appointed by President. The CAG can be removed only on an address from both house of parliament on the ground of proved misbehavior or incapacity. The CAG vacates the office on attaining the age of 65 years age even without completing the 6 years term. {Discussed in Mains Modules in Details}

Parliament of India

India has a bicameral parliament made of President, Rajya Sabha (Upper House / Council of States) and Lok Sabha (Lower House / House of People). While Rajya Sabha represents states and union territories, Lok Sabha represents people of India.

Rajya Sabha

Rajya Sabha is the upper house of parliament which represents the states and union territories. Its membership is fixed to maximum 250 members of which 238 are elected by the representatives of states and union territories while 12 members are nominated by President on account of their excellence in literature, science, art or social service. The present strength of the Rajya Sabha is 245, of whom 233 are representatives of the States/Union Territories and 12 are nominated by the President.

Allocation of Seats in Rajya Sabha

Allocation of seats in Rajya Sabha is listed in *Fourth Schedule* of the Constitution. The seats are allocated to each state mainly on the basis of its population. Due to formation of new states or reorganization of states, the seats allocated the states keeps on changing. Current allocation is shown in below table:

State	Seats	State	Seats
Uttar Pradesh	31	Chhattisgarh	5
Maharashtra	19	Haryana	5
Tamil Nadu	18	Jammu & Kashmir	4

State	Seats	State	Seats
Bihar	16	Himachal Pradesh	3
West Bengal	16	National Capital Territory of Delhi	3
Karnataka	12	Uttarakhand	3
Andhra Pradesh	11	Arunachal Pradesh	1
Gujarat	11	Goa	1
Madhya Pradesh	11	Manipur	1
Odisha	10	Meghalaya	1
Rajasthan	10	Mizoram	1
Kerala	9	Nagaland	1
Assam	7	Puducherry	1
Punjab	7	Sikkim	1
Telangana	7	Tripura	1
Jharkhand	6		
Nominated			**12**
Total			**245**

It is clear from the above table that maximum seats have been allocated to Uttar Pradesh. Further, nine states and UTs viz. Arunachal Pradesh, Goa, Manipur, Meghalaya, Mizoram, Nagaland, Puducherry, Sikkim, Tripura have one seat each. Only two union territories viz. NCT of Delhi and Puducherry have representation in Rajya Sabha.

Elections of Rajya Sabha Members

The 233 elected members of Rajya Sabha are elected by the *elected members of legislative assemblies* of the states in accordance with the System of Proportional Representation by means of Single Transferable Vote. Thus election of Rajya Sabha members is an indirect election. We note here that nominated members of legislative assemblies and members of legislative councils in bicameral legislatures *don't participate* in the election of Rajya Sabha members.

Rajya Sabha term

Rajya Sabha has an indefinite term and not subject to dissolution (Article 83.1). The term of an Individual Rajya Sabha member is 6 years and **one third** of its members retire every two years, in accordance with the rules as prescribed by the parliament of India.

Reservation of Seats for SCs, STs, OBCs, Women etc

There is no reservation of seats in Rajya Sabha.

Presiding Officers of Rajya Sabha

Vice President of India is the ex-officio chairman of Rajya Sabha. Rajya Sabha members also choose a Member of the Rajya Sabha as the Deputy Chairman of Rajya Sabha.

Lok Sabha

Lok Sabha is the lower house of the parliament which represents people. Article 81 deals with the Composition of the Lok Sabha. The maximum strength of Lok Sabha is 552 members of which 530 are elected from states, 20 are elected from Union Territories and 2 are nominated by President from Anglo-Indian community if the president thinks that the community is not adequately represented in the house.

The parliament by law can change the strength of the Lok Sabha. For example, when the first General elections were held in 1951-52, the strength of the Lok Sabha at that time was 489. Currently, constitution has placed a bar for such changes until relevant figures are published of first census taken after the year 2026.

Elected Members of Lok Sabha from States

The total seats for elected members of Lok Sabha are distributed among the states in such way that ratio between the number of seats allotted to each State and the population of the State is, so far as practicable, the same for all States. Further, each State is divided into territorial constituencies in such manner that the ratio between the population of each constituency and the number of seats allotted to it is, so far as practicable, the same throughout the State.

Elected Members of Lok Sabha from Union Territories

Originally, the Constitution had left to the parliament to decide by law how representatives of people from Union territories will be elected. Parliament enacted the Union Territories (Direct Election to the House of the People) Act, 1965, by which the members of Lok Sabha from the union territories are also chosen by

direct election. Thus, as far as election of members of Lok Sabha is concerned, there is no difference between states and union territories.

Nominated Members of Lok Sabha

Representation of the Anglo-Indian Community is provided by the Constitution as per article 331 and NOT by article 81. Article 331 says that: Notwithstanding anything in article 81, the President may, if he is of opinion that the Anglo-Indian community is not adequately represented in the House

of the People, nominate not more than two members of that community to the House of the People.

Multimember constituencies

Each Constituency chooses 1 member. But this was not as it since beginning. Prior to 1962, there were both single – member and multi member constituencies. These multi – member constituencies used to elect more than one member. *The multimember constituencies were abolished in 1962.*

Election of Lok Sabha Members

Article 326 provides that the elections for Lok Sabha MPs have to be direct election on the basis of Adult suffrage. The age to be eligible for voting was 21 years originally and was reduced to 18 years by 61st amendment act 1988.

Lok Sabha Term

Lok Sabha has a fixed term of 5 years and can be dissolved by the President at any time. The original Constitution had a term of Lok Sabha as 6 years. It was changed to 5 years by Constitution 44th Amendment Act 1978. *While a Proclamation of Emergency is in operation, 5 year period for Lok Sabha may be extended by Parliament by law for a period not exceeding one year at a time and not exceeding in any case beyond a period of six months after the Proclamation has ceased to operate.*

Reservation in Lok Sabha

As per article 330 (1) seats are reserved in Lok Sabha for SCs and STs. Currently, 84 (15.47%) seats are reserved for SC and 47 (8.66%) seats are reserved for ST.

Presiding Officers of Lok Sabha

The speaker and deputy speakers are presiding officers of Lok Sabha who are elected by the members of that house.

Members of Parliament

In India, the members of parliament are members of Lok Sabha and Rajya Sabha. Both the houses have elected as well as nominated members. The elected members of Lok Sabha are elected directly on the basis of adult suffrage; the elected members of Rajya Sabha are indirectly elected by members of legislative assemblies of states. While 2 members of Anglo-Indian community are nominated by President in Lok Sabha, 12 members who have excelled in various fields such as art, literature, science, social service etc. are nominated by president in Rajya Sabha. The term period of an elected member of the Rajya Sabha is 6 years, while the same for an elected member of Lok Sabha is 5 years subject to other conditions.

Qualifications to Become an MP

As per article 84 of the constitution, a person is qualified to be a member of parliament provided he:

- is a citizen of India
- has completed 30 years of age in case of Rajya Sabha and 25 years in case of Lok Sabha.
- possesses such other qualifications as may be prescribed in that behalf by or under any law

made by Parliament.

The third condition above led the parliament to include other qualifications for MPs in the Representation of People Act (1951). These qualifications are as follows:

- Only an elector can be elected. Thus, the candidate must be registered as a voter in a parliamentary constituency and *must be eligible to vote*. If due to any reason the person loses eligibility to vote, he would lose eligibility to contest also. For example if a person is jailed or in lawful detention at the time of elections, he shall *not be eligible for voting*. However, if a person is in preventive custody, he can vote. These define if a person is able to contest for election of MP or not.
- It is *not necessary* that a person should be registered as a voter in the same constituency. This is applicable for both Lok Sabha and Rajya Sabha.
- A person from reserved category only can contest election if the Lok Sabha seat is reserved for these categories. However, an SC/ST person can contest election on an unreserved seat also.

Disqualification grounds

The constitution of India has provided (in article 102) that a member of parliament will be disqualified for membership if:

- He holds any office of profit under the Union or state government (except that of a minister or any other office exempted by Parliament)
- He is of unsound mind and stands so declared by a court.
- He is an undischarged insolvent.
- He has ceased to be a citizen of India.
- He is disqualified under any *other law by parliament*

The last condition above led the parliament to include some other conditions for disqualification in Representation of People Act (1951). These are as follows:

- He must not have been found guilty of certain election offences and corrupt practices
- He must not have been convicted for any offence that results in imprisonment for two or more years. However, detention under preventive detention law is not disqualification.
- He must not have failed to lodge an account of election expenses within stipulated time.
- He must not have any interest in government contracts, works and services.
- He must not be a director or managing personnel in a company / organization in which government has at least 25% share.
- He must not have been dismissed from government service due to corruption or disloyalty to state.

- He must not have been convicted for promoting enmity between groups.
- He must not have been punished for supporting social crimes such as untouchability, sati, dowry etc.

Disqualification on Ground of Defection

Apart from article 102, the **Tenth Schedule** to Constitution provides for disqualification of the members on ground of defection. Defection refers to desertion of one's party in favor of an opposing one. As per the provisions of the Tenth Schedule, a member may be disqualified if he:

- Voluntarily gives up the membership of his political party which gave him ticket to contest and win
- Votes or abstains from voting in the House contrary to any direction issued by the political party to which he belongs, unless such voting or abstention has been condoned by the political party within fifteen days.
- A *member elected as an independent candidate shall be disqualified if he joins any political party after his election.*
- However, a nominated member is allowed to join a political party provided he joins such political party of his choices within a period of six months. After that period, joining a political party would lead to defection and disqualification.

Who decides the question of disqualification?

- The question whether a member is subject to disqualification in *all other matters except under 10th schedule (disqualification)* is decided by President. However, President should obtain the opinion of the election commission before taking such decision.
- The question of disqualification under Anti-defection / Tenth Schedule is decided by the Chairman in the case of Rajya Sabha {i.e. Vice-President} and Speaker in the case of Lok Sabha.
- The decision of Chairman / Speaker in this condition is subject to judicial review.

Other conditions of vacating the seats

Apart from the disqualification grounds mentioned in Constitution, RoPA 1951 and Tenth schedule, a member of parliament would need to vacate the seat in follow circumstances:

- A member of parliament can resign from his seat. The resignation letter is addressed to Chairman of Rajya Sabha (Vice-President) and Speaker of Lok Sabha.
- The Chairman or Speaker can declare the seat vacated if a member has remained absent from all its meetings for a period of 60 days without permission. While calculating the 60 days, the period for which house is prorogued or adjourned is not counted.
- If a member has been elected as President or Vice-President, or has been appointed as Governor of a state, his seat will be vacated.

- A person cannot be come member of both Lok Sabha and Rajya Sabha at one time. If a person is elected from both the houses, he need to intimate within 10 days to the house of which he desires to serve. However, if he fails to make such intimation, his Rajya Sabha membership will end.
- If a sitting Lok Sabha member becomes Rajya Sabha member or vice versa, the seat of former house will vacate.
- If a person has contested elections on two seats and is elected on both, he needs to choose one. If he fails to do so, both the seats will get vacated.
- A person cannot be MLA and MP at the same time. If it happens that a person is both an MLA and MP, his *MP seat will vacate.*

Power, Privileges, Immunities of parliament and MPs

As per article 105 and 106, an MP has freedom of speech in parliament. Anything said by a member and any vote casted by a members cannot be questioned in court. Other aspects, power privileges etc. are defined by the parliament. Salaries and allowances are defined by the parliament by Law.

Presiding Officers of Parliament

The presiding officers of Lok Sabha are Speaker and a Deputy Speaker, while that of Rajya Sabha are Ex officio Chairman (Vice-President) and Deputy Chairman. While Speaker, Deputy Speaker and Deputy Chairman are members of respective houses; the Chairman of Rajya Sabha is NOT its member.

Speaker and Other Officers of Lok Sabha

Lok Sabha speaker is the presiding officer or head of Lok Sabha. He is the guardian of powers and privileges of members and committees of Lok Sabha. Lok Sabha speaker is chosen by the members from among themselves, after the first meeting of the Lok Sabha. When the office of Lok Sabha speaker falls vacant, the members elect another speaker on a date *fixed by the President*.

Term of Office

A Lok Sabha speaker remains in office during the life of Lok Sabha generally. However, to remain in office, he needs to remain member of Lok Sabha. Whenever Lok Sabha is dissolved, the Speaker continues to remain in office until immediately before the first meeting of Lok Sabha after it is reconstituted.

Resignation and Removal

The speaker automatically ceases to be so if he is disqualified to be a member of Lok Sabha due to reasons whatsoever. He can vacate his office by addressing a resignation letter to Deputy Speaker. He can also be removed by the members of Lok Sabha by a resolution passed by *absolute majority* {majority of the total members of the House} of Lok Sabha. However, a 14 days advanced notice must

be given for such resolution. The motion of removal can be considered and discussed only when it has the support of at least 50 members. These provisions make removal of speaker difficult and provide him security of tenure.

When such resolution is under consideration of the house, Speaker cannot preside the meeting of the house, however, he is eligible to participate and vote *except the casting vote in case if equality of votes.*

Powers and Functions

Lok Sabha speaker is the representative and principal spokesman of Lok Sabha and his decisions in matters of Lok Sabha are final. His powers and functions are derived from Constitution, Rules of procedure (Lok Sabha) and Parliamentary conventions.

- Primary duty of the speaker is to maintain order and decorum in Lok Sabha.
- His interpretations of constitutional provisions, rules and regulations related to Lok Sabha are final.
- The quorum to constitute a meeting of the Lok Sabha is one-tenth of the membership of the house. If there is no quorum, speaker decides to suspend the meeting.
- Adjournment of Lok Sabha is done by Speaker.

- During voting in the house on a bill or other matters, he first does vote. However, if there is a tie due to equal votes, speaker exercises the ***casting vote***. Objective of casting vote is to resolve a deadlock.
- Joint sittings of both the houses of parliament are *although called by President but presided by Lok Sabha speaker.*
- On the request of the Leader of the House, Speaker may allow a secret meeting. None other than those permitted by speaker can be present in secret meeting.
- Whether a bill is money bill or not, is decided by Speaker and his decision in this matter is final. When a money bill is passed in Lok Sabha and sent to Rajya Sabha, Speaker's endorsement is needed on that.
- Speaker decides the question of disqualification of Lok Sabha members in matters of tenth schedule / anti-defection law. This decision is subject to judicial review.
- He works as ex-officio chairman of Indian Parliamentary Group of the Inter-parliamentary Union.
- Chairmen of all the parliamentary committees of Lok Sabha are appointed by Speaker, provided such committees don't need elected chairmen. Speaker himself is the chairman of Business Advisory Committee, Rules Committee and General Purpose Committee.
- The *Secretary General* of the Lok Sabha is appointed by the Speaker.

Deputy Speaker of Lok Sabha

When Speaker of Lok Sabha is not available, his duties are carried out by Deputy Speaker. A Deputy Speaker is elected by the Lok Sabha members from amongst themselves. Election of Deputy Speaker is done after election of Speaker. The date of election of Deputy Speaker is fixed by Speaker. We note here that Deputy speaker is not subordinate to the Speaker and is directly responsible to Lok Sabha. If Deputy Speaker is also not present, a person appointed by **President** will discharge the duties.

Protem Speaker

Whenever Lok Sabha is dissolved, the Speaker continues to remain in office until immediately before the first meeting of Lok Sabha after it is reconstituted. *President appoints* a speaker *Pro Tem for the first meeting of the newly elected Lok Sabha.* He is appointed to administer oath to the new members and enable the house to elect a new speaker. Usually, the senior-most member is elected as Protem speaker and the President himself administers oath to him.

Secretary General of Lok Sabha

Lok Sabha has its own secretariat and its Secretary General is appointed by Lok Sabha speaker. He is a government servant and remains in office till age of 60 years. His functions are to provide a link between changing members and keeping the records. He summons the members to attend the session of parliament on behalf of President. He also authenticates the bill in absence of Speaker. He is answerable to ONLY Speaker and his action cannot be criticized in or out of Lok Sabha.

Presiding Officers of Rajya Sabha

The presiding officers of Rajya Sabha are the Chairman and Deputy Chairman. While Vice President of India serves as ex-officio chairman of Rajya Sabha; the day to day meetings are presided by Deputy Chairman of Rajya Sabha.

Election of Deputy Chairman of Rajya Sabha

The Deputy Chairman of Rajya Sabha is elected by the Rajya Sabha members from amongst themselves. Whenever the office of the Deputy Chairman falls vacant, the Rajya Sabha members would elect another member to fill the vacancy.

To remain in office, the Deputy Chairman needs to remain a member of Rajya Sabha. He needs to vacate the seat if he loses the Rajya Sabha membership for whatsoever reasons. He can resign from the office by giving in writing to the Vice-President. He can also be removed by a resolution by Rajya Sabha members passed by absolute majority {majority of full membership of house}. When such resolution is under consideration, Deputy Chairman cannot preside over a sitting of the House, but he may be present and participate in proceedings.

Deputy Chairman's functions as Chairman

In certain circumstances, the Deputy Chairman works as Chairman of Rajya Sabha. For example, if

Vice-President is elected as President or is discharging his functions as President due to unavailability of the later, Deputy Chairman works as Chairman of Rajya Sabha.

Casting Vote

Both chairman and Deputy chairman in Rajya Sabha exercise the casting vote when a tie occurs in voting in Rajya Sabha. The Deputy Chairman cannot exercise the casting vote when a resolution for his removal is under consideration of the house.

Is Deputy Chairman subordinate to Chairman?

Deputy Chairman is not subordinate to the Chairman and he is directly responsible to the Rajya Sabha.

Sessions of Parliament, prorogation and dissolution

From time to time, the sessions of the parliament are called upon by president. According to constitution, the maximum gap between two sessions cannot be more than six months. Thus, in each year, there must be two sessions of parliament. However, there are usually three sessions viz. Budget session (between February to May), Monsoon Session (between July to September) and Winter Session (Between November to December).

Adjournment

Adjournment *terminates the sitting* of the House which meets again at the time appointed for the next sitting. The postponement may be for a specified time such as hours, days or weeks. If the meeting is terminated without any definite time/ date fixed for next meeting, it is called *Adjournment sine die.*

Prorogation

Prorogation is end of a session. A prorogation puts an end to a session. *The time between the Prorogation and reassembly is called Recess.* Prorogation is end of session and not the dissolution of the house {in case of Lok Sabha, as Rajya Sabha does not dissolve}.

Dissolution

Rajya Sabha is a permanent house so there is no dissolution of Rajya Sabha, though term of Rajya Sabha members has been fixed for 6 years. The Lok Sabha may dissolve at the end of its five year term or by an order of President. The five year term can be extended during national emergency for another one year at a time by making a law. However, such extension cannot continue beyond a period of six months after the emergency has ceased to operate.

Generally, last session of the existing Lok Sabha before dissolution is called *Lame Duck session*. .

Comparison between Adjournment, Prorogation and Dissolution

- While adjournment, Prorogation and Dissolution are applicable to Lok Sabha; the term Dissolution is not applicable to Rajya Sabha because that is a permanent house.
- While adjournment terminates a sitting, prorogation terminates a session. Dissolution terminates the Lok Sabha itself and needs fresh elections.

- While adjournment is done by presiding officers {speaker / deputy speaker in Lok Sabha and Chairman / Deputy chairman in Rajya Sabha); prorogation is done by President. Dissolution of Lok Sabha is also done by president.
- There is no impact on bills due to adjournment and prorogation. All business including bills, motions, resolutions, notices, petitions, and so on pending before Lok Sabha get lapsed on its dissolution.

President's Address

President's address is the speech delivered by the President of India to both Houses of Parliament assembled together at the *commencement of the first session after each general election* to Lok Sabha and at the commencement of the first session of each year.

Quorum

Quorum refers to the minimum number of the members required to be present for conducting a meeting of the house. Constitution has fixed one-tenth strength as quorum for both Lok Sabha and Rajya Sabha. Thus, to conduct a sitting of Lok Sabha, there should be at least 55 members present while to conduct a sitting of Rajya Sabha, there should be at least 25 members present.

Participation of Ministers

A minister can participate in the proceedings of any house of the parliament irrespective of his own house in which he holds membership. However, he can vote only in the house in which he holds membership.

Participation by Attorney General

Attorney-General of India has right to right to speak in and take part in the proceedings of, either House, any joint sitting of the Houses, and any committee of Parliament of which he may be named a member. However, he is not entitled to vote in any of them.

Language in Parliament

As per constitution, the languages to conduct the business of parliament are Hindi or English. However, a member can address the house in his own language / mother tongue with permission from presiding officer. There are arrangements for simultaneous translations. The constitution had provided that the English as language of the house would discontinue by 1965, but the Official Languages Act 1963 allowed it to be used along with Hindi as language of parliamentary business.

Leader of the House (Lok Sabha)

The Prime Minister, if he is a Member of the House, or a Minister who is a member of the House and is nominated by the Prime Minister to function as the Leader of the House.

Leader of the Council

The Prime Minister, if he is a Member of the Council or a Minister who is a Member of the Council and is nominated by the Prime Minister to function as the Leader of the Council.

Leader of Opposition

A Member of the House who is for the time being the Leader in that House of the party in opposition to the Government having the greatest numerical strength. When there are two or more parties in opposition to the Government, having the same numerical strength, the Speaker shall, having regard to the status of parties recognize any one of the leaders of such parties as the Leader of the Opposition and such recognition shall be final and conclusive.

Contempt of House

Contempt of house means disobedience to the authority of the house by acts like interrupting the proceedings of the house, refusal by a witness to make an oath, giving false evidence, presenting false, forged or fabricated documents to either House or its Committee.

Crossing the Floor

Crossing the floor is the passing between the Member in possession of the House and the Chair. To cross the floor is a breach of Parliamentary etiquette.

Bulletin

Bulletin is published in two parts, Part I containing a brief record of the proceedings of the House at each of its sittings; and Part II containing information on any matter relating to or connected with the Business of the House or Committees or other matter which in the opinion of the Speaker may be included therein.

Expunction

Deletion of words, phrases or expressions from the proceedings or records of the House by an order of the Speaker or from the proceedings or records of a Committee by an order of the Chairman of the Committee or the Speaker as being defamatory or indecent or unparliamentary or undignified.

Maiden Speech

Maiden Speech is the first speech of a member elected for the first time in a new House. Such a member is, as a matter of courtesy, called upon by the Speaker to make his maiden speech in preference to others rising to speak at the same time. This privilege is, however, not extended by the Chair unless claimed within the term of the House to which the member was first returned.

Question Hour and Various Motions in Parliament

Question Hour

Question Hour, is usually the first hour of every sitting of the house. Usually, members ask questions and ministers' answer. There are three kinds of questions viz. starred questions, un-starred questions and short notice questions.

- A **starred question** is distinguished by an asterisk and needs an oral answer. Since the answer is oral, supplementary questions might follow a starred question.
- An un-starred question requires written answer. Since the answer is given in written, there cannot be supplementary questions that follow an un-stared question
- A question relating to a matter of public importance of an urgent character asked with notice

shorter than **ten days** is called a "**Short Notice Question**" Short Notice questions are generally answered orally.

Half an hour Discussion

Members have a right to get information from the Government on any matter of public concern by means of questions to Ministers. When a member feels that the answer given to a question, Starred or Unstarred or Short Notice, is not complete or does not give the desired information or needs elucidation on a matter of fact, he may be allowed by the Speaker to raise a discussion in the House for half an hour. The procedure is, therefore, termed as 'Half-an-Hour Discussion'.

Zero Hour

Zero Hour is an informal tool available to the members to raise the matters without any prior notice. It starts after question hour and lasts until the regular business is taken up. Thus, the time gap between the end of zero hour and beginning of regular business (agenda) of the house is called Zero hour. It is not mentioned in any rule book but is there is existence since 1962 by convention.

Types of Motions

A motion refers to a formal proposal asking the house to take some action. In Parliament, motion is required to be made for any discussion with the permission of presiding officer. The motion are accepted or rejected on the basis of opinions and discussions in the house among members. There are three kinds of motions in parliament viz. substantive motion, substitute motion and subsidiary motion. Substantive motion is most dominating from of them.

Closure Motion

Closure is one of the means by which a debate may be brought to an end by a majority decision of the House, even though all Members wishing to speak have not done so.

Closure versus Guillotine

Guillotine refers to putting by the Speaker of outstanding question or questions relating to the business in hand on expiry of the time allotted for its discussion. *While closure is preceded by a motion, guillotine is not preceded by any motion.* On the last of the allotted days at the appointed time, the Speaker puts every question necessary to dispose of all the outstanding matters in connection with the demands for grants. During budget, guillotine concludes the discussion on demands for grants.

Privilege Motion

A privilege motion is moved against breach of parliamentary privileges. Parliamentary privileges are certain rights and immunities enjoyed by MPs, MLAs and MLCs, individually and collectively, so that they can effectively discharge their functions. When any of these rights and immunities is disregarded, the offence is called a breach of privilege and is punishable under law of Parliament or the state legislature. Each House also claims the right to punish as contempt actions which, while not breach of any specific privilege, are offences against its authority and dignity.

Calling Attention

Calling attention is a type of motion introduced by a member to call the attention of a minister to a matter of urgent public importance. The minister is expected to make authoritative statement from him on that matter. It can be introduced in any house of the parliament.

Motion of Thanks

Motion of thanks is moved and voted in both houses parliament after the inaugural speech of the president at the beginning of first session of new Lok Sabha or first session of New Year. The speech of president is generally drafted by ruling party and its contents outline the vision of the central government. The discussion on motion of thanks generally allows the opposition to critically discuss the government's vision, scope and policies. This motion must be passed in both of the houses. A failure to get motion of thanks passed (which may happen rarely) amounts to defeat of government and leads to collapse of government.

Dilatory motions

Dilatory motions refer to the motions that seek adjournment / delay / retard of the debate on Bills, motions or resolutions etc.

Adjournment Motion

The primary object of an adjournment motion is to draw the attention of Lok Sabha to a recent matter of urgent public importance having serious consequences and in regard to which a motion or a resolution with proper notice will be too late.

Houses in which adjournment motion is allowed

Adjournment motion is allowed only in Lok Sabha {or in state legislative assembly} and NOT in Rajya Sabha {or in state legislative council} because it has an element of censure against the government.

Essential Conditions

There are few conditions of adjournment motion in Lok Sabha as follows:

- Such a motion needs support of at least 50 members.
- It should be introduced on a matter of definite and urgent public importance. However, it should not cover more than one matter and be restricted to that matter only. The subject matter should not be the same which is already being discussed in the same session.
- A question of privilege or any other questions which can be raised via other distinct motion cannot be raised in adjournment motion.

Since adjournment motion disrupts the normal business of the house and this is regarded as extraordinary tool in parliament. The discussion on adjournment motion needs to last at least 2.5 hours.

Calling Attention versus Adjournment Motion

Since Rajya Sabha is not permitted to make use of adjournment motion, there is a similar tool in

Rajya Sabha which is called "**Calling Attention**". The notable difference between the two is that while adjournment motion has an element of censure against the government, **Calling attention** has no such element.

No-Confidence Motion

Council of Ministers is collectively responsible to Lok Sabha and it remains in office till it enjoys confidence of majority of the members in Lok Sabha. Thus, a motion of no-confidence is moved to remove the council of ministers and thus oust the government from office. Following are conditions of No-confidence motion:

- No-confidence motion can be moved only in Lok Sabha {or state assembly as the case may be}. It is not allowed in Rajya Sabha {or state legislative council}
- It is moved against the entire Council of Ministers and not individual ministers or private members.
- It needs support of at least 50 members when introduced in Lok Sabha.

Censure Motion

A censure literally means expression of strong disapproval or harsh criticism. It can be a stern rebuke by a legislature, generally opposition against the policies of Government or an individual minister. However, it can also be passed to criticize, condemn some act. A censure motion can be moved in Lok Sabha or in a state assembly.

Comparison of No-confidence motion and Censure Motion

- Both censure motion and No-confidence motion can be moved in Lok Sabha or Lower house in states.
- While Censure motion can be moved against individual ministers or members, No-confidence motion is moved against the entire council of ministers.
- There is no impact on government when censure motion is passed, the council of ministers need to resign and government collapses when No-confidence motion is passed.

The Business of Law Making

The primary function of parliament is to make new laws, amendment existing laws and repeal old laws. for every such procedure, a bill needs to be passed in both houses of parliament. Once passed in both the houses, bill needs to get assent of the president to become an act. The relevant articles of the constitution are 107 {Provisions as to introduction and passing of Bills}, 108 {Joint sitting of both Houses in certain cases}, 109 {Special procedure in respect of Money Bills}, 110 {money bills) and 111 {assent to bills}.

Government Bill versus Private Member Bill

If a bill is introduced in the house by a minister, it is called *government bill* or *public bill.* If the bill is introduced by any other member than a minister, it is called private member bill. A private member

bill can be introduced by both ruling party and opposition MPs. The other differences between the two are as follows:

- While Government bill needs a seven day notice for its introduction, private bill needs one month notice.
- While Government bill has more chances to get clear, private bills are generally withdrawn or get lapsed.
- Depending on the type of government bill and the majority needed to get such bill passed, the government may collapse upon its failure. For example, during budget, the government needs to get appropriation bills and finance bills passed; failure to do so would lead to collapse of government. However, no impact is on health of government when a private member bill gets rejected.

We note here that if a private member desires to introduce a bill, he/ she must give notice of his intention to the speaker. For every bill it is necessary to ask for **leave** of the House to introduce a Bill. If leave is granted, the bill may be introduced. After a bill has been introduced, it is published in the Gazette. However, before introduction, a bill may be published in the Gazette with the permission of the Speaker of Lok Sabha, Deputy Chairman of Rajya Sabha. No leave is required to introduce bill in such as case.

Process of passing the ordinary bills

First Reading

Generally, there is no debate on introduction of a bill. The person (Minister or MP) who is given a leave to introduce a bill may present some broad idea to introduce the bill. This is called *moving the bill* or *motion for introduction* of the bill. The moving of the ordinary bill can be opposed by the opposition. If the introduction of the bill is opposed, speaker may allow one of the opposing members to cite the reasons. After that Speaker will put the question to vote. If the House is in favor of introduction of the bill, then the bill is introduced and passes for the next stage. Please note that the motion for introduction of a **Finance Bill** or an **Appropriation Bill** is not opposed. This introduction is called "**First Reading**".

Second Reading

After introduction, the bill is open for 4 alternative courses of action in the second stage:

- It may be taken into consideration.
- It may be forwarded to a Select Committee of the House.
- It may be referred to a Joint Committee of both the houses i.e. Rajya Sabha and Lok Sabha.
- It may be circulated / put on website for purpose of eliciting the public opinion on it.

The last alternative is resorted only in a case when the proposed legislative measure may arouse a public controversy. However, if a bill is of emergent nature, any of the upper three alternatives is

taken. The Select Committee or the Joint committee is expected to give its report in a stipulated time.

Select Committee / Joint Committee

The Select Committee or Joint Committee members are selected on the basis of expert knowledge. and its members also include the Opposition Members. If it is a Joint Committee, then 2/3 members are from Lok Sabha and 1/3 are from the Rajya Sabha. The report of this committee may be unanimous or majority opinion. If it is a Majority Opinion, the minority is allowed to give the "*Minutes of Dissent*" in the report.

Clause to Clause Discussion

The submission of the Report by the Select Committee or Joint Committee members is followed by a detailed "Clause to Clause" discussion on the bill. Each Clause is taken up by the House and amendments are moved, discussed and disposed off. This stage is very important. The amendments which are related and pertain to the bill are moved and the Bill goes substantial changes in this stage. This is one of the most time consuming (of the house) stage of a legislative procedure. A bill is considered "clause by clause" and when every clause is voted, this is called "**Second Reading**". Thus, the first two readings of the bill actually refine the subject matter of the bills.

Third Reading

After the second Reading, the house is given sufficient time to study the clauses of the bill. After that the MP or Minister who had moved this bill moves that "the bill is passed". This is called **Third Reading**. Please note that most of the amendments in the third reading are just formal and normally verbal in nature. The discussion is limited and quick. The bill is finally passed as a whole and this marks the work of one house coming to end. The bill is sent to another house. The same three reading procedure is followed in second house of the parliament. In the second house, there are three courses for the bill:

- It is passed as it was passed in the originating house.
- It is to be amended
- It is to be rejected.

In case the course is as per the course of action 2 & 3 given above, the bill is returned to the originating house. If the second house does not return it for 6 months to the originating house it is **deemed to be rejected.** Once it is returned to the originating house, the amendments suggested by the other house are considered. Here two options arise

- The amendments are accepted. In this case, the originating house sends a message to the other house that the amendments are accepted.
- The amendments are NOT accepted. In this case again the originating house sends a message to the other house that the amendments are not accepted.

In the second option given above, means when both the houses are not in agreement, a **joint sitting** of the two houses is called by the president.

Joint Sittings

Joint Sitting of the houses is mentioned by Article 108. As per this article, a Joint sitting is notified by the President as his/ her intention to summon the both the houses for the purpose of voting and deliberating on the bill in the following situations:

- Bill has been passed by one House and transmitted to the other House and it is rejected by the other House
- Both houses have finally disagreed as to the amendments to be made in the Bill
- More than 6 months elapse from the date of the reception of the Bill by the other House without the Bill being passed by it.
- Please note that if there is a deadlock between the two houses on a Constitution amendment Bill, *there cannot be a joint sitting.*

Some other important notes

- A bill pending in other house for more than 6 months is deemed to be rejected but does not mean that a bill gets lapsed.

- The bill which gets lapses due to dissolution of the Lok Sabha, gets Lapses and in such case no joint sitting is called.

Further course of action is as follows:

- In the joint sitting, the disputed provisions are either fully accepted or fully rejected.
- For this, a simple majority is required. This means that if more than half of the members of the both the houses present at floor at that time if accept the disputed provisions, the provisions are accepted fully or if reject, the provisions are rejected fully.

A bill that is passed by both the houses of the parliament goes to the speaker. The speaker signs it and now the bill is sent to the president of assent. This is the last stage of a bill. If the president gives assent to the bill, it becomes a Law. Once it is a law, it gets entered into the statue book and published in Gazette.

However, as we studied, the President may take the following more courses of actions:

- The president returns the bill to the house. If the president returns the bill, the whole procedure is opened again and it will take the same steps as mentioned above.
- The president withholds assent, this would mark the end of the bill.

The above mentioned procedure is for the ordinary bills. There are some important differences in procedure for money bills and financial bills.

Important Points

- While money bills can originate only in Lok Sabha, all other ordinary bills including

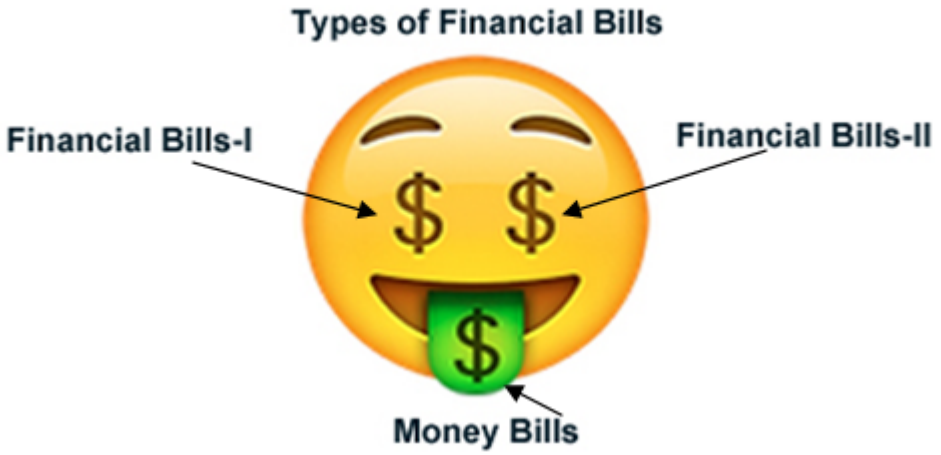
constitution amendment bills can originate in either house of the parliament.

- A bill does not get lapsed on prorogation of the house. All the bills pending in Lok Sabha get lapsed when Lok Sabha is dissolved.
- If a bill has been passed by Lok Sabha and is pending in Rajya Sabha, it will lapse if Lok Sabha dissolves.
- Bill **not** passed by Lok Sabha but pending in Rajya Sabha does not lapse if Lok Sabha dissolves.
- A bill passed by Rajya Sabha and pending in Lok Sabha will lapse if Lok Sabha dissolves.
- A bill pending in other house for more than 6 months is *deemed to be rejected* but does not mean that a bill gets lapsed. Further, for Money bills, the Rajya Sabha has limited time to return with comments otherwise it would be deemed passed in both houses. Thus, Rajya Sabha can NOT reject the provisions of Money Bill or other finance bills.

Money Bill v/s Finance Bill

Every bill which has provisions related to financial matters is a Financial Bill. There are three kinds of Financial Bills in Indian parliament viz.

- Money Bills
- Financial Bills category-I
- Financial Bill category-II.



This simply implies that all money bills are financial bills, but all financial bills are not money bills.

Money Bills

Only those financial bills which contain provisions *exclusively on matters listed in article 110* of the constitution are called Money Bills. On this basis, a bill is money bill if:

- It results in imposition, abolition, remission, alteration or regulation of any tax at union or

state level but NOT at local level. Thus, money bills exist in Parliament and State legislature only. If a financial bill results in imposition, abolition, remission, alteration or regulation at local level by a local body, it is not considered to be a money bill.

- It results in regulation of borrowing of money or results in any guarantee by Government of India.
- Results in withdrawal of money from Consolidated or Contingency fund
- Receipt of money in consolidated fund and public account.

Question of whether a financial bill is money bill or not, is decided by Speaker. Such bill needs to be endorsed by Speaker when passed by Lok Sabha and sent to Rajya Sabha.

Procedure for Passing of the Money Bills

The money bills have special features which make the procedure of their passage in parliament distinct. These special features are as follows:

- A money bill can be introduced / originated only in Lok Sabha {or in legislative assembly in case of bicameral legislature in states}.
- A money bill can be introduced only on prior recommendations of the President {or governor in case of state}

- A money bill can be a government bill only. No private bill can be a money bill.
- Once a money bill is passed in Lok Sabha, it is transmitted to Rajya Sabha for its consideration. But Rajya Sabha has limited powers in this context. It can *neither reject nor amend the money bill.* It can make only recommendations and has to return the bill with or without recommendations to Lok Sabha in 14 days.
- The Lok Sabha may or may not accept the recommendations of Rajya Sabha. Whether or not accepted those recommendations, thus returned bill is considered passed in both houses. If Rajya Sabha does not even return the bill in 14 days, it is considered passed in both houses.
- President can withhold assent to money bill but cannot return it for reconsideration of the Lok Sabha.
- *There is no question of joint sitting in case of money bills* because opinion of Rajya Sabha is immaterial in their case.

Example of a money bill is Finance Bill which is introduced with Budget in India. Usually such bill has provisions related to article 110 (1)(a) {imposition, abolition, remission, alteration or regulation of any tax} and is certified as a money bill. It has its endorsement by speaker as money bill and Rajya Sabha has no power to change its fate.

Financial Bill Category-I and Category-II

Sometimes, a bill apart from *being a money bill* {i.e. having provisions of article 110}, may also have

other provisions. Example of such bill is Central Road Fund Bill (now Central Road Fund Act), which proposed to establish a non-lapsable fund to impose cess/tax by the Union Government on the consumption of Petrol and High Speed Diesel to develop and maintain National Highways. This bill contained provisions of not only imposition of taxes but also putting its proceeds in Consolidated Fund and withdrawing the same from it for development of roads. It has other detailed provisions on how it will be used, what will be duties of government etc. etc. Thus, apart from being a money bill, it also has other provisions and thus called Financial Bill of Category-I.

A financial bill of category-I is considered same as Money Bill and introduced in the Lok Sabha on the recommendation of the President. *However once it has been passed by the Lok Sabha, it is like an ordinary Bill and there is no restriction on the powers of the Rajya Sabha on such Bills. Rajya Sabha has powers to reject it and also there is a provision of joint sitting in this case.*

A financial bill of category-II is one which although has provisions involving expenditure from Consolidated Fund of India but does not have anything mentioned in article 110. We may take the example of "President's (Emoluments and) Pension Act" to understand this kind of bill. This bill has provisions that money has to be taken out of the Consolidated Fund to pay salary to president but there is nothing in the bill as per provisions of article 110.

Such a bill is ordinary in all respects and both Lok Sabha and Rajya Sabha enjoy equal powers in this bill. However, only special feature of this bill is that recommendation of the President is essential for consideration and passing of these Bills by either House.

Procedure of Budget

Article 112 of the Indian Constitution, says that every year "the President of India shall cause to be laid before both the houses of the parliament" the "Annual Financial Statement". This is popularly known as Budget. "*cause to be laid*" here means that the person through whom President acts, is *Finance Minister of the country, who is known as the custodian of the nation's Finances.* The Budget gives the complete picture of the estimated receipts and expenditures of the Government of India for that year. This picture is actually based upon the budget figures of the previous years. There are three kinds of figures in this set. If we are studying the budget of 2015-16, then this set would be made up of actual of 2013-14, budget & revised estimates of 2014-15 and budget estimates of 2015-16.

Budget Estimates

The Budgetary estimates are based upon the previous data. Similarly provisional estimates are also based upon the previous data. When these data are revised as per the current position, they are called "**Revised Estimates**". However, if the **Revised estimates** show the latest short term situation, then they are called "**Quick Estimates**". **Advance estimates** are a kind of "Quick Estimates" which are done ahead of the time.

The main Budget documents are presented to the parliament accordingly various articles of our constitution as follows:

- Annual Financial Statement (AFS) : As per Article 112
- Demand for Grants (DG) : As per Article 113
- Appropriation Bill: as per Article 114 (3)
- Finance Bill: As per article 110 (a)
- While presenting the Budget, the following are presented as mandated in Fiscal Responsibility and Budget Management Act 2003.
- Memorandum Explaining the Provisions in the Finance Bill,
- Macro-economic framework for the relevant financial year
- Fiscal Policy Strategy Statement for the financial year
- Medium Term Fiscal Policy Statement

Discussion on Budget

On a day subsequent to the presentation of the Budget, the House takes up the General Discussion of the Budget which is called the *first stage followed by second stage i.e. discussion and voting on Demands for Grants.*

During the General Discussion on the Budget, the house is at liberty to discuss the Budget as a whole or any question of principle. The scope of discussion at this stage is confined to the general examination of the Budget i.e. the proper distribution of the items of expenditure according to the importance of a particular subject or service, the policy of taxation as is expressed in the Budget and the speech of the Finance Minister.

Standing Committee Reports

After the General Discussion on Budget in both the Houses is over and **Vote on Account** is passed, the House is adjourned for a specified period. The Demands for Grants of each Ministry/Department will be examined by the concerned Standing Committee having jurisdiction over it during the said recess period. The Committee gives separate report for each Ministry. The Demands for Grants are discussed / considered in the House in the light of the reports of the Standing Committee. The reports of the Standing Committees which are of persuasive value are nevertheless treated as considered advice given by the Committee.

The detailed discussions are followed by Guillotine. Guillotine refers to closure imposed on the debate. On the last of the allotted days at the appointed time, the Speaker puts every question necessary to dispose of all the outstanding matters in connection with the Demands for Grants. The Guillotine concludes the discussion on Demands for Grants.

Cut Motions

After the budget is presented in Parliament and discussions over it are completed, the members get

an opportunity to move cut motions to reduce the amount of demand. The members from particular parties or coalitions may bring their own cut motions. The members generally give notice of the Cut Motions for the reduction of the votable heads of expenditure of the Demands for Grants immediately after the Finance Minister or the Railway Minister as the case may be, has presented the Budget in the House.

Every Cut Motion to a demand for Grant represents *disapproval* of some aspect or other of the Budget or the economic policy of the Government. Accordingly Cut Motion is of three kinds:

Policy Cut

This type of cut motion aims that the amount of the demand be reduced to Re. 1. It represents the complete disapproval of policy underlying the Demand. This is because the motion aims to reduce the demand for grant to Re. 1 only, which almost finishes the demand for grant of a ministry.

Economy Cut

This type of cut motion aims that the amount of demand be reduced to certain other amount and it represents that the demand for grants should be altered.

Token Cut

This Cut Motion aims that the amount of the Demand be reduced by Rs. 100" in order to *ventilate a specific grievance,* which is within the sphere of responsibility of the Government of India. Actually, Token cut is symbolic and is humiliating for the Government. To be precise, *all cut motions are humiliating for the ruling party or coalition. The Cut motions provide the members maximum opportunity to examine every part of the budget and criticize the Government.*

Implications of Cut Motions

The Cut Motions are mostly defeated due to Number strength of the ruling party or coalition. As the cut motion is a veto power given to the member of the Lok Sabha to oppose a demand in the financial bill discussed by the government, it is seen as an effective tool to test the strength of the government. If a cut motion is adopted by the House and the government does not have the numbers, it is obliged to resign. The cut motion can be admitted to the house only if it is related to only one demand and not many. No cut motion can be moved on charged expenditures. The cut motions are important because they facilitate the constructive discussion on each demand and uphold the principle of democratic government, by giving the members power to veto the demands.

Votable and No-Votable Charges

The budget shows the estimated receipts and expenditure of the upcoming Financial Year. After the budget is presented to the house (parliament), the government needs its approval to draw even one rupee from the Consolidated Fund of India. This approval comes by voting, which means that the Budget proposals must be passed by the Parliament. However, there are some charges which essentially have to be paid by the Government and for those charges no voting takes place. Thus, the

expenditure embodied in the Budget Documents is of two types:

- The sums required for charged expenditures. These are non-votable.
- The sums required for other expenditures as mentioned in the Budget Documents. These are votable.

Charged Expenditures or Non-Votable Charges

Non-votable charges are called Charged Expenditures; and no voting takes place for the amount involved in these expenditures for their withdrawal from Consolidated Fund of India. This means that they have to be paid in any case, whether the budget is passed or not passed. Following are the charged expenditures:

- Salary and Allowances of the President, Speaker / Deputy speaker of Lok Sabha, Chairman/ Deputy chairman of Rajya Sabha, Salaries and Allowances of Supreme Court judges, Pensions of Supreme Court as well as High Court Judges, Salaries and Allowances of CAG, Lok Pal
- Debt charges of Government of India.

The above expenditures cannot be voted because; these payments are deemed to be guaranteed by the state. Although voting does not take place on such charges, discussion can take place in any house of the parliament. The demand for grant for these charges is also made on recommendation of the president. (Article 113)

> Here we should not that retainer of Attorney General or Solicitor General is NOT a charged expenditure upon Consolidated Fund of India. They are paid a fee which comes from the budgetary allocations of Department of Legal Affairs, which itself though comes from consolidated fund but is a votable charge. Further, while salary of High Court Judges is charged from Consolidated Fund of States, their pension comes from Consolidated Fund of India.

Votable / Voted Expenditures

The Votable part is actual Budget. The expenditures in the Budget are in the forms of **Demand for Grants**. There Budget also presents ways and means – how the government would be recovering the expenditures. Generally, the demands for Grants of each and every ministry are made separately in the Budget documents and each demand for grant has the provisions under its different heads.

Types of Majorities

There are various types of majorities followed in Indian Parliament to pass specific bills and motions as follows:

Simple Majority

Simple majority or working majority refers to majority of more than 50% of the members present and voting. Example:

- Total strength of Lok Sabha: 545
- Vacant Seats: 5
- Members present: 500
- Members present, but decide to abstain / not to vote: 50
- Members present and voting: 500-50=450
- Simple Majority in this case would be: 226

Most of the normal motions and bills in the house such as No-confidence Motion, Motion of Confidence, Motion of Thanks, Censure Motion, Adjournment Motion, Money Bills, Ordinary Bills etc.

Absolute Majority

Absolute majority refers to the majority of more than 50% of the total strength of the house. Example:

- Total strength of Lok Sabha: 545
- Absolute Majority: 273

Such kind of majority is not required in isolation in the Indian Parliament. There are instances when such majority is needed with other majority which would be thus called special majority.

Effective Majority

Effective Majority of house means more than 50% of the effective strength of the house. This implies that out of the total strength, we deduct the absent and vacant seats.

- Total strength of Lok Sabha: 545
- Vacant Seats: 5
- Effective Strength: 545-5=540
- Members present, but decide to abstain / not to vote: 50
- Members present and voting: 540-50=490
- Effective Majority: 490/2+1=245

In constitution of India, the "all the then members" present indicates an effective majority. In Constitution, effective majorities are needed for removal of Vice-President, Deputy Chairman of Rajya Sabha, Lok Sabha speaker and Deputy Speaker.

Special Majority

Any Majority other than simple, absolute and effective majority is called special majority. These include

- Majority by two-third strength of the house {example impeachment of president under article 61}
- Majority by two-third of present and voting members {Example: Power of Parliament to legislate with respect to a matter in the State List in the national interest, under article 249};

Certain constitution amendment bills etc.

- Absolute majority + majority of two-third present and voting {Example: Removal of Supreme Court Judge, CAG etc.}

Examples of Majorities in Constitution

Impeachment of President: Special Majority

According to Article 61, When a President is to be impeached for violation of the Constitution; the charge shall be preferred by either House of Parliament. A 14 days notice to move a resolution is given. Then, the resolution has to be passed by a majority of not less than two-thirds of the total membership of the House. This is an example of Special Majority.

Removal of the Vice-President: Effective Majority

Vice-President may be removed from his office by a resolution of Rajya Sabha passed by a *majority of all the then members* of the Rajya Sabha and agreed to Lok Sabha. This is an example of effective majority in Rajya Sabha.

Removal of Deputy chairman Rajya Sabha: Effective Majority

A member holding office as Deputy Chairman of Rajya Sabha may be removed from his office by a resolution of the Council passed by a majority of all the then members of the Council. (Simple Majority in Rajya Sabha)

Removal of Speaker and Lok Sabha Speaker: Effective Majority

Member holding office as Speaker or Deputy Speaker of the House of the People—(c)may be removed from his office by a resolution of the House of the People passed by a majority of all the then members of the House:

Removal of Supreme Court Judge: Absolute + Special Majority

A Judge of the Supreme Court shall not be removed from his office except by an order of the President passed after an address by each House of Parliament supported by a majority of the total membership of that House (Absolute Majority) and by a majority of not less than two-thirds of the members of that House present and voting (Special Majority) voting has been presented to the President in the same session for such removal on the ground of proved misbehaviour or incapacity. (article 124)

Abolition of Council of States: Absolute + Special Majority

Parliament may by law provide for the abolition of the Legislative Council of a State having such a Council or for the creation of such a Council in a State having no such Council, if the Legislative Assembly of the State passes a resolution to that effect by a majority of the total membership of the Assembly (Absolute Majority) and by a majority of not less than two-thirds of the members of the Assembly present and voting. (Special Majority) Article 169. (1)

Removal of Speaker or Deputy Speaker of Assembly: (Effective Majority)

Speaker or Deputy Speaker of Assembly may be removed from his office by a resolution of the

Assembly passed by a majority of all the then members of the Assembly (Effective Majority). Article 179 (C)

Removal of Chairman or Deputy Chairman of a Legislative Council: (Effective Majority)

Chairman or Deputy Chairman of a Legislative Council may be removed from his office by a resolution of the Council passed by a majority of all the then members of the Council. (Simple Majority) Article 183 (C)

Emergency Proclamation (Absolute + Special Majority)

According to article 352 (4) an emergency proclamation is laid before each House of Parliament and shall cease to operate at the expiration of one month unless before the expiration of that period it has been approved by resolutions of both Houses of Parliament. Once approved it shall cease to be in force if again not approved within six months. For both of these purposes, the resolution should be passed by either House of Parliament only by a majority of the total membership of that House (Absolute Majority) and by a majority of not less than two-thirds of the Members of that House present and voting.(Special Majority)

Amendment of the Constitution via article 368 : (Absolute + Special Majority)

According to Article 368(2), amendment to Constitution may be initiated only by the introduction of a Bill for the purpose in either House of Parliament, and when the Bill is passed in each House by a majority of the total membership of that House (Absolute Majority) and by a majority of not less than two-thirds of the members of that House present and voting, (special Majority).

Further, if the amendment of the constitution also requires the assent of the state assemblies, they can pass the constitutional Amendment Bill with simple majority

Parliamentary Committees and Fora

Parliamentary Committees

The committees of the parliament are considered to be a necessary adjunct of the complex and voluminous work of the parliament as they make the parliamentary work smooth, time saving and expeditious. They exercise effective control of the government activities at a regular basis. The parliamentary committees are mainly of two types viz. Standing Committees and Ad Hoc Committees. The Standing Committees are constituted every year or frequently and they work on continuous basis. Ad hoc committees are temporary and created for specific task. Once that task is completed, the *ad hoc* committees cease to exist. The usual ad hoc Committees are Select/Joint Committees on Bills and the Railway Convention Committee. Further, Lok Sabha classifies Committees on Ethics, MPLADS & Computers as Ad Hoc Committees. Ad hoc committees include the inquiry committees, joint and select committees on bills etc.

As per the "Rules of Procedure and Conduct of Business in the Lok Sabha", there are 19 Standing

parliamentary Committees and 24 Departmentally Related Standing Committees. Out of the 19 Standing Parliamentary Committees, three are Financial Committees viz. Committee or Public Accounts, Committee on estimates and Committee on Public Undertakings. Some committees have members only from Lok Sabha while some have members from both Rajya Sabha and Lok Sabha.

Financial Committees

Committee on Public Accounts

Public Accounts Committee (PAC) is one of the standing parliamentary committees, which was first established in 1921 under the Government of India Act 1919 provisions. This committee examines the *manners and results of spending the public funds.*

Members

Public Accounts Committee has 22 members of which 15 are from Lok Sabha while 7 from Rajya Sabha. The members are "elected" by members of Parliament amongst themselves via a system of proportional representation by means of single transferable vote; so that all parties get due representation in it. Members are elected for a period of one year. A minister cannot be a member of PAC.

Chairman

Chairman of PAC is appointed by Speaker from its members. The chairman used to be of ruling party till mid 1960s, however, now the chairman of PAC is from opposition by convention.

Functions

- PAC *examines the three audit reports of CAG* submitted to President viz. audit report on appropriation accounts, audit report on finance accounts and audit report on public undertakings.
- It examines the *appropriation accounts and the finance accounts of the Union government* and any other accounts laid before the Lok Sabha. While doing this examination, it tries to ensure that money disbursed to various ministries was used for the purpose for which it was given; and this money was used as per rules and regulations.
- It also examines the accounts of the public service corporations {except those public undertakings which have been allotted to committee on public undertakings}, and other such bodies whose accounts are audited by CAG.

CAG assists PAC in its work and there is a close working relationship between CAG and PAC to secure the accountability of executive in the field of financial administration. This is the reason that CAG is called "*Friend, Philosopher and Guide*" of PAC.

Estimates Committee

Estimates Committee was first established during British Era in 1920s but Independent India's first Estimates Committee was established in 1950. This committee examines the estimates included in

the budget and suggests 'economies' in public expenditure.

Members

The Estimates Committee has 30 members and all these members are from Lok Sabha. There is no Rajya Sabha member in Estimates Committee. The members are elected by Lok Sabha members from amongst themselves every year by principles of proportional representation by means of a single transferable vote, so that all parties get due presentation in it. A minister cannot be elected as member / Chairman of estimates committee. The chairman is appointed by the Speaker and chairman is always from ruling party or coalition.

Functions

This committee tries to report economy and efficiency in expenditures. It suggests what changes in policy or administrative framework can be done and what alternative policies can be considered to bring economy and efficiency. Due to this reason, this committee is also called 'continuous economy committee'. The works of this committee continue throughout the year and it keeps reporting to the house as examination proceeds.

Similarities between PAC and Estimates Committee

- Both are financial committees and both are standing committees of parliament
- Both find their origin in British Era
- Members of both are elected and chairmen of both are nominated by speaker.
- A minister cannot be member or chairman of any of them.

Differences between PAC and Estimates Committee

- While PAC has 22 members, Estimates Committee has 30 members.
- While PAC members belong to both houses of parliament, Estimates Committee members belong to only Lok Sabha
- While PAC chairman is from opposition, Estimates Committee Chairman is always from ruling party or dispensation
- While Estimates committee *scrutinizes the Estimates*, PAC scrutinizes the *appropriation and manner of spending. Thus, work of Estimates Committee is ex-ante analysis while that of PAC is ex post facto analysis.*

Committee on Public Undertakings

Committee on Public Undertakings examines the reports and accounts of the PSUs and the CAG audit reports related to PSUs. This committee was established in 1964 on recommendations of Krishna Menon Committee.

Members

Committee on Public Undertakings has 22 members from both the houses of parliament {15 from Lok Sabha and 7 from Rajya Sabha}. These members are elected by the members of parliament from amongst themselves via principle of proportional representation by means of a single transferable

vote, so that all parties get due representation. Term of the members is one year. However, the chairman of this committee, appointed by Lok Sabha speaker is always from Lok Sabha. A minister cannot become chairman of this committee also.

Functions

Committee on Public Undertakings examines the reports and accounts of public undertakings and also the CAG audit reports on public undertakings. It ascertains if the affairs of the PSU is being managed as per sound business and commercial principles and practices. The companies include all the Government Companies whose Annual Reports are placed before the Houses of Parliament under section 619A (1) of the Companies Act, 1956 and statutory Corporations whose names have been specified in the Fourth Schedule to the Rules of Procedure come within the purview of the Committee.

Other Committees Having Members from Both Houses

Committee on Welfare of SCs and STs

The Committee on welfare of SCs and STs is a standing Committee of the Parliament which has 30 members {20 from Lok Sabha, 10 from Rajya Sabha}. This committee examines the report of NCSC and NCST and all other matters related to SCs / STs Welfare including Government schemes for these sections.

Joint Committee on Salaries and Allowances of Members

Joint Committee on Salaries and Allowances of Members was set up under the Salary, Allowances and Pensions of MPs act 1954. This committee has 15 members {10 from Lok Sabha, 5 from Rajya Sabha}. This committee frames rules for regulation of the payment of salary, allowances and pensions to members of the Parliament.

Committee on Empowerment of Women

Committee on Empowerment of Women was constituted in 1997. This committee has 30 members consisting of 20 members from Lok Sabha and 10 members from Rajya Sabha. It considers report of National Commission for Women and examines the measures taken by the Union Government on women safety, security and equality.

Joint Committee on Offices of Profit

The Joint Committee on Offices of Profit is constituted in pursuance of a Government motion adopted by Lok Sabha and concurred in by Rajya Sabha for the duration of Lok Sabha. It examines the composition of the various committees and bodies constituted by the Union and State Governments and recommends whether the persons holding these offices and reports whether the persons holding these offices should be disqualified from being elected as MPs or not.

Committees which are separate for Lok Sabha and Rajya Sabha

Business Advisory Committee

There are two Business Advisory Committees in the Parliament of India, one each for Lok Sabha and Rajya Sabha. These committees regulate the programme and time table of concerned house.

Members

The Lok Sabha Business Advisory Committee has 15 members including Speaker, who is also its chairman. The Rajya Sabha Business Advisory Committee has 11 members including the Vice-President as its ex-officio chairman. The members are nominated by speaker / chairman as the case may be.

Term

The function of the Committee is to recommend the time that should be allocated for the discussion of the stage or stages of Government Bills and other business as the Speaker, in consultation with the Leader of the House, may direct for being referred to the Committee. The committee plans and regulates the Business of the house and renders advice regarding the allocation of time on various discussions.

Committee on Petitions

Both Lok Sabha and Rajya Sabha have their Committee on Petitions. While Lok Sabha committee has 15 members, Rajya Sabha has 10 members. The members of these committees are nominated by Speaker / Chairman as the case may be. The major function of this committee is to examine every petition referred to it and if the petition complies with the rules to direct that it be circulated.

Committee of Privileges

Both Lok Sabha and Rajya Sabha have their Committee on Privileges. The Lok Sabha committee has 15 members, while the Rajya Sabha committee has 10 members. The members are nominated by the Speaker / Chairman as the case may be. The functions of this committee are semi-judicial in nature including examination of breach of privileges of the House. The committee recommends appropriate action.

Committee on Government Assurances

Each house of the Parliament has a committee on Government Assurances which examines the assurances, promises and undertakings given by the ministers on the floor of that house. The Lok Sabha Committee on Assurances has 15 members and Rajya Sabha Committee on Assurances has 10 members.

Committee on Subordinate Legislation

Every house of the parliament has a Committee on subordinate legislation whose main function is to examine the rules and regulations enacted by the executive to fill the gaps in the laws enacted by the parliament and report how far these rules are within limits prescribed in the main law. This committee has 15 members each in Rajya Sabha and Lok Sabha.

Rules Committee

Every house of Parliament has a rules committee which considers the issues related to procedure and conduct of the business in that house and suggest necessary amendments in the rules. The Lok Sabha committee has 15 members and Speaker is its ex-officio chairman. Rajya Sabha committee has 16 members and Vice-President is its ex-officio Chairman.

General Purposes Committee

Each house of parliament has its General Purpose Committee which considers and advises on general matters that are not covered by any other committee. This committee has Speaker {in Lok Sabha) and Chairman / Vice-President {In Rajya Sabha} as its chairman. The Deputy Speaker {in Lok Sabha} and Deputy Chairman {in Rajya Sabha} are also its members. There are further members are whose number is not fixed and who are appointed by Speaker or Chairman.

Committee on Papers Laid on the Table

Each house of Parliament has a Committee on papers laid on the table. The Lok Sabha Committee has 15 members while the Rajya Sabha members have 10 members. The function of this committee is to examine the papers laid on the table of the house by ministers to see if they comply with the constitutional, regulatory and legal aspects.

Committees which Exist only in Lok Sabha

Committee on Absence of Members

Committee on Absence of Members is a special committee in Lok Sabha of India's parliament. There is no such committee in Rajya Sabha. This committee considers the applications of members for leave of absence from sitting of the house and also examines the cases of members who are absent for a period of 60 or more days without permission.

Departmentally Related Standing Committees (DRSCs)

17 Departmentally Related Standing Committees (DRSCs) were constituted on 29th March, 1993 covering all Government Ministries/Departments. These DRSCs replaced the earlier three subject Committees constituted in August, 1989. The 17 DRSCs were formally constituted with effect from 8th April, 1993. At present there are 24 Departmentally Related Standing Committees (DRSCs).

Parliamentary Forums

The Parliamentary Fora or Forums provide a platform to members of the house to have interaction with the Ministers concerned, experts and key officials from the nodal Ministries with a view to have a focused discussion on critical issues facing the country so as to enable them to effectively raise these issues on the floor of the House and in the meetings of the Departmentally Related Standing Committees.

History of Parliamentary Forums in India

The first Parliamentary Forum was constituted by the Lok Sabha Speaker on Water Conservation and Management on 12 August, 2005. Subsequently, the four Parliamentary Forums were constituted namely, Parliamentary Forum on Youth, Parliamentary Forum on Children, Parliamentary Forum on Population and Public Health, and Parliamentary Forum on Global Warming and Climate Change. On 21 January, 2010, during the 15th Lok Sabha, the Hon'ble Speaker, Lok Sabha has re-constituted all the above five Parliamentary Forums.

Composition of Parliamentary Forums

Each Forum consists of 31 Members (excluding the President and the *ex-officio* Vice-Presidents) out of whom not more than 21 are from Lok Sabha and not more than 10 are from Rajya Sabha. Members, other than the President and Vice-Presidents, are nominated by the Hon'ble Speaker, Lok Sabha and the Hon'ble Chairman, Rajya Sabha, as the case may be, from amongst the Leaders of Parties and Groups, or their nominees who have special knowledge/keen interest in the subject. The Hon'ble Speaker, Lok Sabha is the President of all the Forums except the Parliamentary Forum on Population and Public Health wherein the Hon'ble Chairman, Rajya Sabha is the President and Hon'ble Speaker, Lok Sabha is the Co-President. Secretary-General, Lok Sabha is the Secretary to the Forums.

Difference between Parliamentary Forums and Parliamentary Committees

Unlike Parliamentary forums which are constituted with objective of equipping members with information and knowledge on specific issues of national concern and for assisting them to adopt a result-oriented approach towards related issues, Parliamentary Committees are appointed or elected by the House or nominated by the Speaker to give a close consideration to all the legislative and other matters that come up before the house. It works under the direction of the Speaker and presents its report to the House or to the Speaker and the Secretariat for which is provided by the Lok Sabha Secretariat.

Delimitation

Delimitation means the drawing of boundaries. The boundaries may be domestic, national and International, but the most general use of this term is in context with electoral boundaries. Article 82 (Readjustment after each census) makes provision for delimitation of the electoral boundaries. It is the process of *allocation of number of Seats and their demarcation into territories.*

Under Article 82, the Parliament by law enacts a Delimitation Act after every census. After coming into force commencement of the Act, the Central Government constitutes a **Delimitation Commission**. This Delimitation Commission demarcates the boundaries of the Parliamentary Constituencies as per provisions of the Delimitation Act.

Delimitation commissions have been set up four times in the past viz. 1952, 1963, 1973 and 2002

under Delimitation Commission acts of 1952, 1962, 1972 and 2002.

Purpose of Delimitation

In India, the main basis for allocation of seats to various States in the Lok Sabha is **Population** of the state. The division of each state into the territorial constituencies is to be readjusted after the completion of a census so that the **Population-Seat ratio is maintained** within the state and throughout the Union. So the purpose is the Rationalization of the structure and composition of the electoral constituencies, on the principle of " **One vote and one value**".

First Delimitation Commission

When the constitution came in existence, it had fixed the number of Seats to Lok Sabha as **not more than 500.** For the First General Elections for Lok Sabha as well as legislative Assemblies for 1951-52, the Election Commission had divided the entire country into viable territorial divisions of parliamentary / assembly Constituencies. However, after that this task was given to the Independent Delimitation Commission. Accordingly, separate delimitation commissions were set up in 1952 (basis of 1951 census), 1962 (basis of 1961 census), 1972 (basis of 1971 census).

Ban on Delimitation

The 42nd Amendment Act 1976 had put a ban on any further delimitation of the Constituencies till the **year 2000.** So after the 42nd amendment act 1976, the total number of seats in Lok Sabha and Rajya Sabha has remained the same. This ban was imposed mostly on the account of the fear that a few states to get more seats in the Lok Sabha on the basis of a **large population may not take much interest in the family planning**. So, indirectly this was done so that states may not be biased towards the family planning measures.

Delimitation and 84th Amendment Act 2002

The 84th Amendment Act 2002 extended the freeze till the year 2026. This was based upon the calculations of the population planners that by 2026 India will be able to stabilize the population.

So next allocation of seats would be carried out on the basis of the Census after 2026 and the number of seats will not change by then. By enacting the 84th amendment Act,2002, it was also decided to undertake readjustment and rationalization of territorial constituencies in the States, without altering the number of seats allotted to each State in the House of the People and Legislative Assemblies of the States, including the Scheduled Castes and the Scheduled Tribes constituencies, on the basis of the population ascertained at the census for the year 1991, so as to remove the imbalance caused due to uneven growth of population/electorate in different constituencies. So 84th amendment Act did two things:

- Freeze the fresh delimitation till 2026
- Allowed to readjust the seats.

The year 1991 was later altered to 2001 by 87th amendment act 2003.

Delimitation Act 2002

In pursuant with the 84th Amendment Act 2002, the Delimitation Act 2002 was passed. Under this act Delimitation Commission was constituted in July 2002. The Chairman of this commission was Justice Kuldeep Singh. Justice Kuldeep Singh was a retired Judge of the Supreme Court of India. The Ex-officio members of this Commission were an election commissioner of India and state election commissioners. So this commission started working on the basis of 1991 census data. But later in 2003, the word "1991" in the article 82 of the constitution was removed and replaced by 2001. This means that the work done till then by the commission became obsolete. The commission later restarted the work as it was now entrusted with the task of readjusting all parliamentary and assembly constituencies in the country in **all the states of India, except the state of Jammu and Kashmir**, on the basis of population ascertained in 2001 Census.

Later, The Guwahati High court stayed the delimitation exercise in respect of the Arunachal Pradesh, Assam, Nagaland, Manipur (5 states) on the basis of the disputes in the census Figures. In Manipur the work of delimitation was later resumed after Supreme Court stayed on the order of the Guwahati High Court.

Current Position of Delimitation

In the 2009 general elections, 499 out of the total 543 Parliamentary constituencies were newly delimited constituencies. This affected the National Capital Region of Delhi, the Union Territory of Puducherry and all the states except Arunachal Pradesh, Assam, Jammu & Kashmir, Jharkhand, Manipur and Nagaland. Many instances, a constituency with the same name may reflect a significantly different population demographic as well as a slightly altered geographical region.

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Model Questions

Prelims MCQ Topics

Appointment of Governor, Conditions of Office of Governor, tenure and doctrine of pleasure, Appointments done by Governor, Governor's powers with regard to state legislature and bills, Ordinance Making Powers, Judicial Powers, Discretionary Powers of the Governor, Special Responsibilities of Governor, Comparison of India's President and Governor of an Indian State, Legislative Council – Strength and Members, Duration, Creation and Abolition of Legislative Council, MLAs- Qualification and Disqualifications, Advocate General, Union Territories, Power of Parliament to create local legislatures, Special Provisions with respect to Delhi.

Both Union and States in India have parliamentary system of government and the pattern of executive and legislature is almost same at both levels. The Part VI of the constitution deals with the State Executive, Legislature and Judiciary. This part is NOT applicable to Jammu & Kashmir because it has its own constitution.

Governor

The provisions related to state executive are in articles 153 to 167. The state executive is made of Governor, Chief Minister, Council of Ministers and Advocate General. The executive authority of a state is vested in the Governor; and Governor is the constitutional head of the state in the same way as President is the Constitutional head of the Union. The Constitution had provided a Governor for each state but in 1956, the 7th amendment provided for appointment of same person for two or more states.

Appointment of Governor

The Governor is appointed and not elected directly or indirectly. The framers of the constitution initially wanted an arrangement for an elected Governor of each state, very much like the governors of the US states. But the idea was dropped because of below mentioned reasons:

- If the Governor of the state is elected directly by the people of the state, his position would not be a "**Constitutional Head**" and will be that of a "Real Head". This can result in a friction between the council of ministers in the state and the governor.
- If the Governor of the state is elected by the elected representatives of the state assembly, there are possibilities that the Governor rather than being impartial may become the pawn of the political parties that suggest his/ her victory in the Governor's elections.
- Governor in a state in India is actually an **agent of the President** and a **servant of the Union of India**. In case there is any conflict between the state and the centre, a directly or indirectly elected Governor may not prove to be an obedient servant of the Union. This would be inconsistent with the Idea of a strong centre in the country.
- Governor is expected to be an impartial and independent mediator for the rival factions in the state and this can be done only when Governor is a nominee of the President.

Thus, the method of appointment of Governor has removed the evils which would have resulted from any of the alternative methods. The office of Governor is modeled as much like the provincial Governors of Canada who are appointed by the Governor General of Canada and hold the office during his pleasure.

Eligibility

Constitution makes only two eligibility conditions in appointment of Governor. First, he should be a citizen of India and second, he should have completed 35 years of age. Apart from that, it's up to

President {practically Central Government} to decide who can be appointed as Governor.

Should Governor be outsider?

Governor is generally outsider and does not belong to the state in which he holds the office. This is a convention not constitutional requirement. Its objective is to keep governor free from local politics. Since it's not an eligibility condition, a person can be appointed as Governor in home state if the president {centre} wants to do so.

Is Consultation with Chief Minister needed in appointment of Governor?

No, it's not needed.

Conditions of Office

The Governor should not be member of any house of the parliament. If an MP is appointed as Governor, he needs to vacate his seat. He also should not hold any other office of profit. His salary, allowances and other privileges are defined by parliamentary law. Parliament enacted the Governors (Emoluments, Allowances and Privileges) Act, 1982 in this context.

Apart from the free residence, medical facilities and other allowances, a Governor of the state in India currently draws a salary of Rs. 1,10,000 per month. Salary and Allowances of the Governor are *charged expenditures* from the *Consolidated Fund of the State.* If same person is appointed as governor of more than one states, the salary etc. are shared by the concerned states.

Immunities and Privileges

A Governor enjoys personal immunity from legal liabilities for his official acts. When he is in office, he is immune from criminal proceedings even in respect of the personal acts. He cannot be arrested or imprisoned. Civil proceedings against him can be launched against him during his term for his personal acts only after giving two months notice.

Oath

Before entering upon his office, the governor needs to subscribe to an oath to faithfully execute his office and to "preserve, protect and defend" the Constitution, much like President. The oath is administered by Chief Justice of State High Court.

Tenure

Although the governor holds office for a term of five years from the date on which he enters upon his

Office, yet this term is subject to pleasure of president. The "doctrine of pleasure" has always been used to drop governors any time and thus, Governors have no security of tenure. Further, a governor can resign from the office by addressing resignation to President.

Powers and Functions of Governor

Being a constitutional head in the state, the Governors have executive, legislative, financial, judicial and discretionary powers.

Executive Powers

All the executive actions of the state are taken in his name. He makes rules specifying the manner in which the orders and other instruments made and executed in his name shall be authenticated. Further, Governor also can make rules for more convenient transaction of the business of the state government.

Appointments done by Governor

Appointment of some of the following important functionaries of the State Government is made by the Governor including.

Chief Minister and Other Ministers

The Chief Ministers is appointed by Governor and other ministers in state are appointed by him on advice of Chief Minister. The CM as well as other ministers hold their office during pleasure of the Governor. However, they cannot be removed arbitrarily until Council of Ministers has confidence of the state assembly. Further, in *Bihar, Madhya Pradesh and Odisha*, the governor also appoints a Tribal Welfare Minister.

Chairmen and members of SPSC

Governor also appoints the chairman and other members of State Public Service Commissions. *However, removal of chairmen and members of SPSCs can be done only by President.*

Advocate General

Advocate general is the part of state executive and highest law officer of the state. He is appointed by governor and his retainer is determined by Governor. Advocate general has no fixed tenure and holds the office during the pleasure of the Governor.

State Election Commissioner

Governor appoints the state election commissioner and determines the conditions of service and tenure of the later. However, Election Commissioners in states can be removed only in like manner and on like grounds of a state high court judge.

Vice-chancellors

Governor is the Chancellor of universities in the state and he appoints vice-chancellors in various universities.

District Judges

Appointments of persons to be, and the posting and promotion of, district judges in any State is done by Governor of the State in consultation with the High Court exercising jurisdiction in relation to such State. {Article 233}

Role in President's Rule

Governor has extensive executive powers in terms of imposition of emergency in state under article 356. Under this article, Governor can send a report to President and recommend constitutional emergency on the ground that government of the State cannot be carried on in accordance with the provisions constitution.

Legislative Powers

Powers with regard to state legislature

Governor has powers to summon and prorogue state legislature and dissolve the state assembly. He addresses the first session of the state legislature after the general elections in the state. He also appoints $1/6^{th}$ members of the State legislative Council in states wherever there is bicameral legislature. He also nominates one member in state legislative assembly from the Anglo-Indian Community if in view, the community is not well represented.

The powers with regard to Bills

All the bills passed by the state legislatures are sent to the Governor for assent. Once a bill is sent to Governor for assent, he can:

- give assent to the bill
- withhold the assent
- return the bill to legislature for reconsideration {if it is not a money bill}. If the bill is re-passed by legislature with or without amendment, the governor has to give assent to the bill.
- Reserve the bill for consideration of the President in circumstances when the bill *violates constitution* or *is against directive principles of state policy* or *may involve some kind of conflict with union powers* or *is against the larger interest of country and people* or may *endanger the position of the high court in the state*.

Ordinance Making Powers

As per provisions of article 213, the Governor has special legislative power of promulgating the ordinances during the recess of the State legislature.

- To issue an ordinance, the governor must be satisfied with the circumstances that make it necessary for him / her to take immediate action.
- Governor cannot promulgate an ordinance in any of the three situations give below:
    - If the ordinance has the provisions which of embodied in a bill would require president's sanction.
    - If the ordinance has the provisions which the governor would reserve as a bill containing them for the president's sanction.
    - If an act of the state legislature has the same provisions that would be invalid without the assent of the president.

All ordinances promulgated by the Governor in the state have the same effect and force. The ordinance must be laid before the state legislature when it reassembles and it must be upheld by the State legislature, failure to which the ordinance would be invalid.

Powers with respect to Disqualification of members

Governor decides on the question of disqualification of members of the state legislature in

consultation with the *Election Commission.*

Reports laid by Governor in state legislature

Governor 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

Money bills in the State legislature cannot be introduced without prior recommendation of the Governor. Governor ensures that the Budget of the state is laid before the assembly every year. The "Contingency Fund of the state" is maintained and administered by the Governor of the state. Governor can advance money out of it for meeting unforeseen expenditures, but the money has to be recuperated with the authority of the state legislature. The Governor of the state receives the report of the States auditor general pertaining to the accounts of the legislature and puts it before the state legislature.

Judicial Powers

President of India consults the Governor while appointing the Chief Justice and other judges of the High Courts of the states. President has powers can grant pardon, reprieve, respite or remission of punishment to persons convicted of an offense against the any law relating to a matter *to which the executive power of the state extends. Further, He cannot pardon a person awarded capital punishment, although he can convert the same into some other kind of punishment. Further, Governor has no powers to pardon with respect to a sentence in court martial.*

Discretionary Powers of the Governor

The discretionary powers of Governor in state are much more extensive in comparison to the President in centre in India. For example, Article 163 of the constitution says that there shall be a Council of Ministers in the states with the Chief Minister at the head to aid and advise the Governor in exercise his functions, *except those which are required to be done by the Governor on his/ her discretion.* The constitution further mentions that if any question arises whether a matter falls within the Governor's discretion or not, decision of the Governor shall be final, and the validity of anything done by the Governor shall not be called in question on the ground that he ought or ought not to have acted in his discretion. Moreover, what advice was tendered by the Governor to the Ministry cannot be inquired into a court.

Some discretionary powers are as follows:

- Governor can dissolve the legislative assembly if the chief minister advices him to do following a vote of no confidence. Now, it is up to the Governor what he/ she would like to do.
- Governor, on his/ her discretion can recommend the president about the failure of the

constitutional machinery in the state.

- On his/ her discretion, the Governor can reserve a bill passed by the state legislature for president's assent.
- If there is NO political party with a clear cut majority in the assembly, Governor on his/ her discretion can appoint anybody as chief minister.
- Governor determines the amount payable by the Government of Assam, Meghalaya, Tripura and Mizoram to an autonomous Tribal District Council as royalty accruing from licenses for mineral exploration.
- Governor can seek information from the chief minister with regard to the administrative and legislative matters of the state.
- Governor has discretion to refuse to sign to an ordinary bill passed by the state legislature.

Thus, though the Governor is made the constitutional head of a state like president of India, yet there is a thin line as the Constitution empowers the Governor to act without the advice of the Chief Minister and his council and can use discretion on certain matters.

Special Responsibilities of Governor

The constitution has also placed some special powers and functions of Governor in certain states which need to be exercised in consultation with the Council of Ministers in state. These include:

- Establishment of separate development boards for Vidarbha and Marathwada in Maharashtra.
- Establishment of separate development boards for Saurashtra and Kutch in Guhjarat
- Governor of Nagaland has special responsibility with respect to law and order in the State of Nagaland for so long as in his opinion internal disturbances occurring in the Naga Hills-Tuensang Area immediately before the formation of that State continues.
- Special powers with respect to administration of tribal areas in Assam.
- Special powers with respect to Manipur with respect to administration of hill areas in Manipur.
- For peace and for ensuring social and economic advancement of the different sections of the population in Sikkim.
- With respect to law and order in Arunachal Pradesh.

Comparison of India's President and Governor of an Indian State

The key similarities and differences between President and Governor are given below:

Similarities

- Both the President and Governor have the status of Constitutional Heads.
- All executive decisions are taken in their name but actual power is exercised by Council of Ministers

- All ordinary / money bills passed must get their assent before they become an act.
- Both of them have powers to promulgate ordinances
- All Money bills can be introduced with prior recommendation of President in the Lok Sabha and Governor in the state legislature.

Differences

- The discretionary powers of Governor are *with wider scope in the state* than the President in the Union.
- Governor cannot grant pardon to somebody convicted and sentenced to death, although he can commute such sentence. Only president has power to pardon someone sentenced to death.
- President can nominate two members of Anglo-Indian Community in Lok Sabha, Governor can nominate one member of Anglo-Indian Community in State Legislature.
- President nominates 12 members in Rajya Sabha. Governor nominates 1/6th members of State Legislative Council wherever bicameral legislatures exist in states.
- Only President can declare war or peace.
- Only President can pardon a person punished under Martial law.

State Legislature

Articles 168 to 212 in the constitution deal with matters related to state legislature. In India, states can be unicameral or bicameral. In unicameral states, only legislative assembly is found in states while in bicameral a legislative council is found. Most states in India have a unicameral legislature. Features of the Legislative assembly resemble to those of the Lok Sabha in the centre and features of legislative council resemble to those of Rajya Sabha.

Legislative Council

Legislative Council or Vidhan Parishad is the upper house in bicameral legislatures in some states of India. While most states have unicameral legislature with only legislative assembly, currently, *seven states* viz. Andhra Pradesh, Bihar, Jammu and Kashmir, Karnataka, Maharashtra, Telangana, and Uttar Pradesh have legislative council. Further, Parliament has also cleared formation of Legislative Council Rajasthan and Assam.

Strength of the Legislative Council

Total Number of the Legislative Council should not exceed the 1/3rd of the total number of members of the Legislative assembly, but it *should not be less than 40* (Article 171). However, Jammu & Kashmir is an exception to this where the upper house has strength of 36 only. This is because; J & K assembly is created as per the J & K constitution and Part VI is not applicable to Jammu & Kashmir.

Representatives in the Legislative Council

In legislative Council, there are 5 different categories of representation.

- 1/3rd of the total membership is elected by the electorates consisting of the members of the self Governing bodies in the state such as Municipalities, District Boards etc.
- 1/3rd members are elected by the members of the Legislative assembly of the State
- 1/12th members are elected by an electorate of University Graduates.
- 1/12th members are elected by the electorate consisting of the secondary school teachers (3 year experience)
- 1/6th members nominated by the Governor on the basis of their special knowledge / practical experience in literature, art, science, cooperative movement or social service.

For the first 4 categories mentioned above, the election is held in accordance with the system of proportional representation by means of a single transferable vote and secret ballot method. *The above representation can be changed by parliament of India by law.*

Eligibility to become a Member of Legislative Council (MLC)

To be eligible for membership of the Legislative council, a person

- Must be citizen of India
- Must have completed the age of 30 years
- Must possess such other qualifications as prescribed by the parliament by law.

The member should not hold the office of the profit. Should not be of unsound mind and should not be an undischarged insolvent.

Duration of Legislative Councils

The legislative council is permanent body but 1/3rd of its member retire every 2 years. The members of the council elect a chairman which is called "presiding officer". The council also elects the Deputy chairman.

Who decides whether the state should be unicameral or bicameral?

Article 168 of the constitution of India provides for a Legislature in every state of the country. The same article mentions that there are some states where there is a legislative council as well. Thus, Indian Constitution does not adhere to the principle of bicameralism in case of every legislature. The framers of the constitution as well as members of the Constituent assembly had in mind that it may not be possible for all the states to support two houses, financially as well as for other reasons. For example, some of the members of the Constituent assembly criticized the idea of bicameral legislature in the states as a superfluous idea and a body which is unrepresentative of the population, a burden on the state budget and causing delays in passing legislation. That is why, whether there should be a legislative council in the state or not, is decided by legislative assembly of the state itself. But it does not mean that legislative assembly can itself create a legislative council. The constitution

of India has full provisions about the creation of legislative council and its abolishment.

Who can abolish a legislative council?

The power of abolition and creation of the State legislative council is vested in Parliament of India as per article 169. But again, to create or to abolish a state legislative council, the state legislative assembly must pass a resolution, which must be supported by **majority of the strength** of the house and **2/3rd majority of the present and voting** (Absolute + Special Majority). When a legislative council is created or abolished, the Constitution of India is also changed. However, still, such type of law is not considered a Constitution Amendment Bill. (Article 169). The resolution to create and abolish a state legislative council is to be assented by the President also.

Legislative Assembly

Legislative assembly is the popular house of the State legislature resembling in features with India's Lok Sabha. It is made up the members directly elected by the people of the state. As per article 128, the Legislative assembly of each state cannot have number of members more than 500 and less than 60. However, there are three exceptions to this viz. Sikkim (32), Goa (40) and Mizoram (40). For election purpose, the state is divided into the number of constituencies as per the seats for the assembly. The term of the assembly is 5 years but it can be dissolved prior to 5 years by Governor. During a National Emergency, the parliament by law can extend the term of a state assembly by 1 year.

Eligibility to become a MLA

- The person should be Citizen of India
- Should be more than 25 years of age
- Other qualifications as prescribed by the parliament by law.

Disqualification of MLA

A person is disqualified on the following grounds:

- If he/ she holds any office of the profit under the central or state Government
- If he/ she is of unsound mind
- If he / she is an undischarged insolvent
- If he / she has voluntarily acquired the citizenship of a Foreign country
- If he/ she is disqualified under any other law of the parliament such as anti-defection law.

Who decides that a person is disqualified?

The question, whether a person has been subject to any of the above disqualification will be referred to the Governor who decides in consultation with the election commissioner of the state. The decision of the Governor is final. The Governor of the state nominates **one member** of the Anglo Indian Community to the state assembly as per provisions of article 333, if he / she is of the opinion that the community is not well represented in the state assembly.

Presiding Officer of Legislative Assembly

Presiding officer of the state legislative assembly is also known as Speaker who is elected by the members of the assembly. The members of the assembly also elect deputy speaker.

Chief Minister and Council of Ministers in State

Article 163 of the constitution says that there shall be a Council of Ministers in the states with the Chief Minister at the head to aid and advise the Governor in exercise his functions, *except those which are required to be done by the Governor on his/ her discretion.* Further, if there is any question whether a matter falls within the Governor's discretion or not, decision of the Governor shall be final.

In the state, the chief minister is appointed by Governor and other ministers are appointed by Governor on advice of Chief Minister. The council of the Ministers holds the office during the pleasure of the Governor, but actually holds the office as long as it enjoys majority in state legislative assembly. The council of ministers works on the principle of collective responsibility to the legislature of the state. This means that vote of no-confidence against any minister automatically leads to the resignation of entire council. A Minister who for any period of six consecutive months is not a member of the Legislature of the State, at the expiration of that period ceases to be a Minister. (Article 164)

The council of Ministers formulates the policy of the Government and implements it practically. The all important appointments in the states are made by the Governor and Council of Minister advices / aids Governor in this work. The Council of Ministers forms and presents the Budget of the state every year.

Legislative Process in States

There is hardly anything special with respect to the conduct of the business in state legislatures and it is almost same as that of process in Lok Sabha. Most of the articles are same even in verbatim. Some important points are as follows:

- The state legislature must meet at least twice a year and the interval between the any two sessions of the legislature should not exceed 6 months.
- The new session begins with the opening address by the Governor , in which the Governor outlines the policy of the state Government.
- This address is then debated and then a resolution is passed for thanks to Governor. During this debate, the opposition parties get opportunity to criticize the policy of the Government.
- Every bill except Money Bill can be introduced in either house of the legislature.
- The same process as we discussed in Union legislative process is followed and the bill is passed after third reading.
- After passing, the bill goes to Governor for assent. Here 4 courses of action arise for the Bill:

- The Governor gives assent to bill and it becomes an act
- Governor withholds the assent
- Governor returns the bill (provided it is NOT a money Bill)
- Reserve the bill for consideration of the President
- The Governor may send a bill back. If the legislature again sends the bill after passing it again, Governor cannot withhold the assent.
- However, a Governor may reserve assent for consideration of the President.
- Please note that President is NOT bound to give assent even if a bill is passed for second time in the State legislature.

Bill, State Legislature and President

Please not that Governor may not return the money money bills however he can withhold assent to a Money bill. However, in case of other bills, when the bill reserved by the Governor and sent to the President, President may give assent or withhold it.

The president can also direct the Governor of the state to send back the bill to the state legislature for reconsideration. The state legislature, in this case will have 6 months for re-passing the bill.

And after re-passing, it is NOT sent to the Governor again but sent to the President directly.

Still the President is NOT obliged to give assent. However, if President thinks is alright, then may go for advisory jurisdiction of the Supreme Court.

Law making Powers of the State Legislatures

- State Legislature can make laws on the subjects which are in the state list as well as concurrent list.
- However, if its own law on subjects from the concurrent list should not conflict with the Union Laws. If there is a conflict, the law passed by the Union shall prevail.
- State Legislature exercises the complete control of the finances and no taxes can be levied or expenditure incurred without the approval of the state legislatures.

Advocate General in State

Advocate General is the Highest Law Officer and is part of state executive. He is appointed by the Governor and enjoys the office during the pleasure of the Governor. The remuneration / retainer of the Advocate General is decided by the Governor. The qualification to become an advocate general is the same as that of a Judge of a High Court. The advocate general has been assigned the duty to give advice to the state Government on legal matters which are referred to him/ her. Advocate General is entitled to appear before any court of law within the state or Address the state Legislature as and when required. However, he is not entitled to vote in state assembly.

Union Territories

The territories of the Union of India have states, union territories and the territories which might be acquired by India at any time. While states are members in the federal system with a share in distribution of power with centre, *Union territories are under the direct control and administration of Union* and are thus prominently display the unitary features. Currently, India has seven Union Territories viz. Andaman and Nicobar Islands; Chandigarh; Dadra & Nagar Haveli, Daman & Diu, Lakshadweep, NCT of Delhi and Puducherry.

Administration of the Union Territories (Article 239)

The Union Territories are administered by the President through an administrator, who is appointed by him with a suitable designation. This designation is called either Lieutenant Governor or Chief Commissioner or Administrator. In Andaman & Nicobar Islands, Puducherry and Delhi, administrator is called Lt. Governor, while in Chandigarh, Dadra & Nagar Haveli, Daman & Diu and Lakshadweep he/ she is known as Administrator. The *President may appoint a Governor of an adjoining state as administrator of a Union territory*. In such case the Governor works independently with regard to the administration of the Union Territory.

Power of Parliament to create local legislatures (Article 239A)

Power to decide the structure of administration in the UT is vested in Parliament. Parliament was empowered to create a legislature or council of ministers or both for a Union Territory via Constitution (Fourteenth Amendment) Act, 1962 by inserting Article 239A. Using this article legislature of Puducherry was established.

Special Provisions with respect to Delhi (Article 239AA)

Article 239AA was inserted by 69th amendment act, 199. This article provides special provisions for the Union Territory of Delhi. After the 69th Amendment Act 1991, w.e.f from February 1, 1992, the UT of Delhi is called National Capital Territory of Delhi. The administrator of the NCT as appointed by the President as Lieutenant Governor. Via Article 239AA, a legislative assembly for NCT of Delhi was provided. The power to decide the number of the seats and reservation of the seats was vested in the parliament.

With this, Delhi became a state and the Constitutional provisions with regard to Elections (Article 324-327 and 329) became applicable in NCT. Since then, Delhi has been struggling for a status of full-fledged state of India.

On which subjects the Delhi State legislature make laws?

As per the provisions of the Article 239AA, the State Government of Delhi can make laws for whole or part of the NCT on all subjects in the *State List or Concurrent List* except the following subjects of the **State List:**

- Entry 1: Public Order
- Entry 2: Police
- Entry 18: Land
- Entry 64: Offences against the laws Jurisdiction power of all courts

This means that Delhi has been endowed with a legislative Assembly with a chief minister and a council of ministers with limited powers, distinct from the powers available for them in other states. The Article 239 AA has kept the Matters covered by Entries 1, 2 and 18 of the state list of Seventh Schedule i.e. Public order, police and land outside their purview.

What is implication of this provision?

As per article 239AA, Delhi Police, Municipal Corporation of Delhi etc. come under Union Government. While the Union home ministry deals with law and order, the Delhi Development Authority (DDA) — which owns a major chunk of land in Delhi — is part of the Union Urban Development Ministry. The lieutenant governor, considered the Centre's representative in Delhi, is chairman of DDA. The police commissioner of Delhi too reports to the lieutenant governor.

President's Rule on Delhi

Article 239AB deals with President's rule in NCT of Delhi. Article 239AB provides that if the Lieutenant Governor of Delhi gives a report to the President that a situation has arisen in National Capital Territory of Delhi in which the administration cannot be carried out in accordance with the provisions of the article 239AA, then President can suspend any provisions of Article 239AA.

Ordinance making Power of Administrator (Article 239)

Article 239B gives the administrator of the Union Territory of Puducherry the power of ordinance making. The administrator of Puducherry can promulgate an ordinance when the legislative assembly of Puducherry is NOT in session and the ordinance can be promulgated with the prior permission of President only. Rest of the features of the ordinance is same as Governor of a state.

Power of President to regulate peace, progress and good government (Article 240)

President may make regulations for the peace, progress and good government of the Union Territories of the Andaman & Nicobar Islands, Lakshadweep, Dadra & Nagar Haveli, Daman & Diu and Puducherry. However as far as Puducherry is concerned, President does not make any law on regulation for the peace, progress and good government after the Legislature of the Puducherry was created and had its first meeting. But during the dissolution or suspension of the Puducherry Legislative assembly, the president can regulate the peace, progress and good government.

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India's constitution has established an integrated judiciary with the Supreme Court at the top, high courts below it and subordinate courts below high courts. The single system of courts has been adopted from Government of India Act 1935 and enforces both central and state laws.

Supreme Court of India

On January 28, 1950, India's Supreme Court succeeded the Federal Court of India which was established by Government of India Act 1935 and the Privy Council, which was highest judicial body in the country during British Era. The organisation, independence, jurisdiction, powers and functions of the Supreme Court are provided in articles 124 to 147 in Part V of the Constitution of India.

Number of Judges

Since February 2009, Supreme Court of India has total sanctioned strength 31 judges including the Chief Justice. The original constitution had fixed sanctioned strength of the court at 8 and left the matter to parliament to increase the number of judges as needed by making a law. The number was increased to 11 in 1960, 14 in 1968, 18 in 1978, 26 in 1986 and 31 in 2009.

Appointment of the Judges

Every Judge of the Supreme Court is appointed by the President after consultation with the Judges of the Supreme Court and High Courts in states, the president may deem necessary for the purpose. President if thinks necessary, can consult the Judges of the High Courts of States to appoint a supreme court Judge, as per article 124(2). However, in appointment of the other judges, president shall always seek consultation from the Chief Justice of India. Till 1993, the Judges of the Supreme Court were appointed by the President on recommendation of the CJI, but now a committee of 5 senior most judges recommends the names to the law ministry which after scrutinizing send the paper to the president. The president either approves the names or returns the names for reconsideration of the Supreme Court. If still the Supreme Court sends the same names president appoints the persons recommended.

Qualifications of the Judges of the Supreme Court

To be appointed a Judge of the Supreme Court, a person must be a citizen of India and must have been the judge of a high court for a period of 5 years or an advocate of the High Court for at least 10 years or in view of the President a distinct Jurist of the country. Thus, there is nothing which can prevent the direct appointment of the Judges of Supreme Court from the Bar, yet, so far the appointments have been made from the Judges of High Courts only.

Tenure of the Judges

The CJI and other Judges of the Supreme Court of India hold the office until they attain the age of 65 years { Presently, Supreme Court judges retire at 65 and High Court judges at 62}. A Judge can relinquish the office by addressing the resignation to President of India. A retired Judge of the

Supreme Court is prohibited from practicing law before any court or authority within the territory of India; however, there is NO constitutional prohibition that a retired judge gets appointed for some specialized work of the Government.

Removal of Supreme Court Judges

A Judge of the Supreme Court (and also High Court) can be removed from his position by President only on the ground of proved misbehaviour or incapacity. The power for investigation and proof of such misbehaviour or incapacity is vested in the parliament. Each house, in order to remove the judge, will have to pass a resolution which is supported by 2/3rd of members present and voting and majority of the total membership of the house {absolute + special majority}

Salary of the Supreme Court Judges

The Salaries and Allowances of the Judges of the Supreme Court as follows:

- Chief Justice : Rs. 1 Lakh
- Other Judges: Rs. 90,000

In case of High Courts this is as follows:

- Chief Justice : Rs. 90,000
- Other Judges : Rs. 80,000

The salary and pension of Supreme Court Judges is a Non-votable expenditure charged from the Consolidated Fund of India. The Salary of the High Court Judges is charged from the **Consolidated Fund of States** while the pension of the High Court Judges is charged from the consolidated fund India.

When CJI is absent

Any other Judge of the Supreme Court is appointed by the President as Acting Chief justice as per provisions of Article 126.

Post Retirement Jobs

Retired judges of Supreme Court are barred from pleading or acting in *any court within the territory of India. However,* government generally uses the retired higher judiciary judges as heads of various commissions. There has been a demand from certain sections of the society that there should be a "cool off" period of two years for the retired judges before they are installed in other offices.

Ad Hoc Judges

Ad hoc judges can be appointed in the Supreme Court by "Chief Justice of India" with the prior consent of the President, if there is no quorum of judges available to hold and continue the session of the court. Only the persons who are qualified as to be appointed as Judge of the Supreme Court can be appointed as ad hoc judge of the Supreme Court. (Article 127).

Further, as per provisions of the Article 128, Chief Justice of India, with the previous consent of the President, request a retired Judge of the Supreme Court High Court, who is duly qualified for

appointment as a Judge of the Supreme Court, to sit and act as a Judge of the Supreme Court. The salary & allowance of such judge are decided by the president.

The retired Judge who sits in such a session of the Supreme Court has all the jurisdiction, powers and privileges of the Judges BUT are NOT deemed to be a Judge.

Supreme Court and High Courts as Court of Record

Both the Supreme Court and High Courts regarded as courts of record. Supreme Court is a court of record as per provisions of Article 129 and has the powers of such a court including the power to punish for contempt of itself.

Seat of Supreme Court

As per article 130, Seat of the Supreme Court is Delhi, but it can hold its **meeting** anywhere in India. The decision to hold a meeting anywhere in India is taken by the Chief Justice of India in consultation with President. There are no regional benches though the demand was made in past. The demand was turned down by the Supreme Court.

Jurisdiction of Supreme Court

Supreme Court of India has original, appellate, writ and advisory jurisdiction as discussed below:

Original Jurisdiction

As per article 32, Supreme Court is the guardian / protector of fundamental rights and any person whose fundamental rights are violated can directly approach the Supreme Court for remedy. Supreme Court has from time to time interpreted the fundamental rights and has protected the Citizens of India from any unconstitutional legislation which breech their fundamental rights. Any matter regarding the enforcement of Fundamental Rights comes under the Original Jurisdiction of the Supreme Court. Apart from this, Supreme Court is the *Highest Interpreter of the Constitution* and tribunal for final settlements of the disputes between Center and States as well as States and States. Supreme Court has original Jurisdiction in matters related any dispute between:

- Government of India and one or more states
- Government of India and State(s) on one side and State(s) in other side
- State(s) and State(s)

The dispute should involve a question whether of law or fact on which depends existence of a legal right which the court is called upon to determine.

Appellate Jurisdiction

Supreme Court is the Highest Court of appeal and the writs and decrees of Supreme Court run throughout the country. The cases come to the Supreme Court in the form of appeals against the judgments of the lower courts and this is called appellate jurisdiction. Appellate jurisdiction involves the Constitution, Civil and criminal matters.

An appeal can be made in the Supreme Court against any judgment, decree or final order of the High

Court in the territory of India, whether in a civil criminal or other proceedings, if the High Court Certified that the case involves a substantial question of law as to the interpretation of the Constitution. Even of the High Court refuses to give such certificate , the Supreme Court can grant special leave to appeal if the court is satisfied that the case involves a substantial question of law as to the interpretation of the Constitution.

In every matter that involves the interpretation of the constitution whether, civil, criminal or any other proceeding, the Supreme Court has been made the final authority to elaborate the meaning and intent of the Constitution.

As far as criminal cases are concerned there are 3 situations in which criminal appeals in Supreme Court are permitted: (Article 134)

- The High Court has on appeal reverse the order of acquittal of accused person and sentenced him to death.
- The High Court has withdrawn for trial before itself any case from any subordinate court and such trial convicted the accused person and sentenced him to death.
- High Court certifies that the case is worth appeal to the Supreme Court.

Advisory Jurisdiction

Article 143 (Power of President to consult Supreme Court) discusses the advisory jurisdiction of the Supreme Court.

- If the president feels that a question of law or fact has arisen or is likely to arise and the question is of such a nature and of such public importance that it is expedient to obtain the opinion of the Supreme Court upon it, he can refer the same to Supreme Court for its advisory Opinion.
- Such an opinion is NOT binding on the president.

Can Supreme Court overrule its own verdicts?

It is said that the Lower court is concerned with the facts and High Court with the error of the judgment of the lower court. The Supreme Court is concerned with wisdom. But the Supreme Court may also go wrong and such wrongs can be rectified. Article 137 of the Constitution provides that Supreme Court can review and revise its own orders.

Special Leave Petition

Special leave petition is a power of Supreme Court whereby the court may, in its discretion, grant special leave to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India. {Article 136}. Special Leave Petition has been used frequently to obviate the bar put by **article 262** on SC for hearing the matters related to inter-state riparian disputes.

Court of Record

The judgements, proceedings and acts of the Supreme Court are recognized as legal precedents and legal references. They are recorded for perpetual memory and testimony. These records are admitted to be of evidentiary value and cannot be questioned when produced before any court. In India, both Supreme Court and High Courts serve as Courts of Record.

Power to punish for contempt of itself

Supreme Court and High Courts have power to punish for contempt of themselves. While Supreme Court has power to punish for contempt not only of itself but also of high courts, subordinate courts and tribunals of the entire country.

Provisions for Independence of Supreme Court

To keep Supreme Court free from encroachments, pressures and interferences of the executive and legislature, following provisions have been made in the constitution.

- Judiciary is separate from executive.
- Consultation of judiciary has been made must for appointment of Judges, so that it curtails arbitrary discretion of executive in appointments.
- Removal of the judges of Supreme Court is one of the most difficult processes. A judge can be removed only by president when a resolution support by at least 100 members of parliament is passed in both the houses by absolute and special majority. This process is such difficult that no judge of Supreme Court has been removed so far.
- The Salaries, allowances and other privileges are charged upon consolidated fund of India. They cannot be changed except during a financial emergency.
- The Constitution has put a bar on any discussion in parliament or state legislature regarding conduct of the judges in discharge of their duty except when a motion for their removal is under consideration in parliament.
- Retired judges of Supreme Court are barred from pleading or acting in any court within the territory of India.
- Supreme Court has power to punish for contempt of itself.
- Officers and servants of the Supreme Court are appointed by Supreme Court itself.
- Parliament *can extend but cannot curtail* the jurisdiction of Supreme Court.

High Courts

Every state in India has a High Court which operates within its territorial jurisdiction. Every High Court is a court of record which has all the powers of such as court including the power to punish for contempt of itself.

Appointment of the Judges of High Courts

The procedure of appointing the Judges of the High Courts in India is slightly different from the appointment of the Judges of the Supreme Court. As per article 217, the chief Justice of the high court is appointed by the President in consultation with the Chief justice of India as well as the Governor of the state in question. A collegium system has evolved over the years in which a Collegium headed by the CJI makes recommendation to the government for appointment of judges. The Collegium recommends the names to the law ministry which after scrutinizing send the paper to the president. The president either approves the names or returns the names for reconsideration of the Supreme Court. If still the Supreme Court sends the same names president appoints the persons recommended.

Qualification to Become a High Court Judge

A person to be appointed as a judge of a high court, should be a citizen of India. Further,

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

There is no minimum age fixed for high Court judges, and unlike in Supreme Court, there is no provision for appointment of a distinguished jurist as a judge of a high court.

Term and Salary

A Judge of High Court holds the office until he completes the age of 62 years. (In Supreme Court it is 65 years). The salaries and allowances of the Chief Justice of High Court and Judges of the High Court are decided by the parliament by law, time to time.

- Current salary of Chief Justice is Rs. 90,000
- Current salary of other judges is Rs. 80, 000

The salaries and other expenses of the judges and maintenance of the state high courts are charged from consolidated fund of the state. Pension of retired high court judges comes from Consolidated Fund of India.

Removal of the Judge of a High Court

A Judge of the High Court can be removed from office only for proven misbehaviour or incapacity and only in the same manner in which a Judge of the Supreme Court is removed. *The President of India can remove a Judge of the High Court, from his office only if each house of the parliament passes a resolution by a two third majority of its members present and voting in each house requesting him to remove the Judge.*

Transfer of Judges

Transfer of High Court Judges is done by the President in consultation with the following

- Chief justice of India' whose opinion is formed by senior most judges of the Supreme Court.
- Chief Justice of the High court from where transfer is to take place.

- Chief Justice of the High Court to where the transfer is to take place

Post retirement Jobs

The retired permanent judges of a high court are prohibited from pleading or acting in any court or before any authority in India except the Supreme Court and the other high courts. *However,* government generally uses the retired higher judiciary judges as heads of various commissions. There has been a demand from certain sections of the society that there should be a "cool off" period of two years for the retired judges before they are installed in other offices.

Jurisdiction of the High Courts

High Court has original, writ, appellate and supervisory jurisdiction. It also has advisory functions and can advice on matters of law or constitution if state government or governor so desires. Further, it has control over the subordinate courts in the state and

Original Jurisdiction

In several matters high court has power to hear the dispute in first instance, not by way of appeal. This is called original jurisdiction. Like Supreme Court, high court has original jurisdiction in matters of enforcement of fundamental rights. Further, it has original jurisdiction in matters related to admiralty, will, marriage, divorce, company laws and contempt of court. It also has similar jurisdiction in matters related to election of MPs and MLAs.

Writ Jurisdiction

Article 226 empowers the High Court with writ jurisdiction for the enforcement of fundamental rights as well as any other matter within the territory of its jurisdiction. The difference between Supreme Court (article 32) and High Court (article 226) is that while Supreme Court can issue writs only for enforcement of fundamental rights, high court can issue writs for other matters also.

Appellate Jurisdiction

The High Court hears the appeals against the subordinate courts in both civil and criminal matters.

Supervisory Jurisdiction

High court has the power of superintendence over all courts and tribunals within its territorial jurisdiction except military courts or tribunals. It also has power to transfer the cases from other subordinate courts in the state to itself. (227)

General Knowledge Today

Prelims Polity-7: Local Bodies, Scheduled and Tribal Areas

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Panchayats & Municipalities

The subject of 'Local Government' is mentioned in the State List under the Seventh Schedule of the Constitution. To provide Local Governments a constitutional backbone, the parliament has enacted 73rd and 74th amendment acts to make framework on their composition, structure, powers, functions and duties. Thus, Part IX and IXA of the Constitution of India deal with the local governments. While Part IX deals with Rural Local Government, Part IX-B deals with Urban Local Government.

73rd Amendment Act and Features of Panchayati Raj

The 73rd Amendment 1992 added a new Part IX to the constitution titled "The Panchayats" covering provisions from Article 243 to 243(O); and a new Eleventh Schedule covering 29 subjects within the functions of the Panchayats.

Significance of the amendment

This amendment implements the article 40 of the DPSP which says that "State shall take steps to organise village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government" and have upgraded them from non-justifiable to justifiable part of the constitution and has put constitutional obligation upon states to enact the Panchayati Raj Acts as per provisions of the Part IX. However, states have been given enough freedom to take their geographical, politico-administrative and others conditions into account while adopting the Panchayati Raj System.

Salient Features

Gram Sabha

Gram Sabha is a body consisting of *all the persons registered in the electoral rolls* relating to a village comprised within the area of Panchayat at the village level. Since all the persons registered in electoral rolls are members of Gram Sabha, *there are no elected representatives*. Further, Gram Sabha is the only permanent unit in Panchayati Raj system and not constituted for a particular period. Although it serves as foundation of the Panchayati Raj, yet it is **not** among the three tiers of the same. The powers and functions of Gram Sabha are fixed by state legislature by law.

Three Tiers of Panchayati Raj

Part IX provides for a 3 tier Panchayat system, which would be constituted in every state at the village level, intermediate level and district level. This provision brought the uniformity in the Panchayati Raj structure in India. However, the states which were having population below 20 Lakh were given an option to not to have the intermediate level.

All the members of these three level are elected. Further, the chairperson of panchayats at the intermediate and district levels are indirectly elected from amongst the elected members. But at the

village level, the election of chairperson of Panchayat (Sarpanch) may be direct or indirect as provided by the state in its own Panchayati Raj Act.

Reservation in Panchayats

There is a provision of reservation of seats for SCs and STs at every level of Panchayat. The seats are to be reserved for SCs and STs in proportion to their population at each level. Out of the Reserved Seats, 1/3rd have to be reserved for the women of the SC and ST. Out of the total number of seats to be filled by the direct elections, 1/3rd have to be reserved for women. There has been an amendment bill pending that seeks to increase reservation for women to 50%. The reserved seats may be allotted by rotation to different constituencies in the Panchayat. The State by law may also provide for reservations for the offices of the Chairpersons.

Duration of Panchayats

A clear term for 5 years has been provided for the Panchayats and elections must take place before the expiry of the terms. However, the Panchayat may be dissolved earlier on specific grounds in accordance with the state legislations. In that case the elections must take place before expiry of 6 months of the dissolution.

Disqualification of Members

Article 243F makes provisions for disqualifications from the membership. As per this article, any person who is qualified to become an MLA is qualified to become a member of the Panchayat, but for Panchayat the minimum age prescribed is 21 years. Further, the disqualification criteria are to be decided by the state legislature by law.

Finance Commission

State Government needs to appoint a finance commission every five years, which shall review the financial position of the Panchayats and to make recommendation on the following:

- The Distribution of the taxes, duties, tolls, fees etc. levied by the state which is to be divided between the Panchayats.
- Allocation of proceeds between various tiers.
- Taxes, tolls, fees assigned to Panchayats
- Grant in aids.

This report of the Finance Commission would be laid on the *table in the State legislature*. Further, the Union Finance Commission also suggests the measures needed to augment the Consolidated Funds of States to supplement the resources of the panchayats in the states.

Powers and Functions: 11th Schedule

The state legislatures are needed to enact laws to endow powers and authority to the Panchayats to enable them functions of local government. The 11th schedule enshrines the distribution of powers between the State legislature and the Panchayats. These 29 subjects are listed below:

11th Schedule of the Constitution	
1. Agriculture, including agricultural extension.	16. Poverty alleviation programme.
2. Land improvement, implementation of land reforms, land consolidation and soil conservation.	17. Education, including primary and secondary schools.
3. Minor irrigation, water management and watershed development.	18. Technical training and vocational education.
4. Animal husbandry, dairying and poultry.	19. Adult and non-formal education.
5. Fisheries.	20. Libraries.
6. Social forestry and farm forestry.	21. Cultural activities.
7. Minor forest produce.	22. Markets and fairs.
8. Small scale industries, including food processing industries.	23. Health and sanitation, including hospitals, primary health centers and dispensaries.
9. Khadi, village and cottage industries.	24. Family welfare.
10. Rural housing.	25. Women and child development.
11. Drinking water.	26. Social welfare, including welfare of the handicapped and mentally retarded.
12. Fuel and fodder.	27. Welfare of the weaker sections, and in particular, of the Scheduled Castes and the Scheduled Tribes.
13. Roads, culverts, bridges, ferries, waterways and other means of communication.	28. Public distribution system.
14. Rural electrification, including distribution of electricity.	29. Maintenance of community assets.
15. Non-conventional energy sources.	

Further, the state legislature can authorize the Panchayats to collect and appropriate suitable local taxes and provide grant in aids to the Panchayats from the Consolidated Funds of the states.

Audit of Accounts

State Government can make provisions for audit of accounts of the Panchayats.

Elections

Article 243K enshrines the provisions with respect to elections of the Panchayats. This article

provides for constitution of a State Election Commission in respect of the Panchayats. This State Election Commission would have the power to supervise, direct and control the elections to the Panchayats and also prepare the electoral rolls.

The article maintains the independence of the election commission by making provisions that the election commissioner of this commissioner would be removed only by manner and on same grounds as a Judge of the High Court.

If there is a dispute in the Panchayat elections, the *Courts have NO jurisdiction over them*. This means that the Panchayat election can be questioned only in the form of an election petition presented to an authority which the State legislature by law can prescribe. (Important) The election commissioner for this reason is to be appointed by the Governor. The terms and conditions of the office of the Election commissioners have also to be decided by the Governor.

Applications to Union Territories

Provisions of Panchayats shall be applicable to the UTs in same way as in case of the states but the President by a public notification may make any modifications in the applications of any part.

Exempted areas and states

The provisions of part IX are not applicable to the following:

- Entire states of Nagaland, Meghalaya and Mizoram
- Hill areas in the State of Manipur for which District Councils
- Further, the district level provisions shall not apply to the hill areas of the District of Darjeeling in the State of West Bengal which affect the Darjeeling Gorkha Hill Council.
- The reservation provisions are not applicable to Arunachal Pradesh.

Continuance of Existing Laws

Any provision of any law relating to Panchayats in force in a State immediately before the commencement of the Constitution (Seventy-third Amendment) Act, 1992, which is inconsistent with the provisions of this Part, shall continue to be in force until amended or repealed by a competent Legislature or competent authority.

Bar on Interference by Courts

Article 243 O bars the courts to interfere in the Panchayat Matters. The validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies cannot be questioned in a court. No election to any Panchayat is to be questioned except by an election petition presented to such authority and in such manner as provided by the state legislature.

Comment

The positive impact of the 73rd Amendment in rural India is clearly visible as it has changed power equations significantly. Elections to the Panchayats in most states are being held regularly. Through over 600 District Panchayats, around 6000 Intermediate Panchayats and 2.3 lakh Gram Panchayats, more than 28 lakh persons now have a formal position in our representative democracy.

Still, this bill lacks the proper definition of the role of the bureaucracy. It does not clearly define the role of the state government. On practical level, people are illiterate in India and they are actually not aware of these novel features. The Panchayats are dominated by effluents in some parts of the country. The 3 tiers of the Panchayati Raj have still very limited financial powers and their viability is entirely dependent upon the political will of the states.

74th Amendment Act and Municipalities

Constitution (Seventy Forth Amendment) Act, 1992 has introduced a new **Part IXA** in the Constitution, which deals with Municipalities in an article 243 P to 243 ZG. This amendment, also known as **Nagarpalika Act**, came into force on 1st June 1993. It has given constitutional status to the municipalities and brought them under the justifiable part of the constitution. States were put under constitutional obligation to adopt municipalities as per system enshrined in the constitution.

Definition of Metropolitan area

Metropolitan area in the country is an area where population is above 10 Lakh. (Article 243P)

Three Kinds of Municipalities

Article 243Q provides for establishment of 3 kinds of Municipalities of every state.

- **Nagar Panchayat:** A Nagar Panchayat is for those areas which are transitional areas i.e. transiting from Rural Area to Urban areas. *"Governor" will by public notice, will define these three areas based upon the population, density of population, revenue generated for local administration, % of employment in Non-agricultural activities and other factors. Further, a Governor may also if, he fits it necessary, based upon the industrial establishments, can specify the Industrial Townships by public notice.*
- **Municipal Council:** A Municipal council is for smaller urban area
- **Municipal Corporation:** A municipal Corporation for Larger urban Areas

Composition of Municipalities

All the members of a Municipality are to be directly elected by the people of the Municipal area and for the purpose of making the electorate; the municipal area will be divided into territorial constituencies known as **Wards**.

- Besides the seats filled by direct elections, some seats may be filled by nomination of persons having special knowledge and experience in municipal administration.
- Persons so nominated shall not have the right to vote in the meetings of the municipality.
- The Legislature of a State may, by law, also provide for the representation in a municipality of members of the House of the People and the members of the Legislative Assembly of the State representing constituencies which comprise wholly or partly the Municipal area and also the Members of the Council of States and the members of the Legislative Council of the State registered as electors within the municipal area.

The manner of election of Chairpersons of municipalities has been left to be specified by the **State Legislature. {**Article 243R}

Ward Committees

There shall be constituted the ward committees consisting of one or more wards within the territorial area of all the municipalities with a population of 3 Lakhs or more. { Article 243S}

Reservation of Seats:

Rreservation of the seats for the Scheduled castes and scheduled tribes in every municipality corporation has to be provided in proportion to their population to the total population in the municipal area.

- The proportion of seats to be reserved for SC/ST to the total number of seats has to be same as the proportion of the population of SC/ST in the municipal area.
- The reservation has to be made for only those seats that are to be filled by the direct elections. (This means no reservation for nominated seats)
- This article also provides that not less than one-third of the total number of seats reserved for SC/ST shall be reserved for women belonging to SC/ST. (**Mandatory provision**)
- In respect of women, the seats shall be reserved to the extent of not less than one-third of the total number of seats. This includes seats reserved for women belonging to SC/ST. These reservations will apply for direct elections only. (**Mandatory provision**)

- There are no bar on State Legislatures from making provisions for reservation of seats in any municipality or office of Chairperson in the municipalities in favor of backward class of citizens. (**Optional Provision**). {Article 243S}

Duration of Municipalities

Duration of the municipality has been fixed at 5 years from the date appointed for its first meeting. Elections to constitute a municipality are required to be completed before the expiration of the duration of the municipality. If the municipality is dissolved before the expiry of 5 years, the elections for constituting a new municipality are required to be completed within a period of 6 months from the date of its dissolution. {Article 243U}

Disqualifications of the members

A member is disqualified to be chosen as a member of municipality if he / she is disqualified under any law to be elected as MLA. The minimum age to be qualified as a **member is 21 years.**

Powers, authorities and responsibilities

As per Article 243 W, all municipalities would be empowered with such powers and responsibilities as may be necessary to enable them to function as effective institutions of self-government.

- The State Legislature may, by law, specify what powers and responsibilities would be given to the municipalities in respect of preparation of plans for economic development and social

justice and for implementation of schemes as may be entrusted to them.

An illustrative list of functions that may be entrusted to the municipalities has been incorporated as the Twelfth Schedule of the Constitution. This schedule defines 18 new tasks in the functional domain of the Urban Local Bodies, as follows:

12th Schedule of the Constitution	
1. Urban planning including town planning.	10. Slum improvement and upgradation.
2. Regulation of land-use and construction of buildings.	11. Urban poverty alleviation.
3. Planning for economic and social development.	12. Provision of urban amenities and facilities such as parks, gardens, playgrounds.
4. Roads and bridges.	13. Promotion of cultural, educational and aesthetic aspects.
5. Water supply for domestic, industrial and commercial purposes.	14. Burials and burial grounds; cremations, cremation grounds; and electric crematoriums.
6. Public health, sanitation conservancy and solid waste management.	15. Cattle pounds; prevention of cruelty to animals.
7. Fire services.	16. Vital statistics including registration of births and deaths.
8. Urban forestry, protection of the environment and promotion of ecological aspects.	17. Public amenities including street lighting, parking lots, bus stops and public conveniences.
9. Safeguarding the interests of weaker sections of society, including the handicapped and mentally retarded.	18. Regulation of slaughter houses and tanneries.

Financial Powers

Via Article 243X, the constitution has left it open to the Legislature of a State to specify by law matters relating to imposition of taxes. Such law may specify:

- Taxes, duties, fees, etc. which could be levied and collected by the Municipalities, as per the procedure to be laid down in the State law
- Taxes, duties, fees, etc. which would be levied and collected by the State Government and a share passed on to the Municipalities
- Grant-in-aid that would be given to the Municipalities from the State
- Constitution of funds for crediting and withdrawal of moneys by the Municipality.

Finance Commission

Article 243Y makes provision that the Finance Commission constituted under Part IX for Panchayats shall also review the financial position of the municipalities and will make recommendations to the Governor.

- The recommendations of the Finance Commission will cover the following:
- Distribution between the State Government and Municipalities of the net proceeds of the taxes, duties, tolls and fees to be levied by the State
- Allocation of share of such proceeds between the Municipalities at all levels in the State
- Determination of taxes, duties, tolls and fees to be assigned or appropriated by the Municipalities
- Grants-in-aid to Municipalities from the Consolidated Fund of the State
- Measures needed to improve the financial position of the Municipalities.

Union Finance Commission also suggests the measures needed to augment the Consolidated Funds of States to supplement the resources of the panchayats in the states.

Audit and Accounts

As per article 243Z, the maintenance of the accounts of the municipalities and other audit shall be done in accordance with the *provisions in the State law*. The State Legislatures will be free to make appropriate provisions in this regard depending upon the local needs and institutional framework available for this purpose.

Elections Commission

Article 243ZA makes the provisions that the superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of, all elections to the Panchayats and municipalities shall be vested in the **State Election Commissions**.

Application to Union Territories:

Article 243ZB makes provisions for applications of these provisions to the Union Territories. This article says that the provisions of Municipalities shall be applicable to the UTs in same way as in case of the states but the President by a public notification may make any modifications in the applications of any part.

Not applicability in some areas

Article 243 ZC says that provisions of part IXA are not applicable to

- Scheduled Areas referred in article 244. These include Assam, Meghalaya, Tripura and Mizoram.
- This part is also not applicable to the area covered under Darjeeling Gorkha Hill Council.

If the parliament makes any modifications in the scheduled areas , then the same restrictions would apply to those areas also.

Committee for District Planning

We have studied in the part IX that Planning and allocation of resources at the district level for the Panchayati Raj institutions are normally to be done by the Zila Parishad. As per the provisions of the Part IX-A, for urban areas, municipal bodies discharge these functions within their respective jurisdictions.

However, this gives rise to an important question that at the how the allocation of the funds has to be made. The Constitution has made provisions of creating **two Planning Committees in the state**.

- One is District Planning Committee at the district level with a view to consolidating the plans prepared by the Panchayats and the Municipalities and preparing a development plan for the district as a whole and the other is a Metropolitan Planning Committee.
- As per Article 243 ZD, there shall be constituted in every State at the district level a District Planning Committee to **consolidate the plans prepared by the Panchayats and the Municipalities** in the district and to prepare a draft development plan for the district as a whole.
- The option of composition and filling the seats has been left open to the states.
- District Planning Committee in preparing the Draft Development Plan shall have regard to:
- Matter of common interest between the Panchayats and the Municipalities including spatial planning
- Sharing of water and other physical and natural resources
- Integrated development of infrastructure and environment conservation
- Extent and type of available resources, whether financial or otherwise.

The Draft District Development Plan so prepared and recommended by the District Planning Committee shall be forwarded by the Chairperson of the Committee to the State Government.

Metropolitan Planning Committee:

Article 243 ZE says that there shall be constituted in every Metropolitan area a **Metropolitan Planning Committee** to prepare a draft development plan for the Metropolitan area as a whole. So for the areas with a population of 10 lakhs or more, a Metropolitan Planning Committee shall be constituted for preparing a draft development plan for the metropolitan area as a whole.

- The composition and filling of seats is open to the State legislatures.
- The Metropolitan Planning Committee shall take into account the following for preparation of the Draft Development Plan:
- Plan prepared by the Municipalities and the Panchayats in the metropolitan area
- Matter of common interest between the Municipalities and Panchayats including coordinated spatial plans of the area

- Sharing of water and other physical and natural resources
- Integrated development of infrastructure and environmental conservation
- Overall objectives and priorities set by the Government of India and the State Government
- Extent and nature of investments likely to be made in the metropolitan area by agencies of the Government
- Other available resources, financial and otherwise.

Comment

When we look at the provisions of the Part IXA of our constitution, we can say with confidence that 74th amendment act 1992 is one of the most important and vital amendments carried out so far in with regard to the urban development. The act has attempted to make the local bodies stronger, transparent. Here are some notable implications with regard to this Constitution amendment act:

- Local Government including self- government institutions in both urban and rural areas being exclusively a State subject under the legislative Entry 5 of the State List of the Seventh Schedule, the Union Government cannot enact any law relating to these subjects. However, what the part IX-A (and also IX) has done is to outline the Scheme which would be implemented by the States by making laws or amending their own existing laws to bring them in conformity with the provisions of the Constitution (74th Amendment) Act. Union Government's role is catalytic within the meaning of "economic and social planning" under concurrent list.
- Due to this amendment, a uniform pattern has emerged all over the country except any tribal areas which exist only in the north-eastern region, unless the Parliament by law extends the same to the tribal areas.
- The discretion of the state Governments has been drastically curtailed in the sense that they have now constitutional obligations to set up the Municipalities as per article 243Q.
- The criteria to set up the municipalities have been fixed and now it is more rational and scientific.
- With this act, the district planning has been given the Constitutional Status. Due to this the planning process itself has changed.

Types of Urban Governments

There are several types of urban bodies in India such as Municipal Corporation, Municipality, Notified Area Committee, Town Area Committee, Special Purpose Agency, Township, Port Trust, Cantonment Board etc. Brief detail about them is given below:

Municipal Corporation

Municipal Corporations are created to look after the administrative needs of large cities such as

Delhi, Mumbai, Chennai, Kolkata, etc. The respective state legislatures can establish the municipal corporations by passing an act. In case of union territories, they can be established by the acts of Indian Parliament. There may be a one single act for all municipal corporations in the state or separate act for each municipal corporation.

There are three authorities under a municipal corporation viz. the council, the standing committees and the commissioner. The council acts as the deliberative and legislative wing of the corporation. The council is made up of councillors who are directly elected by the people. The head of the council is called mayor. Mayor is assisted by a deputy mayor. Mayor presides over the council meetings.

As the council is too large in size, standing committees are created to facilitate the working of the council. The standing committees take decisions with respect their field like public works, education, health, taxation, etc. The municipal commissioner is the chief executive authority of the corporation and he implements the decisions taken by the council and its standing committees. State government appoints the municipal commissioner. Generally IAS officers are appointed as the municipal commissioner.

Municipality

The municipalities are created for the administration of smaller cities and towns. They are set up by the acts of the respective state governments. In case of union territories, they are set up by acts of Parliament of India. Municipalities are called with different names like municipal council, municipal committee, municipal board, borough municipality, city municipality, etc.

A municipality has three authorities viz. the council, the standing committees and the chief executive officer. The council acts as the deliberative and legislative wing of the municipality. The council is made up of councillors who are directly elected by the people. The head of the council is called president or chairman. He is assisted by a vice-president or vice-chairman. President/Chairman presides over the meetings of the council. The standing committees deal with different fields like public works, education, health, etc. They facilitate the working of the council. The chief executive officer looks after the day-to-day responsibilities of administration of the municipality. He is appointed by the state government.

Notified Area Committee

A notified area committee is established to take care of administration of an area which is either a fast developing town from industrialisation or a town not yet developed to fulfil all the conditions to create a municipality but is considered as important by the state government. A notified area committee is created by a notification in the government gazette. The notification also mentions the provisions of the State Municipal Act that are applied to the notified area committee. The state may also entrust to it powers under any other act. The powers of a notified area committee are equal to a

municipality. Unlike the municipality, a notified area committee is an entirely nominated body. State government nominates all members including the chairman to a notified area committee. Thus, a notified area committee is neither an elected body nor a statutory body.

Town Area Committee

A town area committee is created for the administration of a small town. It is like a semi-municipal authority. Limited number of civic functions such as roads, street lighting, and drainage are entrusted to it. It is established by a separate act passed by a state legislature. The act mentions the composition, functions, and other matters related to the town area committee. It may be a wholly nominated body by a state government or a wholly elected body or partly nominated and partly elected.

Cantonment Board

They are created for municipal administration for civilian population in the cantonment areas. Unlike other urban local bodies, a cantonment board is created as well as administered by union government. The provisions of the Cantonments Act of 2006, a central government act, are applicable to a cantonment board. A cantonment board functions under the administrative control of union defence ministry. Now, there are 62 cantonment boards in the country.

The members of a cantonment board are partly elected and partly nominated. While the elected members hold the office for a term of 5 years, the nominated members continue as long as they hold the office. The military officer who is commanding the station is the ex-officiopresident of the board and he presides over its meetings.The board's vice-president is elected by the elected members from amongst themselves and he holds the position for five years.

The functions of a cantonment board are similar to those of a municipality. Their functions are categorised as obligatory and discretionary functions.Its executive officer is appointed by the President of India. He is responsible for implementation of the decisions of the board and its committees. The source of income of the boards includes both, tax and non-tax revenue.

Township

Townships are created by the large public sector enterprises for its staff and workers near to the plant with all civic amenities. A town administrator is appointed by the enterprise to take care of the administration of the township. He is assisted by some engineers and some other staff. The township form of urban government has no elected members.

Port Trust

The port trusts are created in the port areas like Kolkata, Chennai,Mumbai, etc. The objective in their creation is to manage and protect the ports; and to provide civic amenities. A port trust is set up by an Act of Parliament. Its members include both elected and nominated. Its chairman is an official. Its civic functions are almost similar to those of a municipality.

Special Purpose Agency

Along with the above seven types of urban bodies, the states can create certain agencies to look after specific functions that 'legitimately' belong to any of the above local urban governments. These agencies are function-based and not area-based like the above seven bodies. They are known as 'special purpose' or 'single purpose' agencies or 'functional local bodies'.

They are created as statutory bodies by an act of state legislature or as departments by an executive resolution. They work as autonomous bodies dealing with their allotted functions independently of the local urban governments. They are not subordinated to any local urban governance bodies.

Examples of such bodies are:

- Town improvement trusts.
- Water supply and sewerage boards.
- Pollution control boards.
- Electricity supply boards.
- Urban development authorities.
- City transport boards.
- Housing boards.

Constitution Part IXB: Cooperatives

The Constitution (Ninety Seventh Amendment) Act 2011 relating to the co-operatives is aimed to encourage economic activities of cooperatives which in turn help progress of rural India. It is expected to not only ensure autonomous and democratic functioning of cooperatives, but also the accountability of the management to the members and other stakeholders.

Reasons of Failure of Cooperative Sector

The cooperative sector has been playing a distinct and significant role in the country's process of socio-economic development. The failure of cooperatives in the country is mainly attributable to:

- Dormant membership and lack of active participation of members in the management of cooperatives.
- Mounting overdue in cooperative credit institution
- Lack of mobilisation of internal resources and over-dependence on Government assistance,
- Lack of professional management.
- Bureaucratic control and interference in the management, political interference and over-polarisation have proved harmful to their growth.
- Predominance of vested interests resulting in non-percolation of benefits to a common member, particularly to the class of persons for whom such cooperatives were basically formed, has also retarded the development of cooperatives.

These are the areas which needed to be attended to by evolving suitable legislative and policy support with proper political will and financial support.

97th Amendment Act, 2011

As per the amendment the changes done to constitution are:-

- **In Part III**of the constitution, after words "or unions" the words "Cooperative Societies" was added.
- In **Part IV**a new **Article 43B** was inserted, which says: *The state shall endeavour to promote voluntary formation, autonomous functioning, democratic control and professional management of the co-operative societies".*
- After **Part IXA**of the constitution, a **Part IXB** was inserted to accommodate state vs centre roles.

Salient features Part IXB

- It makes Right to form cooperatives is a **fundamental right**.
- Reservation of one seat for SC/ST and two seats for women on the board of every co-operative society.
- Cooperatives **could set up agency**which would oversee election.

- **Uniformity in the tenure**of Cooperative Board of Directors.
- **Provisions for incorporation, regulation**and winding up of co-operative societies based on the principles of democratic process and specifying the maximum number of directors as twenty-one.
- **Providing for a fixed term**of five years from the date of election in respect of the elected members of the board and its office bearers;
- Providing for a **maximum time limit of six months**during which a board of directors of co-operative society could be kept under suspension;
- Providing for **independent professional audit**;
- Providing for **right of information to the members**of the co-operative societies;
- **Empowering the State Governments**to obtain periodic reports of activities and accounts of co-operative societies; which have individuals as members from such categories;
- Providing for offences relating to co-operative societies and **penalties**in respect of such offences.

Implications

The amendment of the Constitution to make it obligatory for the states to ensure autonomy of **cooperatives** makes it binding for the state governments to facilitate voluntary formation, independent decision-making and democratic control and functioning of the cooperatives.

It also ensures **holding regular elections under the supervision of autonomous authorities**, five-year term for functionaries and independent audit. Significantly, it also mandates that in case the board is dissolved, the new one is constituted within six months. Such a constitutional provision was urgently required as the woes of the cooperative sector are far too many, long-lasting and deep-rooted to be addressed under the present lax legal framework

However, it ***fails to establish what constitutional amendments can't do in reviving institutions*** and may be victim of rival political institutions at the state level as happened in case of 73rd amendments. It is feared that state-level politicians will do to this amendment on cooperatives what they did to the one on panchayats. Barring exceptions in a few sectors and states, the cooperative sector, particularly cooperative credit societies numbering over 120 million, has for a long time been in a shambles with all kinds of vested interests using them as personal fiefdoms and ladders to political power and means of personal aggrandisement.

Part-X: Scheduled and Tribal Areas

A scheduled area is an area which is demarcated for some special purpose in relation to its administration, development etc. Part-X of the constitution in article 244 designates certain areas as 'scheduled areas in fifth schedule' and 'tribal areas in sixth schedule'.

Scheduled Areas

Schedules areas are those areas which are treated differently from other areas in a state in the sense that whole of the administrative machinery operating in the state is **not** extended to these areas and the Central Government has somewhat greater responsibility for these Areas. The Scheduled areas can be established under Article 244 and 5th Schedule of the Constitution in any state except *Assam, Meghalaya, Tripura and Mizoram.*

Declaration of scheduled areas

The scheduled areas can be *declared by President by order.* The President at any time can order that the whole or part of a schedule area ceases to be a scheduled area. Thus, the President of India has the power to declare an area as scheduled area and also the power to declare a scheduled area to be ceased to be known as scheduled area. Further, President can also by order alter the boundaries of the scheduled areas. However, to change the boundary of a scheduled area, the president is required to consult the Governor of the state in which the area is located. No separate law / act is needed to establish, change boundaries or discontinue a scheduled area.

Criteria for scheduled areas

The Constitution does not mention any specific criteria for establishing the Scheduled Areas. However, since they are established for protection of the tribals and aboriginals, the most basic critera is preponderance of tribal population in those areas. Further, underdevelopment and a

marked disparity in economic standard of the people are also criteria. They embody principles followed in "Excluded" and 'Partially-Excluded Areas' under the Government of India Act 1935; Schedule 'B' of recommendations of the Excluded and Partially Excluded Areas Sub Committee of Constituent Assembly and Scheduled Areas and Scheduled Tribes Commission 1961.

Objective

The key objective is to provide protection to the tribals living in the Scheduled Areas from alienation of their lands and natural resources to non-tribals.

Report of Governor

In these areas, the Governor has been given plenary powers as far as their administration is concerned. The executive power of the Union extends to the giving of directions to the State as to the administration of these areas. Governor of these states need make report to the President annually or as needed by President regarding the administration of the Scheduled Areas in that State.

Tribal Advisory Council

To take care of the welfare of the scheduled tribes, a **Tribal Advisory Council** is constituted in each state with a scheduled area.

- This Tribal Advisory Council will be made of *maximum 20 members* out of which the three-fourth will be Scheduled Tribes MLAs in the state.

- It advises the Governor on matters pertaining to the welfare and advancement of the Scheduled Tribes in the State.
- The number of members of these councils, mode of their appointment, appointment of the chairman, officers and servants of these councils, conduct of its meeting and general business are **controlled by the Governor of the state in question**".
- Governor also can make a notification that that any particular Act of Parliament or of the Legislature of the State shall not apply to a Scheduled Area or any part thereof in the State or shall apply to a Scheduled Area or any part thereof in the State.
- Governor can also make rules for the better management of peace and good governance in such areas.

Thus, article 244 confers plenary power on the Governor to bring independent legislations in respect of tribal affairs in consultation with the TAC. Due to this, the role of TAC is very crucial in the governance of Scheduled Areas. The negligence to constitute the TAC is equal to negating the rights of tribals and stalling the process of governance.

Current Tribal Advisory Councils

At present (February 2016), ten states viz. Andhra Pradesh, Chhattisgarh, Gujarat, Himachal Pradesh, Jharkhand, Madhya Pradesh, Maharashtra, Odisha, Rajasthan and Telangana have established Tribal Advisory Councils in *Scheduled areas*. Further, two other States viz. Tamil Nadu

and West Bengal, have also set up TAC in *Non-scheduled areas.*

Tribal Areas

The Constitution of India makes special provisions for the administration of the tribal dominated areas in four states viz. Assam, Meghalaya, Tripura and Mizoram. As per article 244 and 6th Schedule, these areas are called "*Tribal Areas*", which are technically different from the Scheduled Areas under fifth schedule.

Difference Between 5th Schedule and 6th Schedule Areas

- While both the areas under 5th schedule and 6th schedule have dominance of the tribal people, constitution calls them with different names viz. Scheduled Area under 5th schedule while Tribal areas under 6th schedule.
- While executive powers of the union extend in Scheduled areas with respect to their administration in 5th schedule; the 6th schedule areas remain within executive authority of the state.
- While 5th schedule envisages creation of Tribal Advisory Council , 6th schedule provides for District Councils and Regional Councils with certain legislative and judicial powers.

Autonomous Districts and Autonomous Regions

Governors of four states viz. Assam, Meghalaya, Tripura and Mizoram are empowered to declare some tribal dominated districts / areas of these states as autonomous districts and autonomous regions by order. No separate legislation is needed for this. The Governor also has power to include any other area, exclude any area, increase, decrease, diminish these areas, unite two districts / regions, and alter the names and boundaries of these autonomous districts and regions.

Creation of autonomous district councils and regional councils

Article 244 and 275 make provision for creation of the District Councils and regional councils. Each district / regional council is a body corporate which is empowered for administration of the area under its jurisdiction. They are named as "District council of (name of district) and Regional Council of (name of region). These two bodies have perpetual succession and a common seal and shall by the said name sue and be sued.

Members of autonomous councils

The District Councils and Regional Councils are consisting of maximum 30 members, of whom maximum 4 members shall be nominated by the Governor and the *rest shall be elected on the basis of adult suffrage*. However, this rule has an exception. The current provision is that the **Bodoland Territorial Council** can have 46 members and out of these 46, 40 are elected on the basis of adult suffrage. These 40 seats are divided as follows:

- 30 seats are reserved for the Scheduled Tribes

- 5 seats are reserved for non-tribal communities
- 5 seats are unreserved
- The remaining six seats are nominated by the Governor from amongst the un-represented communities of the Bodoland Territorial Areas District
- Out of these 6, at least 2 are women.

Term of Members

The elected members of the District Council *shall hold office for a term of five years* from the date appointed for the first meeting of the Council after the general elections to the Council.

Current Councils

Currently, there are ten such Councils in the region as listed below:

Assam

- Bodoland Territorial Council
- Karbi Anglong Autonomous Council
- Dima Hasao Autonomous District Council

Meghalaya

- Garo Hills Autonomous District Council
- Jaintia Hills Autonomous District Council
- Khasi Hills Autonomous District Council

Tripura

- Tripura Tribal Areas Autonomous District Council

Mizoram

- Chakma Autonomous District Council
- Lai Autonomous District Council
- Mara Autonomous District Council

Legislative Powers of the Sixth Schedule Councils

The district councils and regional councils have powers to make laws on certain matters of local importance but *all such laws require the assent of the governor*. The subjects on which these councils can make laws include:

- Roads, bridges, ferries etc. modes of transport
- Animal husbandry, veterinary training & practice
- Primary and Secondary Education
- Agriculture including farm research and education
- Fisheries
- Social security and social insurance
- employment and unemployment
- Flood control

- Entertainment including Cinemas and Theatres
- Public health, sanitation, hospitals and dispensaries
- Minor irrigation
- Trade and commerce in certain products such as food, cattle fodder, raw cotton, raw jute etc.
- Libraries, museums, monuments etc.
- Alienation of land

Further, Bodoland Territorial Council has been given more powers and it has capable of making laws on virtually all subjects of local interest. All these laws need assent of the Governor. The Governor may keep some of the laws for consideration of the president.

Judicial Powers of the Sixth Schedule Council

The laws made by the state legislature on any subject that comes within the jurisdiction of the council, would not extend within the jurisdiction of the autonomous council unless the council so directs by public notification. The President in regard to a Central Act and the Governor in regard to a State Act may direct that the Central Act or State Act shall not apply to an autonomous district or shall apply with such modifications as may be specified. The Councils have also been endowed with wide civil and criminal judicial powers, for example establishing village courts etc. However, jurisdiction of these councils is subject to jurisdiction of the concerned High Court.

PESA Act 1996

The 73rd amendment Act 1992 had made constitutional provisions for the three tier Panchayats all over the country. However, this act is not applicable to Jammu and Kashmir, Nagaland, Meghalaya and Mizoram and certain other areas including scheduled and tribal areas. These other areas include

- scheduled areas and the tribal areas in the states
- hill area of Manipur for which a district council exists
- Darjeeling district of West Bengal for which Darjeeling Gorkha Hill Council exists.

At the same time, Article 243M (4) (b) of the part IX made the provisions that *parliament may by law, extend the provisions of this Part to the scheduled areas* and the tribal areas. Even before the Parliament could enact legislation, some states such as Andhra Pradesh, Himachal Pradesh and Rajasthan extended the Part IX to their scheduled areas. This means that it became an unconstitutional act on the part of these states. This irked the tribal leaders because they thought that the state government would erode the autonomy of the tribal people in their affairs because now, there would be a conflict between the Panchayati Raj bodies and Schedule 5 bodies. The tribal leaders of the Andhra Pradesh took this matter to the Andhra Pradesh High Court. The high court in its judgment held that extension of Andhra Pradesh Panchayati Raj Act, 1994, to scheduled areas is against the Constitution.

This woke up the leaders sitting at centre and now they felt that parliament should enact a law to extend the provisions of the Central Act to the scheduled areas using provisions of Article 243 (M). To clarify as to how the scheduled areas of Schedule V could be covered under the provisions of Part IX, the government established a high level committee under the chairmanship of **Dileep Singh Bhuria,** which we call the Bhuria Committee. On the basis of the recommendations of Bhuria Committee, a bill was introduced in the parliament and passed on December 19, 1996, which was subsequently assented to by the president on December 24, 1996. Thus, the Panchayats (Extension to the Scheduled Areas) Act 1996 has extended the Part IX of the Constitution to the scheduled areas of the fifth schedule.

Via this act, it was made mandatory for the Andhra Pradesh, Himachal Pradesh, Bihar, Maharashtra, Madhya Pradesh, Gujarat, Rajasthan and Orissa to amend their existing Panchayat acts in consonance with the Extension Act within a year i.e. by 1997

Salient Provisions of PESA Act

- In the Schedule areas, every village will have a **Gram Sabha** consisting of persons whose names are included in the electoral rolls for the Panchayats at the village level.
- In the schedule areas, there will be a **minimum** of 50% seats reservation for Scheduled Tribes (STs) at all the tiers of Panchayats.
- If the area has different tribal communities, the reservation of different tribal communities shall be on the basis of proportion to their population.
- The chairpersons at all levels of the Panchayats in Schedule areas shall be reserved for STs.
- If there are no ST members at intermediate or district level Panchayats, the state government shall nominate such underrepresented STs by **maximum of one-tenth** of the total elected members of the Panchayats.
- Every legislation on the Panchayats in scheduled area shall be in conformity with the customary law, social and religious practices and traditional management practice of the community resources.

Powers and authority of the Gram Sabha and Panchayats in Scheduled areas

Gram Sabha has the power to safeguard and preserve the traditions and customs of people, their cultural identity, community resources and customary mode of dispute resolution. It also has power to approve plans, programmes and projects for social and economic development, to identify persons as beneficiaries under the poverty alleviation and other programmes, to give certificate of utilisation of funds for various plans and programmes.

If there is an acquisition of land in these areas, Gram Sabha must be consulted. However, actual planning and implementation of the projects shall be co-ordinated at the state level. So, in land

acquisition, the role of Panchayats in these areas is advisory only.

The recommendation of the Gram Sabha or the Gram Panchayats is mandatory for grant of prospecting licence or *mining lease for minor minerals* in that area.

Gram Sabha has the right to enforce prohibition or to regulate or restrict the sale and consumption of any intoxicant.

Gram Sabha and Panchayat have right to regulate the

- ownership of minor forest produce;
- to prevent alienation of land;
- to manage village markets;
- to exercise control over money lending;
- to exercise control over institutions and functionaries in all social sectors;
- to control over local plans and resources for such plans including tribal sub-plans.
- Planning and management of minor water bodies shall be entrusted to panchayats at appropriate level.

State legislations may endow Panchayats with such powers and authority as may be necessary to enable them to function as Institutions of Self Governance (ISG).

The state laws shall contain safeguards to ensure that Panchayats at higher level do not assume the powers and authority of any Panchayat at the lower level or of the gram Sabha.

Thus, we see that the PESA Act has been an important legislative framework to be enacted by the state legislatures for the tribals to have their control and rights over natural resources and conserve and preserve their identity and culture and that too in a participatory manner through the institution of gram Sabha.

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Finance Commission

Finance Commission of India is established by President of India as per Article 280 of the constitution. The first finance commission was established in 1951. The Constitutional requirement for setting up a Finance Commission in India was an original idea, not borrowed from anywhere. That is why it is called the original contribution.

Article 280

Article 280 reads: President should, within two years of commencement of the Constitution and thereafter on expiry of **every 5th year**, **or at such intervals as he/ she thinks necessary**, would constitute a Finance Commission.

Members

A Finance Commission would consist of a Chairman and 4 other members who are all will be appointed by the President.

Functions

Since the commission has to be constituted at regular intervals, a certain measure of continuity in the work of these commissions is ensured. Each commission benefits by the work of previous commission.

Finance commission has to make recommendations to the President on two specific matters and on any other mater referred to the commission by the president in the interest of Sound Finance. The two specific matters are as follows:

- How the net proceeds of taxes should be distributed between the Union and States?
- On what principles, the grants-in-aid of the revenues of the State out of the Consolidated Fund of India should be give to needy states?

The President, after considering the recommendations of the Finance Commission with regard to income tax, prescribes by order the percentages and the manner of distribution. So, parliament is not directly concerned with the assignment and distribution of the income tax.

Relevance of Finance Commission

The importance of the Finance Commission as a Constitutional instrument is capable of settling many complicated financial problems that affect the relations of the Union and States. This is evident from the recommendations of the last 14 finance Commissions appointed so far.

Report of Finance Commission in Parliament

Article 281 says that President shall cause every recommendation made by the Finance Commission under the provisions of this Constitution together with an explanatory memorandum as to the action taken thereon to be laid before each House of Parliament.

Recommendations

Finance Commission does not tell the Union Government on how to increase its funds. Its work is to make recommendations on distribution between the Union and the States of the net proceeds of taxes and the principles which should govern the grants-in-aid of the revenues of the States out of the Consolidated Fund of India and the sums to be paid to the States which are in need of assistance by way of grants-in-aid of their revenues.

Regarding States

Finance Commission suggests the measures needed to augment the Consolidated Fund of a State to supplement the resources of the Panchayat and Municipalities in the State on the basis of the recommendations made by the Finance Commission of the State.

On Panchayat and Municipalities

The role of the Finance Commission has widened after the 73rd and 74th Constitutional amendments to recognise the rural and urban local bodies as the third tier of government. Article 280 (3) (bb) and Article 280 (3) (c) of the Constitution mandate the Commission to recommend measures to augment the Consolidated Fund of a State to supplement the resources of Panchayats and Municipalities based on the recommendations of the respective State Finance Commissions (SFCs). This also includes augmenting the resources of Panchayat and municipalities.

Tribunals

Tribunals were added in the Constitution by Constitution (Forty-second Amendment) Act, 1976 as Part XIV-A, which has only two articles viz. 323-A and 323-B. While article *323-A deals with Administrative Tribunals*; article *323-B deals with tribunals for other matters.* In general sense, the 'tribunals' are *not courts of normal jurisdiction,* but they have very specific and predefined work area. The administrative tribunals **are not original invention** of the Indian Political System. They are well established in all democratic countries of Europe as well as United States of America.

Definition of Administrative Tribunal

An administrative Tribunal is a multimember body to hear on cases filed by the staff members alleging non-observation of their terms of service or any other related matters and to pass judgments

on those cases.

Need for Administrative Tribunals

We all know that the government employs a large work force to carry out its diverse activities. Managing such a large number of personnel is a herculean task. Most of the government employees are better educated and enough aware to be insistent on their rights.

There are times when the disputes between the employer (Government) and employees over service matters can arise. This may also lead to litigation between the employees and the government. An employee can though approach the court for redressal of grievances for, the protection of the law is guaranteed to every citizen including government servants. But the judiciary is already overburdened with cases. Then, the court procedure is extremely cumbersome, costly and time-consuming. Due to the huge number of employees, the judicial remedy stands practically ruled out and there was a need for some alternative forum.

Thus, the basic objective of the administrative tribunals is to take out certain matters of disputes between the citizen and government agencies of purview of the regular courts of law and make the dispute redressal process quick and less expensive.

The Administrative Reforms Commission (1966-70) had recommended the setting up of 'Civil Service Tribunals' to function as final appellate authorities in respect of orders inflicting the major punishments of dismissal, removal from service and reduction in rank. At around same time, **J.C. Shah Committee** had also recommended the establishment of an administrative tribunal to adjudicate on service matters.

In one of the judgments, the Supreme Court of India observed that civil servants need not waste their time in fighting battles in the regular law courts and suggested the establishment of such tribunals.

Jurisdiction of tribunals in service matters

According to Article 323A, administrative tribunals can adjudicate the disputes and complaints with respect to the recruitment and conditions of service of persons appointed to public services and posts at

- Union Level
- State Level as well as
- Any local or other authority within the territory of India.

Establishment of Tribunals

Article 323A provides that a law made by the parliament may provide for establishment of an Administrative Tribunal for the Union and a separate Administrative Tribunal for each state or two or more states. *These tribunals exclude the jurisdiction of all courts except the special jurisdiction of the*

Supreme Court in Article 136. The matters for these tribunals are as follows:

- Recruitment and conditions of service of persons appointed to public services in *Union as well as States as well as Local authorities*
- Recruitment and conditions of service of persons appointed to any corporation ***owned or controlled by the Government.***

Tribunals by State Legislatures

Article 323 B empowers the **parliament or state legislatures** to set up tribunals for matters other than those mentioned above. The matters to be covered by such tribunals are as follows:

- Levy, assessment, collection and enforcement of any tax
- Foreign exchange, import and export across customs frontiers;
- Industrial and labour disputes;
- Matters connected with Land reforms covered by Article 31A
- Ceiling on urban property;
- Elections to either House of Parliament or the House or either House of the Legislature of a State, but excluding the matters which include
- Delimitation of constituencies
- Matters which can be only questions via election petition. This means that some election matters where courts have been barred cannot be questions in tribunals also.
- Production, procurement, supply and distribution of food-stuffs (including edible oilseeds and oils) and such other goods as the President may, by public notification, declare to be essential goods

Administrative Tribunals Act 1985

Using the powers conferred by the Article 323A of the Constitution, Parliament passed a law to establish the Administrative tribunals in India. The **Administrative Tribunals Act 1985** provides for adjudication or trial of disputes and complaints with respect to recruitment and conditions of service of public servants.

- The act has made provisions for the **Central Administrative Tribunal** for the Centre and a **State Administrative Tribunal** for a particular State.
- In addition, the Act also provides for the establishment of **Joint Administrative Tribunals** to hear cases from more than one State.
- The Act was amended shortly thereafter to constitute a Common administrative Tribunal between the Centre and the State.
- The Administrative Tribunals were thus, established in November, 1985 at Delhi, Mumbai, Calcutta and Allahabad.

- Today, there are 17 Benches of the Tribunal located throughout the country wherever the seat of a High Court is located, with 33 Division Benches.
- In addition, circuit sittings are held at Nagpur, Goa, Aurangabad, Jammu, Shimla, Indore, Gwalior, Bilaspur, Ranchi, Pondicherry, Gangtok, Port Blair, Shillong, Agartala, Kohima, Imphal, Itanagar, Aizwal and Nainital.

Central Administrative Tribunal: Important Notes

Its function is to adjudicate the disputes with respect to recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or state or other local authorities within the territory of India or under the control of Government of India. In addition to Central Government employees, the Government of India has notified 45 other organizations to bring them within the jurisdiction of the Central Administrative Tribunal. The provisions of the Administrative Tribunals Act, 1985 do not apply to the following:

- Members of paramilitary forces
- Armed forces of the Union
- Officers or employees of the Supreme Court
- Persons appointed to the Secretariat Staff of either House of Parliament or the Secretariat staff of State/Union Territory Legislatures.
- The CAT is headed by a chairman who must be either a sitting or a retired Judge of a High Court.
- Other than Chairman, there are 16 Vice-Chairmen and 49 Members.
- The principle bench is located at New Delhi

Please note that Central Administrative Tribunal enjoys the status and powers of a High Court. However, Government employees not satisfied with CAT orders on their service matters can appeal in High Courts, followed by appeal in Supreme Court. We note here that the law commission had recommended that the appeals should go straight to the Supreme Court; however, this remains just a proposal as of now. In disposing of its cases, the Tribunal observes the canons, principles and norms of 'natural justice'.

Tribunals in various States

Many states in India have established the Tribunals. In some states, the decisions and judgments are binding upon the state Government. In some states such as Andhra Pradesh, the judgments of Tribunals are binding on the State Government unless nullified by the latter within a period of two months. In some states the Tribunals have taken away the jurisdiction of the respective high courts in service matters, while in some other states, they do not abridge or ban the jurisdiction of the High Court concerned.

Election Commission

For the conduct of free and fair elections an **independent Election Commission** has been provided for in **Article 324**. Constitution of India has provided a separate chapter for elections and has not left the elections to jurisdiction of the executive and legislative departments of the government. This is mainly because the makers of the constitution had been very serious to safeguard this political right as an integral part of the constitution itself. *Election commission of India is a permanent body* entrusted for the following matters:

- Election of President
- Election of Vice-President
- Election of Lok Sabha as well as Rajya Sabha
- Elections to State Legislatures as well as Legislative Councils
- Reservation of Seats in Lok Sabha and State Legislatures
- Qualifications of the MPs and MLAs
- Determination of population for purposes of election

The powers of the election Commission are as follows

- Superintendence , direction and control of all the elections mentioned above
- ***Power of appointing election tribunals*** for the decisions of doubts and disputes in connection with the elections.

Appointment of Election Commissioners

India has a three member election commission. These all are appointed by the President for a *term which is fixed by the President.* However, conditions of service and tenure of office of the chief election commissioner and other election commissioner are determined by an act of parliament titled The Chief Election Commissioner and Other Election Commissioners (Conditions of Service) Act, 1991. This act has fixed the following:

- The chief election commissioner or an election commissioner shall **hold office for a term of 6 years or age of** 65 years, whichever is earlier.
- The chief election commissioner and other commissioners are paid a salary equal to the salary of a judge of the Supreme Court. On retirement they are entitled to a pension payable to a judge of the Supreme Court.
- All business of the election commission shall, as far as possible, be transacted unanimously. If the chief election commissioner and other election commissioners differ in opinion on any matter, such matter shall be decided according to the opinion of the majority.

Independence of ECI

The constitution of India has ensured that the commission shall act as an independent body.

Independence is secured by some of these provisions:

- The chief election commissioner shall not be removed from office except in like manner and on like grounds as a judge of the Supreme Court. A judge of supreme court can be removed only by an order of the President passed after an address by 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 the members of that House present and voting has been presented to the President in the same session for such removal on the ground of proved misbehavior or incapacity.
- The other election commissioners cannot be removed from office without recommendation of the CEC.
- Their conditions of service shall not be varied to their disadvantage after their appointment.
- It is the duty of the president or the governor of a state to make available to the commission , when so requested, such staff as may be necessary for the conduct of its functions.

Other functions of Election Commission

Preparation of Electoral rolls

One of the most important functions of the election commission is to prepare for identification the up-to-date list of all the persons who are entitle for voting at the poll.

Recognition of political parties and allotment of symbols

Election commission gives recognition of parties and allotment of symbols via the authority vested in it via the Representation of The People (Amendment) Act, 195. Section 29A of this act provides for registration of the political parties with the commission, of associations and bodies of individual citizens of India as political parties for purpose of recognized political party has been classified either as a national party or a state party under paragraph 7 of the elections symbol order, 1968.

Scrutiny of the nomination papers:

The election Commission of India examines the nomination papers of the candidates. These papers are accepted if found in order, but rejected otherwise. This duty is performed by the returning officer who notifies to all the contesting candidates the date, time and place for the formal scrutiny of nomination papers.

Monitoring of Election Expenses

Scrutinizing the accounts of election expenses submitted by contestants in elections. In India every contesting candidate is required to maintain and file the accounts of his election expenses within a prescribed period after publication of the result of his election.

National Commissions of SCs and STs

For effective implementation of various safeguards provided in the Constitution for the SCs & STs and various other protective legislations, the original constitution had provided for appointment of a

Special Officer under *Article 338* of the Constitution. This special officer, called **Commissioner for SCs & STs** was assigned the duty to investigate all matters relating to the safeguards for SCs and STs in various statutes and to report to the President upon the working of these safeguards. In order to facilitate effective functioning of the office of the Commissioner for SCs & STs 17 regional offices of the Commissioner were set up in different parts of the country.

However, there was a concern of the politicians that that the Office of the Commissioner for SCs & STs alone was not enough to monitor the implementation of Constitutional safeguards. So, it was proposed to amend the Article 338 and put in place a Multi-Member Commission for the SC and STs. But even before the amendment was passed, the government changed the system via administrative decision and established the first Commission for SCs & STs in 1978 under Shri Bhola Paswan Shastri as Chairman and other four Members.

It was later renamed as **National Commission for Scheduled Castes and Scheduled Tribes**. It was set up as a *National Level Advisory Body* to advise the Government on broad policy issues and levels of development of Scheduled Castes and Scheduled Tribes. However, till that time, it had no explicit constitutional backing.

Later, the National Commission for Scheduled Castes and Scheduled Tribes was given constitutional backing via the Constitution (Sixty fifth Amendment) Act, 1990. The previous Bhola Paswan Shashtri commission was replaced by the **NCSTST** chaired by Shri Ram Dhan.

- In 1995, second NCSCST was established under H. Hanumanthappa as Chairman.
- Third NCSCST was set up in 1998 under Dileep Singh Bhuria as the Chairman.
- Fourth NCSCST was set up under Dr. Bizay Sonkar Shastri in 2002.

However, 89th amendment of the constitution in 2003 bifurcated the NCSCST and made provisions for *NCSC under Article 338* and *NCST under new Article 338A*.

Structure of NCSC and NCST

The commission consists of a chairman, vice-chairman and **five other** members. The chairman, vice-chairman and members of the commission are appointed by the President. The conditions of service and tenure of the members of commission shall be such as the presidents may by rule determine.

Duties of NCSC and NCST

- To investigate and monitor all matters relating to the safeguards for SC's and ST's under the constitution and any other law or any order of the government and to evaluate the working of such safeguards.
- To inquire into specific complaints with respect to the deprivation of rights and safeguards of SC's and ST's.

- To participate and advice on planning process of socio-economic developments of SC's and ST's and to evaluate the progress of their development under the union and any state.
- To present to the president reports upon the working of those safeguards annually and at such other times as the commission deems fit.
- To make recommendations as to the measures that should be taken by the centre and states for the effective implementation of those safeguards and other measures implementation of those safeguards and other measures for the protection, welfare and socio-economic development of the SC's and ST's.
- To discharge such other functions for protection, welfare and development and advancement of SC's and ST's as the president may, subject to the provisions of any law made by parliament by rule specify.

Power of NCSC and NCST

The NCSC and NCST have the power to regulate their own procedures. While investigating any matter *they have all the powers of a civil court* in following matters :

- Summoning and enforcing the attendance of any person from any part of India and examining him on oath.
- Requiring the discovery and production of any document.
- Receiving evidence on affidavit.
- Requisitioning any public record or copy thereof from any court or offices.
- Issuing commissions for the examination of witness and documents.
- Any other matter which the president may, by rule, determine.

Consultation by Union and State Governments

The union and state governments need to consult the commissions on all major matters affecting SC's and ST's.

Inter-state Council

Inter State council is a constitutional body set up on the basis of provisions in Article 263 of the Constitution of India by a Presidential Order dated 28th May, 1990 on recommendation of Sarkaria Commission. Article 263 of the Constitution envisages establishment of an institutional mechanism to facilitate coordination of policies and their implementation between the Union and the State Governments.

Article 263

Article 263 says that "if at any time it appears to the President that the public interest would be served by the establishment of a Council charged with the duty of –

- inquiring into and advising upon disputes which may have arisen between States;

- investigating and discussing subjects in which some or all of the States, or the Union and one or more of the States, have a common interest; or
- making recommendations upon any such subject and in particular, recommendations for the better co-ordination of policy and action with respect to that subject,

it shall be lawful for the President by order to establish such a Council, and to define the nature of the duties to be performed by it and its organization and procedure."

Functions and Duties

Inter-State Council is a recommendatory body and it investigates and discusses such subjects, in which some or all of the States or the Union and one or more of the States have a common interest, for better coordination of policy and action with respect to that subject. It also deliberates upon such other matters of general interests to the States as may be referred by the Chairman to the Council. Its duties include:

- Inquiring into and advising upon disputes which may have arisen between/among States
- Investigating and discussing subjects in which some or all of the States, or the Union and one or more of the States have a common interest
- Making recommendations upon any such subject for the better coordination of policy and action with respect to that subject

Composition of Inter-state Council

Prime Minister is the Chairman of the Inter-state Council. Chief Ministers of all the States and Union Territories having Legislative Assemblies, Administrators of Union Territories not having Legislative Assemblies, Governors of States under President's rule and six Ministers of Cabinet rank in the Union Council of Ministers, nominated by the Chairman of the Council, are members of the Council. Five Ministers of Cabinet rank nominated by the Chairman of the Council are permanent invitees to the Council.

Secretariat

The Inter-State Council is assisted by Secretariat, which is headed by a Secretary to the Government of India. The Inter-State Council Secretariat closely monitors the implementation of the recommendations made by the Inter-State Council, and places the Action Taken Report before the Standing Committee/Council for consideration. *Inter-State Council Secretariat also works as Secretariat of the Zonal Councils.*

Emergency Provisions

The part 18 of Indian constitution deals with the emergency provisions. This part has been the subject of most acrimonious attacks by the critics in the history of Independent India. During the framing of the constitution, this part had witnesses the most agitated scenes and debates in the Constituent Assembly. One of the sources that influenced the emergency provisions in India was the

Weimar Constitution of Germany (1919-1933).

National / War Emergency: Article 352

Article 352 says that if the president is satisfied that a grave emergency exists whereby the security of India or any part of the territory of India is threatened by war or external aggression or armed rebellion, he may proclaim an emergency. This emergency may be with respect to whole or part of India. The article 352 puts certain conditions which are very important to understand:

- The proclamation or formal declaration of emergency can be revoked by further proclamation.
- The proclamation of a war emergency cannot be made by the president unless the Union cabinet gives him in written that such proclamation should be made.
- If a proclamation is NOT revoked subsequently, it should be laid before the parliament. The both houses of parliament must approve such proclamation within two months. If the parliament does not approve the proclamation, it will become ineffective.
- It may be that at the time of the proclamation, the house of people has been dissolved or its dissolution takes place within the period of two months after the proclamation. In these cases, the proclamation shall be laid before Rajya Sabha. If Rajya Sabha passes it, it must be approved by Lok Sabha within the 30 days of the new meeting of the Lok Sabha. However, if Rajya Sabha itself does not pass the proclamation, the proclamation would cease to be valid.

Please note that Power of President to declare an Emergency may be made use of even before the actual occurrence of aggression or disturbance.

Effect of Proclamation of War Emergency: Article 353 & 354

As soon as the emergency is proclaimed, the federal provisions of the Constitution cease to function in the area affected by the proclamation. As a result, there is a twofold expansion of the authority of the Union.

- First, the executive power of Union will extend to the giving of any directions to any state executive in emergency area.
- Second, Parliament's law making power will extend to the subjects that are enumerated in the state list.

Apart from that, the President is empowered to restrict or prohibit by order the distribution of revenues are that normally assigned entirely to the states under the financial provisions of the constitution.

However, all such orders need to be placed before each House of Parliament for approval. The combined effect of the operation is that there is a emergence of full-fledged Unitary Government.

Consequences of Emergency

- The union government acquires the powers to issue directions to the states regarding the

manner in which they have to exercise the executive power (article 353).

- The parliament is empowered to legislate on any subject in the state list. It may be noted that during emergency the states can also make laws, but this is subject to overriding power of the parliament. (Article 353 (b)).
- The centre can alter distribution of revenue between the union and the state. However, such an order is to be laid before each house of parliament and comes to an end by the end of the financial year in which the proclamation ceases to operate.
- The life of Lok Sabha can be extended by one year at a time up to the period not exceeding beyond six months after the proclamation ceases to operate.
- It leads to automatic suspension of freedoms guaranteed by art. 19 of the constitution. However as soon as the proclamation of emergency cases, the freedoms under art.19 are automatically resorted.

The president can suspend right to enforce fundamental rights granted by the constitution (art.359). The order regarding suspension of fundamental rights may extend to the whole be laid before each house of parliament as soon as possible. It may be noted that the president does not possess any power to suspend the enforcement of fundamental rights guaranteed in article 20 and 21.

Instances of National Emergency

The national emergency was for the first time proclaimed in 1962 in the wake of the Chinese invasion. This emergency was also used by the government to tide over the situation arising out of the Indo-Pak war of 1965. The emergency was finally lifted in January, 1968. The second national emergency was declared in December 1971 during the Bangladesh war and remained in force till march 1977. The third national emergency was declared in June 1975 on grounds of internal disturbance and was revoked in march 1977. However, as a result of the 44th amendment of the constitution it is no more possible to declare national emergency on grounds of internal disturbances. Instead it can be declared on grounds of armed rebellion.

Constitutional Emergency in States: Article 356

If the president is satisfied *on receipt of a report from the governor or otherwise* that a situation has arisen in which the Government in a state cannot be carried in accordance with the provisions of the Constitution, he / she is empowered to proclaim an emergency. The result would be that:

- President may assume to himself all or any of the functions of the state or he may vest all or any of those functions in the Governor or any other such authority.
- President may declare that powers of the state legislatures shall be exercisable by the parliament.
- President may make any other incidental or consequential provisions necessary to give effect to the object of proclamation.

However, it must be noted here that President cannot assume to himself any of the powers vested in a High Court. Further, the proclamation would have to be approved by the Houses of the parliament in same manner as in case of a War Emergency. However, *even if Parliament has approved the proclamation, it will normally cease to operate 6 months after the Parliamentary approval.* The proclamation can be repeated if necessary so as to allow the period of emergency to continue for maximum of one year. Every such resolution approving the emergency has to be passed by each of the houses of Parliament by a majority of not less than two-thirds of the members present and voting. If the emergency proclamation authorizes Parliament to exercise the powers of the state legislature, it is open to parliament to adopt one or other two alternative courses. It may pass all legislative enactments for the state including financial legislations. But if the parliament does not find it convenient to do this all additional work, it may confer upon the President to delegate this power to any authority. Parliament is also empowered to authorize the president to sanction expenditure from the Consolidated Fund of the state. Any law made by any of the authorities mentioned above shall continue in force until repealed or altered by a competent legislative or other authority.

Instances of Constitutional Emergency & Sarkaria Commission Report

This kind of emergency under Article 356 has been declared for over 110 times in India. For the first time constitutional emergency was declared in Punjab in 1952. In most of the cases constitutional emergency was declared because no stable Government could be formed as a consequence of elections. However, may times, the states were placed under presidential rule on grounds of expediency. Some of the governments enjoying comfortable majority in the assembly were suspended on the plea that *they had lost contact with the people, or failed to protect the minority* communities, or failed to maintain law and order etc.

The issue has been raised for several times that constitution should be suitably amended to ensure that the union government is not able to get rid of state government which it does not like. This issue was examined by **Sarkaria Commission**, which however did not favour the deletion of this article, as suggested by some critics. On the other hand, Sarkaria commission suggested a number of measures to ensure that the centre makes use of this provisions only on rare occasion.

The main suggestions of Sarkaria commission in this regard as follows:

- Article 356 to be used as a measure of last resort when all available alternative fail to prevent or rectify the breakdown of constitutional machinery.
- An explanation be obtained from the errant state before taking action under article 356.
- The governor should explore all possibilities to form government which is backed by majority in the assembly and if it is not possible, it should ask the outgoing ministry to act as caretaker government and hold fresh elections without avoidable

- The governor should recommend proclamation of president rule without dissolving the assembly.
- The state legislative assembly should not be dissolved before the proclamation has been laid before the parliament and an opportunity accorded to it to consider the proclamation.
- The governor's report recommending imposition of presidential rule should state all the material facts and grounds in precise and clear terms.
- Appropriate amendment be carried out in the relevant provisions of the constitution to make the remedy of judicial review more meaningful.

Is dismissal of state Government subject to Judicial Review?

Please note that in S.R. Bommai v. Union of India (1994) the Supreme Court held that dismissal of state government was subject to judicial review and the court could review the dissolved state assembly if the dissolution was found to be judiciary indefensible. The court also laid down the following norms regarding imposition of president's rule :

- No state assembly be dissolved while proclaiming emergency in the state. it should be dissolved only after parliament has ratified the proclamation.
- The proclamation under art. 356 is subject to judicial

- If the court strikes down the proclamation, it can restore the dismissed government to office and reactive the legislative
- The supreme court can ask of which the president is advised to make the
- President's rule can be imposed only on a written report from the government.
- It is unconstitutional for the party in power at the centre to dismiss an opposition-ruled state government.

What is the impact of Emergency on Fundamental rights (Article 358, 359)?

During the period of emergency declared under any of the above two categories, the *State is empowered to suspend the Fundamental Rights given in Article 19.*

State here means that power to suspend the operation of these fundamental rights is vested NOT ONLY in Parliament but also in Union Executive and even the subordinate authority. Apart from this, the President is empowered to suspend the right to move any court of law for the enforcement of any of the fundamental rights. This means that virtually, the whole chapter of Fundamental rights can be suspended during the operation of emergency. However, such orders need to be placed before parliament as soon as possible for its approval.

Financial Emergency: Article 360

If the President is satisfied that a situation has arisen whereby the financial stability or credit of the country or any part of it is threatened, he / she may declare a financial emergency. Proclamation in this case also has to be approved by the Parliament as in the case of two other cases of emergency.

During the Financial emergency, the executive authority of the Union shall extend to giving of the directions to any state to observe such canons of financial propriety as may be specified in the direction or any other direction, the president may deem necessary for the purpose. Such directions may include those requiring the reduction of salaries and allowances of the Government servants and even those of the Judges of Supreme Court and High Courts. Financial emergency has never been proclaimed in India.

Special Provisions with Respect to Jammu & Kashmir

Under the Part XXI of the Constitution of India, which deals with "Temporary, Transitional and Special provisions", Article 370 is a temporary provision granting special autonomous status to Jammu and Kashmir. Here is a backgrounder on this topic.

Historical Background

Immediately after independence, a major column of armed men from Pakistan had invaded Kashmir and they were nearly successful in capturing Srinagar. Confronted with the chances of losing Kashmir to Pakistan, Maharaja Hari Singh requested help from India. Immediately, Patel's aid V P Menon arrived in Srinagar and told the maharaja that India could take action only if Kashmir acceded to India. It is widely believed that Maharaja wanted to keep is independence but reluctantly acceded to India due to the grave situation created by the Pakistani invaders. Thus, on October 26, 1947, Maharaja Hari Singh signed the Instrument of Accession.

Here, we need to note that the accession was partly provisional. For example, clause 7 of this instrument read that Maharaja was NOT committed to accept the future constitution of India. Similarly, clause 8 said that nothing in the instrument affected the sovereignty of the Kashmir. The subjects that were surrendered to India included Defence, External Affairs, Communications and some ancillary subjects such as elections and jurisdiction of courts in these three matters.

With such instrument in hands, India had sent its forces to Kashmir. Later, Sheikh Abdulla, who was under custody, was released by Maharaja Harsingh. Abdullah, although condemned the Pakistani attack on Kashmir yet asserted the sovereign right of the people of Kashmir to decide their future. In 1948, he was made the prime minister of Kashmir.

Meanwhile regrettably, Kashmir issue was taken to UN by Nehru and the issue was given a tag of international dispute between India and Pakistan. Not only that, India also made a promise of plebiscite in Kashmir. However, the idea of separate Kashmir was overruled.

By 1949, Sheikh Abdullah and Maharaja Harisingh decided that Kashmir should remain united with India with maximum possible autonomy. India granted a special status to Kashmir in article 306A of the **draft constitution**. This special status was given as per clause 7 of the Instrument of Accession. At that time, **Hasrat Mohani** had objected the special status. But he also expressed hope that in due

course Kashmir would become ripe for same kind of integration as similar to other states. The Article 306A was enshrined as **Article 370** in the constitution as a "temporary provision". Sheikh Abdullah did not want that to be a temporary provision and insisted for his iron clad guarantee of autonomy but India did not accept that.

Implications of Article 370

Article 370 specifies that except for **Defence, Foreign Affairs, Finance and Communications** the Indian Parliament needs the State Government's concurrence for applying all other laws. This has some peculiar implications as follows:

Applicability of parts

- Most provisions of the Constitution which are applicable to other states are not applicable to J&K. Part VI in whole is not applicable to Jammu & Kashmir.

Jurisdiction of Indian Parliament

- The Jurisdiction of the Parliament of India in relation to Jammu and Kashmir is confined to the matters enumerated in the Union List, and also the concurrent list. There is no State list for the State of Jammu and Kashmir. At the same time, while in relation to the other States, the **residuary power** of legislation belongs to Parliament, in the case of Jammu and Kashmir, the residuary powers belong to the Legislature of the State, except certain matters to which Parliament has exclusive powers such as preventing the activities relating to cession or secession, or disrupting the sovereignty or integrity of India.

- The power make laws related to preventive detention in Jammu and Kashmir belong to the Legislature J & K and not the Indian Parliament. Thus, no preventive detention law made in India extends to Jammu & Kashmir.
- Kashmir enjoys some other privileges over and above the other states of India. For example, the plenry power of parliament with respect to alteration of the name or territories of the State (Art.3) does not extend to the state. Similarly, International treaty or agreement affecting any part of the territory of the state (Art.253) doesn't extend to Jammu and Kashmir. Article 253 empowers the Parliament to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body. Any action of the Union Legislature or Union Executive which results in alteration of the name or territories or an international treaty or agreement affecting the disposition of any part of the territory of Jammu and Kashmir requires the consent of the State Legislature.

Emergency

- Initially, Article 356 and 357 did not apply to India. However, these two articles related to

suspension of the Constitutional machinery in the state have been extended to the state by the Amendment Order of 1964. However, Failure means failure of the constitution machinery as set up by the Constitution of the State and not the provisions in part VI of the Constitution of the India. As a result, where the failure of the Constitutional machinery takes place in Jammu & Kashmir, two types of Proclamation may be made

- The President's Rule under Art. 356 of the Indian Constitution (as in the case of the other States of the Indian Union)
- The Governor under section 92 at the Constitution of J&K for which there is no counter part in any other State of India.

- The Union of India has no power to declare Financial Emergency under Article 360 in the state.

Fundamental Rights

- Apart from the rights enjoyed by all states of India, some special right as regards employment, acquisition of property and settlement have been conferred on permanent resident of the State by constitution of Jammu and Kashmir. Right to property is still a fundamental right in the state.

DPSP & Fundamental Duties

- Part IV (Directive Principles of the State Policy) and Part IVA (Fundamental Duties) of the Constitution are not applicable to J&K.

Amendment of the Constitution

- The provisions of Art. 368 of the Constitution of India are not applicable for the amendment of the State Constitution of Jammu & Kashmir. The Jammu & Kashmir assembly by two third majority amend its own constitution (except in those matters that are related to relationship of the State with the Union of India)
- The Union has no power to suspend the Constitution of J&K.

Jammu & Kashmir High Court

- The High Court of J&K has limited powers as compared to other High Courts within India. It cannot declare any law unconstitutional. Unlike High Courts in other states, under Article 226 of the Constitution, it cannot issue writs except for enforcement of Fundamental Rights.

Amendment or abrogation of Article 370

Article 370(3) reads:

Notwithstanding anything in the foregoing provisions of this article, the President may, by public notification, declare that this article shall cease to be operative or shall be operative only with such exceptions and modifications and from such date as he may specify...Provided that the recommendation of the ***Constituent Assembly*** *of the State referred to in clause (2) shall be necessary before the President issues such a notification*".

Now the question is that the J&K has no longer a constituent assembly. This poses a moot question if

the article can be amended or removed by Indian parliament. Some jurists say it can be amended by an amendment Act under Article 368 of the Constitution and the amendment extended under Article 370(1).

Demand for Abrogation of Article 370

The arguments in favour of and against the abrogation of article 370 are equally valid. Those who argue for abrogation of the article say that it has created certain psychological barriers and is root cause of all the problems. Moreover, Article 370 encourages secessionist activities in the country. It is also argued that at the time of enactment, it was a temporary arrangement which was supposed to erode gradually. This article is a constant reminder that Jammu and Kashmir is still to merge fully with India.

Those who argue against the article 370 say that the abrogation will cause serious consequences. They ask why there are separatist activities in other states which have not such special treatment by constitution. According to them, abrogation of this article would also violate the solemn undertaking by India given to state through the instrument of accession.

Amendment of the Constitution

Part XX of the Constitution of India has only one article that is Article 368 that deals with the amendment of the Constitution. As per this article, Parliament may add, amend or repeal any provision of the constitution as per the procedure laid down for this purpose. However, in the Kesavanand Bharati Case 1973, the Supreme Court has ruled that the Parliament cannot amend those provisions which constitute the Basic Structure of the Constitution.

Procedure for Amendment

- A constitution amendment bill *can be introduced in any house* of the parliament. A bill for the purpose of amendment of constitution *can NOT be introduced in any state legislature*.
- The Ordinance making power of the President *can NOT be used to amend the Constitution.*
- A constitution amendment bill *can be introduced both as a government bill or a private member bill.* However, if it's a Private Member, then it has to be examined in the first instance and recommended for introduction by the Committee on Private Members' Bills and Resolutions before it is included for introduction in the List of Business.
- *Prior recommendation of President is NOT needed* in introducing the constitution amendment bills.
- Constitution Amendment Bills are not treated as Money Bills or Financial Bills even if they have some provisions related to them.
- A constitution amendment bill must pass in both the houses separately by absolute + special majority {absolute → more than 50% of strength; special → 2/3 of present and voting}.

- If there is a disagreement between the two houses on a constitution amendment bill, there is NO provision of joint sitting to resolve the deadlock.
- The bills which result in some changes in the constitution but passed by *simple majority* are not deemed to be Constitution Amendments.
- If a bill seeks to amend the federal provisions of the Constitution, it must also be ratified by the legislatures of half of the states by a simple majority.
- Once the bill is passed in both houses, the bill is sent to president for approval. The 24th Amendment Act of 1971 had made it obligatory for the President to give his assent to a constitutional Amendment Bill. Thus, for a Constitution amendment bill, a President can neither withhold his assent not return the bill for reconsideration.

Bills which result in changes but not deemed to be Constitution Amendment Bills

There are several amendments which result into some changes in the constitution but can be passed in the houses by simple majorities. Such bills are NOT considered to be Constitution Amendment Bills for the purpose of Article 368. These include the following:

- Admission or establishment of new states.
- Formation of new states and alteration of areas, boundaries or names of existing states.
- Abolition or creation of legislative councils in states.
- Changes in the Second Schedule-emoluments, allowances, privileges and so on of the president, the governors, the Speakers, judges, etc.
- Changes in the requirements of quorum in Parliament.
- Salaries and allowances of the members of Parliament.
- Changes in the Rules of procedure in Parliament.
- Changes in the Privileges of the Parliament, its members and its committees.
- Use of English language in Parliament or changes in use of official langauges {Please note that insertion of a language in 8th schedule or removal from it would need an amendment bill to be passed as per article 268}
- Changes that need to redefine number of the judges of Supreme Court.
- Changes that extend the jurisdiction of Supreme Court {Parliament can extend but cannot curtail jurisdiction of Supreme Court}.
- Changes in elections to parliament and state legislatures; delimitation.
- Changes in scheduled areas (5th schedule) and Tribal Areas (6th schedule)

Bills seeking to amend all other provisions can be introduced in either House of Parliament.

Amendments that seek to change federal provisions of the Constitution

A Constitution Amendment Bill which seeks to make any change in articles relating to:—

- the election of the President, or

- the extent of the executive power of the Union and the States, or
- the Supreme Court and the High Courts, or
- distribution of legislative powers between the Union and States, or representation of States in Parliament, or the very procedure for amendment as laid down in article 368 of the Constitution

The above bills will be first passed in the two houses separately by absolute and special majority and then also need to be ratified by legislatures of at least half of the states *by resolutions*. Only after this, the bill will be sent for presidential assent.

Presidential Assent to Constitution Amendment Bills

Constitution Amendment Bills passed by Parliament by the prescribed special majority and, where necessary, ratified by the requisite number of State Legislatures are presented to the President under article 368 of the Constitution under which the President is bound to give his assent to such Bills.

Services under the Union and States

The Constitution of India provides for the creation of **All India Services** that are common to the Union and the States. The All India Services Act, 1951 provides that the Central Government may make rules for regulating the recruitment and the conditions of service of persons appointed to the All India Services.

- Presently only the IAS, the IPS and the IFS have been constituted as All India Services.
- The recruitment to these services is made through the Union Public Service Commission on the basis of the annual Civil Services Examination.
- This is intended to insulate the civil service from political influences and prevent the development of a patronage system.
- The officers of the All India Services are recruited and trained by the Union Government and serve in the various State Governments as well as Centre.
- Please note that the **Indian Revenue Service** is called a **Central Service** instead of an All India Service as they work only in the Central Government.

Cadres

The officers of All India Services are organized into cadres, derived from the states they are allotted to work in for as long as they continue to be a member of the respective Service. Twenty-four states have their own cadre, but there are also three joint cadres: Assam-Meghalaya, Manipur-Tripura, and Arunachal Pradesh-Goa-Mizoram-Union Territories (AGMUT). Recently the North-Eastern Areas (Re-organisation) Amendment Bill, 2011 was approved by the cabinet which seeks to provide for separate Cadres of All India Services for the States of **Manipur and Tripura**.

- There are State Cadres and the Officers of All India Services (AIS) – Indian Administrative

Service, Indian Police Service and Indian Forest Service – are divided into State cadres.

- When on probation the All India Service (AIS) Officers are allocated to their States. Officers of AIS working with the Central Government are posted on deputation for some years.
- The AIS officers in a State cadre may be original residents of that State but almost 2/3 of all officers are from outside the state.
- The AIS officer cannot demand his home State cadre but may put in request for being considered for the home cadre. Generally once allotted to a State, an officer for his whole service stays with that State cadre.

The All India Services Act 1951 empowers the government of India to make, *after consultation with state governments*, rules for the regulation of recruitment and conditions of service of the persons appointed to an All India Service.

Indian Administrative Service (IAS)

- Controlled by the Central Government.
- Selected candidates are appointed to different state cadres and as and when required they also move to Central Government jobs on deputation.
- IAS Officers are trained to handle government affairs. This being the main responsibility, every civil servant is assigned to a particular office which deals with policy matters pertaining to that area.
- The policy matters are framed, modified, interpreted in this office under the direct supervision of the Administrative Officer in consultation with the Minister. The implementation of policies is also done on the advice of the Officer.
- Cabinet Secretary stands at the top of the government machinery involved in Policy making followed by Secretary/Additional Secretary, Joint Secretary, Director, Under Secretary and Junior Scale Officers in that order.

These appointments are filled by civil servants according to seniority in the Civil Services. In the process of decision making, a number of officers give their views to the Minister who weighs the matter and makes a decision considering the issue involved.

Indian Forest Service (IFoS)

India was one of the first countries in the world to introduce scientific forest management.

- 1864 → British Raj established the Imperial Forest Department.
- 1866 → Dietrich Brandis, a German forest officer, was appointed Inspector General of Forests.
- 1867→The Imperial Forestry Service was organized subordinate to the Imperial Forest Department.

The British colonial government also constituted provincial forest services and executive and

subordinate services similar to the forest administrative hierarchy used today. Officers appointed from 1867 to 1885 were trained in Germany and France, and from 1885 to 1905 at Cooper's Hill, London, a noted professional colleges of forestry. From 1905 to 1926, the University of Oxford, University of Cambridge, and University of Edinburgh had undertaken the task of training Imperial Forestry Service officers.

- From 1927 to 1932, forest officers were trained at the Imperial Forest Research Institute (FRI) at Dehradun, which had been established in 1906.
- The Indian Forest College (IFC) was established in the 1938 at Dehradun, and officers recruited to the Superior Forest Service by the states and provinces were trained there.
- Forestry, which was managed by the federal government until then, was transferred to the "provincial list" by the Government of India Act 1935, and recruitment to the Imperial Forestry Service was subsequently discontinued.
- The modern Indian Forest Service was established in the year 1966, after independence, under the All India Services Act 1951.
- The first Inspector General of Forests, Hari Singh, was instrumental in the development of the IFS.

Indian Police Service

The Indian Police Service is responsible for internal security, public safety and law and order. In 1948, a year after India gained independence from Britain; the Imperial Police (IP) was replaced by the Indian Police Service.

Please note that IPS is not a law enforcement agency; rather it is the body to which all senior police officers belong regardless of the agency for whom they work.

Applicability to Jammu & Kashmir

Article 308 says that in this part, the Expression **State** does not include the State of Jammu and Kashmir. This means that provisions of Part XIV don't apply to Jammu & Kashmir. However, please note that we have a Jammu and Kashmir Cadre.

Regulation of recruitment and conditions of the public services

Article 309 empowers the **Parliament and the state legislatures** to regulate the recruitment and the conditions of service of the persons appointed to public services and posts under the Centre and States respectively. The original constitution provided that until such laws are made, the president or Governor can make rules for the regulation of such matters.

Applicability of doctrine of pleasure

Doctrine of pleasure is applicable to public services. Article 310 says that the services under Part XIV are *under the pleasure of the President or Governor*. This section makes it clear that a person who is a member of a defense service or of a civil service of the Union or of an all-India service or holds any

post connected with defense or any civil post under the Union holds office during the pleasure of the President, and every person who is a member of a civil service of a State or holds any civil post under a State holds office during the pleasure of the Governor 3 of the State.

Though, these officers hold the office during the pleasure of the president and Governor, yet their dismissal is subject to a condition. This condition has been stipulated in article 310(2). Article 310(2) says that in case of dismissal of a person from these services, the president or the Governor may (in order to secure the services of a person having special qualifications) provide for the payment to compensation. This compensation may be provided on the following grounds:

- If the post is abolished before expiration of the contractual period or
- If he / she is required to vacate that post for reasons not connected with misconduct on his / her part.

Removal and Dismissal of civil servants

Article 311 makes it clear that a person who is a member of the civil service of the Union or State can not be dismissed or removed by an authority subordinate to that by which he was appointed. The removal is possible only after an inquiry in which he / she has been informed of the charges against him / her and given a reasonable opportunity of being heard in respect of those charges. However, the above rule is not applicable in the following cases:

- If the person is convicted on a criminal charge.
- If the authority empowered to remove him / her, records in written that there are satisfactory reasons to remove him / her from service and its practically not possible to conduct such inquiries. The decision of the authority in such cases is final.

If the Governor or President is satisfied that such inquiry is not needed in the interest of the security.

Creation of new All India Services

Article 312 says that if the Rajya Sabha has declared by resolution supported by not less than two-thirds of the members present and voting (Special Majority) that it is necessary or expedient in the national interest so to do, Parliament may by law provide for the creation of one or more all India services. Please note that this also includes an All India Judicial Service. Article 312 also makes it clear that the services known at the commencement of Indian Constitution as the Indian Administrative Service and the Indian Police Service shall be deemed to be services created by Parliament under this article.

Proposed All India Judicial Service

Article 312 also makes it clear that the all-India judicial service shall not include any post inferior to that of a **district judge** as defined in article 236. The law providing for the creation of the all-India judicial service aforesaid may contain such provisions for the amendment of Chapter VI of Part VI as may be necessary for giving effect to the provisions of that law and no such law shall be deemed to be

an amendment of this Constitution for the purposes of article 368.

Change in condition of service of Civil Servants

Article 312 A makes it clear that the Parliament by law can change/ revoke the conditions of the services with respect to the remuneration, leave and pension and the rights as respects disciplinary matters of persons who, having been appointed to serve under the Government of India or of a State in any service or post.

The article 312 also makes it clear that dispute on such a decision shall not be questioned in any court.

State public service commissions

Article 315 makes provisions for Public Service Commissions for the Union and Each state. If two or more States may agree that there shall be one Public Service Commission for that group of States, and if a resolution to that effect is passed by the House or, where there are two Houses, by each House of the Legislature of each of those States, Parliament may by law provide for the appointment of a Joint State Public Service. Chairman and other members of a Public Service Commission shall be appointed as follows:

- President → for UPSC and Joint Public Service Commission
- Governor → for state public service commission

Further, around 50% of the members of every Public Service Commission shall be persons with minimum 10 years experience under Government of India or under the Government of a State. A member of a Union Public Service Commission holds the office for a term of 6 years from the date on which he enters upon his office or 65 years of age. The age for State Public Service Commission or Joint Commission is 62 years. A member of Public service commission tenders his / her resignation **to President** (in case of UPSC/JPSC) or to **Governor** in case of State Public Service Commission. A member of Public Service Commission is NOT eligible for reappointment into the same office again, once the term has expired.

Removal of chairman /member of the public service commission can be removed

Article 317 deals with the removal of the Chairman or any other member of a Public Service Commission. Please note that thought the chairman and members of UPSC / JPSC are appointed by President and State PSCs by Governor, the removal of chairman or any member of *even a state Public Service Commission can be done ONLY by President.*

They can be removed from office by order of the President on the ground of misbehaviour after the Supreme Court, on reference being made to it by the President, has, on inquiry held in accordance with the procedure prescribed in that behalf under article 145, reported that the Chairman or such other member, as the case may be, ought on any such ground to be removed.

However, this article makes it clear that President, in the case of the Union Commission or a Joint

Commission, and the Governor in the case of a State Commission, *may suspend from office the Chairman or any other member of the Commission in respect of whom a reference has been made to the Supreme Court.* This suspension would be valid until the President has passed orders on receipt of the report of the Supreme Court on such reference.

number of members in public service commissions

Article 318 makes it clear that the numbers of members of commission, conditions of service etc. are determined by the President in case of UPSC and JPSC and Governor in case of State PSCs.

Can chairman of UPSC join any other government job after he has ceased to hold office?

No. Article 319 makes it clear that once the chairman of the UPSC has ceased to hold the office, he / she shall be ineligible for further employment, either under Government of India or Government of state.

However, the same article makes clear that Chairman of a State Public Service Commission shall be eligible for appointment as the Chairman or any other member of the Union Public Service Commission or as the Chairman of any other State Public Service Commission, but not for any other employment either under the Government of India or under the Government of a State.

The members of the UPSC shall be eligible for appointment as the Chairman of the Union Public Service Commission, or as the Chairman of a State Public Service Commission, but not for any other employment either under the Government of India or under the Government of a State.

How examinations are conducted by Public Service Commissions?

Article 320 makes it clear that it shall be the duty of the Union and the State Public Service Commissions to conduct examinations for appointments to the services of the Union and the services of the State respectively.

If two or more states request the UPSC to assist the states in framing and operating schemes of joint recruitment for any services for which candidates possessing special qualifications are required, UPSC will help them out.

Article 321 says that an act made by Parliament or Legislature of a State may provide for the exercise of additional functions by the Union Public Service Commission or the State Public Service Commission.

Article 322 makes it clear that expenses of the Union or a State Public Service Commission, including any salaries, allowances and pensions payable to or in respect of the members or staff of the Commission, shall be charged on the Consolidated Fund of India or Consolidated Fund of the State.

Who submits the report of public service commission's in parliament / assembly?

Article 323 makes it clear that it will be the duty of the **UPSC to present annually to the President** a report as to the work done by the Commission and on receipt of such report the **President shall cause it to be laid before each House of Parliament**.

In case of state public service commission, the same will be done by the Governor.

If the case is of a Joint Public Service Commission, then the JPSC will present a report annually to the Governor of each of the States the needs of which are served by the Joint Commission a report as to the work done by the Commission in relation to that State.

Official Languages

Part 17 of the constitution of India (Articles 343 to Article 351) makes elaborate provisions dealing with the official language of the Republic of India. The main provisions dealing with the official language of the Union are embodied in Articles 343 and 344 of the Constitution of India. The Official languages have been listed in the 8th schedule of Constitution of India.

Official language of union

Hindi written in Devanagari script is the Official Language of the Union. The original constitution provided that for a period of 15 years from the commencement of the constitution, *English will continue to be used for all official purposes of the Union*. The constitution made it clear that President may, during the said period, by order authorize the use of the Hindi language in addition to the English language and of the Devanagari form of numerals in addition to the international form of Indian numerals for any of the official purposes of the Union.

Hindi is not India's National Language. Neither is it language of communication between states & centre. Both Hindi and English are Official languages of India.

The constitution also makes it clear that even after 15 years, the Parliament by law may provide for the continued use of English for any specific purpose.

- The constitution has put all authority in the hands of the central government both for formulating and implementing the language policy.
- It is also special responsibility of the centre to develop and spread the official language (Hindi) of the union (art. 351)

Parliamentary Committee on languages

Article 344 that initially after 5 years of commencement and thereafter every 10 years, the President will by order constitute a *Parliamentary Committee of 30 members representing the different languages specified in the eighth schedule* , which will make recommendations to the president to :

- Make the progressive use of the Hindi language for the official purposes of the union.
- Restrictions on the use of the English language for all or any of the official purposes of the union.
- The form of numerals to be used for any one or more specified purposes of the union.
- Any other matter referred by the president on linguistic matters of official languages.

Official Languages in States

Though Hindi is the official language of India, the states may by law adopt any one or more of the languages in use in the state or Hindi as the language or languages to be used for all or any of the official purposes of that state.

Language of communication between Union and States

As per Article 346, the official languages for communication between one state and another or between a state and the union are as follows:

- For the time being the official language of communication of Union i.e. English
- If two or more states agree that the Hindi language should be the official language for communication between such states, that language may be used for such communication.

Language of courts

According to the Article 348, language to be used in the Supreme Court and in high courts and for bills acts etc will be in in the English language until parliament by law provides otherwise.

Special directive for promotion of Hindi

Article 351 says that it shall be the duty of the Union to promote the spread of the Hindi language, to develop it so that it may serve as a medium of expression for all the elements of the composite culture of India and to secure its enrichment by assimilating without interfering with its genius, the forms, style and expressions used in Hindustani and in the other languages of India specified in the Eighth Schedule, and by drawing, wherever necessary or desirable, for its vocabulary, primarily on Sanskrit and secondarily on other languages.

language to be used to redress grievances

Article 350, says that every person shall be entitled to submit a representation for the redress of any grievance **to any officer or authority of the union or a state in any of the languages** used in the union or in the state, as the case may be.

Special Officer for Linguistic Minorities

Under Article 350B, a **special officer for linguistic minorities** has been enshrined in the constitution.

- This officer is to be appointed by the president.
- Its job is to investigate all matters relating to the safeguards provided for linguistic minorities and report to the president.
- Please note that this report is also one of those reports laid before each house of parliament and sent to the government of the states concerned.

First Official Language Commission

The first official language commission was appointed in 1955 with B.G. Kher as chairman and it submitted its report in 1956 which was presented to parliament in 1957 and examined by a joint parliamentary committee.

Authorized translation (central laws) act, 1973

In 1973, parliament enacted the authorized translations (centrals laws) act, 197, to provide that when a central law is translated into a regional language (other than Hindi), and published in the official gazette, under the authority of the president, such translation shall be deemed to be the authorized translation thereof in such language.

Scheduled languages

The Eighth Schedule to the Indian Constitution contains a list of 22 scheduled languages viz. Assamese, Bengali, Bodo, Dogri, Gujarati, Hindi, Kannada, Kashmiri, Konkari, Maithili, Malayalam, Manipuri, Marathi, Nepali, Odia, Punjabi, Sanskrit, Santali, Sindhi, Tamil, Telugu, Urdu. The list had originally 14 languages only.

At the time the constitution was enacted, inclusion in this list meant that the language was entitled to representation on the Official Languages Commission and that the language would be one of the bases that would be drawn upon to enrich Hindi, the official language of the Union. The list has since, however, acquired further significance.

- The Government of India is now under an obligation to take measures for the development of these languages, such that "they grow rapidly in richness and become effective means of communicating modern knowledge."

- In addition, a candidate appearing in an examination conducted for public service at a higher level is entitled to use any of these languages as the medium in which he or she answers the paper.

Via the 92nd Constitutional amendment 2003, 4 new languages – Bodo, Maithili, Dogri, and Santali – were added to the 8th Schedule of the Indian Constitution.

General Knowledge Today

Prelims Polity-9: Special Provisions and Important Facts

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Special Provisions

Immunity Provisions for President and Governor

As per Article 361,

- The President or Governor are *not personally answerable to any court* for the exercise and performance of their powers, while in office.
- But it does not mean that conduct of these two office holders can not be checked. The Article 361 makes it clear that conduct of the *President may be brought under review by any court, tribunal or body appointed or designated by either House of Parliament* for the investigation of a charge under article 61.
- *No criminal proceedings can be started* or continued against the President, or the Governor of a State, in any court during his term of office.
- No court can issue arrest warrants for President as well as Governor.
- Civil proceedings against a Governor or President against things done by him in his personal capacity can be done only with a prior 2 months notice.

Size of ministry for smaller states

The constitution bars the maximum number of ministers in parliament or legislative assembly to be 15% of the total strength. However, Article 361B was inserted by Constitution (Ninety-first Amendment) Act, 2003 via which it was provided only for smaller states such as Sikkim, Mizoram and Goa where the strength of the assembly is 40 or less. In these states, the government can have a maximum of 12 ministers.

Abolition of Privy Purse

Article 363-A was inserted in the Constitution (Twenty-sixth Amendment) Act, 1971. This amendment is best known for **abolition of Privy Purse**.

It said that concept of rulership, with privy purses and special privileges unrelated to any current functions and social purposes, is incompatible with an egalitarian social order. Government have, therefore, decided to terminate the privy purses and privileges of the Rulers of former Indian States. It is necessary for this purpose, apart from amending the relevant provisions of the Constitution, to insert a new article therein so as to terminate expressly the recognition already granted to such Rulers and to abolish privy purses and extinguish all rights, liabilities and obligations in respect of privy purses.

In accordance with the Constitution (Twenty-sixth Amendment) Act, 1971, The article 361B says that a prince, Chief or other person who, at any time before the commencement of the Constitution (Twenty-sixth Amendment) Act, 1971, was recognized by the President as the Ruler of an Indian State or any person who, at any time before such commencement, was recognized by the President as

the successor of such ruler shall, on and from such commencement, cease to be recognized as such Ruler or the successor of such Ruler. This article also mentions abolition of Privy Purse.

Special power of president in context with major ports and aerodromes

Article 364 makes special provisions as to major ports and aerodromes. It says that President may by public notification direct that any law made by Parliament or by the Legislature of a State shall not apply to any major port or aerodrome or shall apply thereto subject to such exceptions or modifications as may be specified in the notification.

Extraordinary emergency powers of President as per Article 365

Article 365 is an extension to emergency powers of President. The Constitution of India has provided the President of India the power to impose emergency using article 352 and article 365 on two different accounts, if the state does not follow the Indian constitution and if the state does not obey the union Government direction. Article 365 says that where any State has failed to comply with, or to give effect to, any directions given in the exercise of the executive power of the Union under any of the provisions of this Constitution, it shall 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 this Constitution.

The words "it shall be lawful for the President to hold" occurring in Article 365 do not impose an obligation. They only confer power, the exercise of which is a matter of discretion with the President.

On every non-compliance with the Union direction, irrespective of its extent and significance, the President (in effect the Council of Ministers) is not bound to hold that a situation has arisen in which the Government of the non-complying State cannot be carried on in accordance with the Constitution.

The President should exercise this drastic power in a reasonable manner with due care and circumspection, and not mechanically. He should give due consideration to all relevant circumstances, including the response, if any, of the State Government to the direction. In response to the direction the State Government might satisfy the President that the direction had been issued on wrong facts or misinformation, or that the required correction has been effected.

The President should also keep in mind that every insignificant aberration from the constitutional path or a technical contravention of constitutional provisions by the functionaries of the State Government would not necessarily and reasonably lead one to hold that the Government in the State cannot be carried on in accordance with the Constitution.

Thus Article 365 acts as a screen to prevent any hasty resort to the drastic action under Article 356 in the event of failure on the part of a State Government to comply with or to give effect to any

constitutional direction given in the exercise of the executive power of the Union. Therefore, the extraordinary powers under Article 365 are necessary but should be exercised with great caution and in extreme cases.

Powers of Parliament to make temporary laws on state list subject

Article 369 gave the power to parliament to make laws with respect to certain matters in the State List as if they were matters in the Concurrent List for a period of 5 years initially. These included trade and commerce within a State in, and the production, supply and distribution of, cotton and woollen textiles, raw cotton (including ginned cotton and unginned cotton or kapas), cotton seed, paper (including newsprint), food-stuffs (including edible oilseeds and oil), cattle fodder (including oil-cakes and other concentrates), coal (including coke and derivatives of coal), iron, steel and mica.

Special Provisions for Nagaland

Article 371A makes special provision with respect to the State of Nagaland to protect the Nagas. Notwithstanding anything in this Constitution, no Act of Parliament in respect of-

1. religious or social practices of the Nagas,
2. Naga customary law and procedure,
3. administration of civil and criminal justice involving decisions according to Naga customary law,
4. ownership and transfer of land and its resources,

shall apply to the State of Nagaland unless *the Legislative Assembly of Nagaland by a resolution so decides;*

The Governor of Nagaland shall have special responsibility with respect to law and order in the State of Nagaland for so long as in his opinion internal disturbances occurring in the Naga Hills-Tuensang Area immediately before the formation of that State continue therein or in any part thereof and in the discharge of his functions in relation thereto the Governor shall, after consulting the Council of Ministers, exercise his individual judgment as to the action to be taken.

Special Provisions for Assam

Article 371 B makes special provisions with respect to the State of Assam. It says that President may, by order made with respect to the State of Assam, provide for the constitution and functions of a committee of the Legislative Assembly of the State consisting of members of that Assembly elected from the tribal areas of Assam.

Special Provisions for Manipur

Article 371C makes Special provision with respect to the State of Manipur. It says that the President may, by order made with respect to the State of Manipur, provide for the constitution and functions of a committee of the Legislative Assembly of the State consisting of members of that Assembly elected from the Hill Areas of that State, for the modifications to be made in the rules of business of the Government and in the rules of procedure of the Legislative Assembly of the State and for any

special responsibility of the Governor in order to secure the proper functioning of such committee.

Reservation of Seats for Anglo-Indians

According to Article 366 (2) an Anglo-Indian means a person whose father or any of whose other male progenitors in the male line is or was of European descent but who is domiciled within the territory of India or born within such territory and whose parents habitually were resident in India and not established for temporary purposes only.

- The Constitution empowers the president under Article 331 to nominate **maximum of two members** of the Anglo Indian Community to the Lok Sabha, if he/ she is of the opinion that the community is not adequately represented. The president will act on the basis of this constitutional provision only when no Anglo Indian had been elected to the House of people in General Elections
- Under article 333, the Governor of an state is of the opinion that Anglo Indian Community is not adequately represented in the state assembly, he / she can nominate one member.

Please note that the Anglo Indian Community was entitled to special educational grants under the Article 337 of the Constitution for a period of 10 years. During the first three years, this grant was what the community had been receiving in 1947. Thereafter, it was to be progressively reduced @10% at the end of every three years and it would completely cease after 10 years.

Reservation to backward classes

The constitution does not define as to who are the persons who belong to the backward classes. It is for the central and the state governments to specify such classes of persons for the purpose of the constitution.

Under article 340 (I) the president is empowered to appoint a commission consisting of such person as he thinks fit to investigate the conditions of socially and educationally backward classes within the territory of India and the difficulties under which they labor and to make recommendations as to the steps that should be taken by the union or any state to remove such difficulties and to improve their conditions and as to the grants that should be made by the union or any state for that purpose and conditions subject to which such grants should be made.

Maximum Reservation Rule of Supreme Court

In 1963, the Supreme Court ruled that more than 50% reservation of jobs in a single year would be unconstitutional.

Part XVI and Linguistic Minorities

A linguistic minority is a class of people whose mother tongue is different from that of the majority in the state or part of a state. the constitution provides for the protection of the interests of linguistic minorities.

Article 350-A imposes a duty on the states to Endeavour to provide adequate facilities for instruction

in the mother tongue at the primary stage of education to children belonging to linguistic minority. The president is authorized to issue such directions to any state, as he considers necessary or proper for securing the provisions of such facilities.

Article 347 provides for the use of majority language in the administration. If a demand is made in this behalf and the president is satisfied that a substantial proportion of the population of a state desire the use any language spoken by them to be recognized by the state, the president may direct that such language shall also be officially recognized throughout the state or any part of tire state for such purposes as he may specify.

Article 350 gives right to every person to submit a representation for the redress of any grievance to any officer or authority of the union or a state in any of the language used in the union or a state, as the case may be.

Article 350-B empowers the president to appoint a special officer for linguistic minorities. It is the duty of the special officer to investigate all matters relating to the safeguards provided for linguistic minorities under this constitution and report to the president upon those matters at such intervals as the president may direct. The president shall cause reports to be laid before each house of parliament and send to the government of the state concerned.

Important Notes for Prelims-1

India's political status from 15 August 1947 to January 26, 1950

With the enactment of Indian Independence Act 1947, India ceased to be a colony of UK. From 15 August 1947 till January 26, 1950, India remained as a dominion in the British Commonwealth of Nations. On 26 January 1950, India declared itself to be a sovereign republic and with this, it ceased to be a dominion. Pakistan continued to be a British Dominion until 1956.

Members of First Cabinet of India

Members	Portfolios Held
Jawaharlal Nehru	Prime Minister; External Affairs & Commonwealth Relations; Scientific Research
Sardar Vallabhbhai Patel	Home, Information & Broadcasting; States
Dr. Rajendra Prasad	Food & Agriculture
Maulana Abul Kalam Azad	Education
Dr. John Mathai	Railways & Transport
R.K. Shanmugham Chetty	Finance

Members	Portfolios Held
Dr. B.R. Ambedkar	Law
Jagjivan Ram	Labour
Sardar Baldev Singh	Defence
Raj Kumari Amrit Kaur	Health
C.H. Bhabha	Commerce
Rafi Ahmed Kidwai	Communication
Dr. Shyama Prasad Mukherji	Industries & Supplies
V.N. Gadgil	Works, Mines & Power

Key Unitary Features of Indian Constitution

- Single Citizenship
- Single Integrated Judiciary
- Appointment of Governor by President
- Power of parliament to make laws on every matter enumerated in state list under article 249
- Emergency / President rule modify the federal features temporarily.

First Backward Classes Commission

The first Backward Classes Commission was appointed in 1953 under the chairmanship of Kaka Kalelkar. It submitted its report in 1955.

India's Prime Ministers who have been members of Rajya Sabha

Indira Gandhi (1966), H D Deve Gowda (1996), and Manmohan Singh (2004) have been members of the Rajya Sabha.

Doctrine of popular sovereignty

Doctrine of popular sovereignty attributes the ultimate sovereignty to People of India and *not the parliament of India*.

Right to Flying India's National Flag: statutory right or fundamental right?

Hoisting the National Flag is regulated by the following:

- Emblems and Names (Prevention of Improper Use) Act, 1950
- Prevention of Insults to National Honour Act, 1971
- Flag Code – India.

Still right to fly an Indian Flag is *not a statutory right*. The court has established that it is an implied fundamental right under article 19(1).

Right to Work

In India, right to work is a legal right (via MGNREGA) and directive principle. It's not a fundamental right.

Provisions related to Education

Constitution of India has provisions related to education in Fundamental Rights, Fundamental Duties, Directive Principles, sixth schedule and seventh schedule.

Exclusive Powers of Rajya Sabha

Rajya Sabha in India's Parliament has certain exclusive powers with respect to the following:

- Enable the parliament to make law on a matter of state list
- Creation of new All India Services
- Enforcing proclamation of emergency when Lok Sabha is dissolved

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

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

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

The Constitutional Functionaries outside the Doctrine of Pleasure

The constitutional functionaries, which are not dependent on the pleasure of the president include

the following:

1. Supreme Court as well as High Court judges
2. Comptroller & Auditor General of India
3. Chief Election Commissioner
4. UPSC Chairman
5. UPSC Members

The tenure of the Supreme Court judges [Article 124], High Court judges [Article 218], Auditor General of India [Article 148(2)], Chief Election Commissioner [Article 324], and the chairman and members of the Public Service Commission [Article 317] are not dependent on the pleasure of the president or the governor, as the case may be. These posts are expressly excluded from the operation of the doctrine of pleasure.

Language of Supreme Court of India

The supreme court of India hears only those who petition or appeals which are in English or any other language accompanied by a translation in English. We note here that parliament has not made any provision for the use of Hindi in the Supreme Court. No document in language other than English can be filed in the Court unless it is accompanied by a translation agreed to by both the parties or certified to be true translation by a Translator appointed by the Court or translated by a Translator appointed or approved by the Court.

The states of India in which English is official Langauge

English is the official language of Nagaland, Arunachal Pradesh and Mizoram.

Definition of Lingustic Minority in India

The term 'Linguistic Minority' has not been defined in the Constitution. A group or groups of people whose mother languages are different from the principal language(s) of the State/U.T. broadly constitute the linguistic minority. The Supreme Court *in DAV College Vs. State of Punjab (1971)* said, "A linguistic minority for the purpose of Article 30(1) is one which must at least have a separate spoken language. It is not necessary that the language should also have distinct script for those who speak it so as to be a linguistic minority.

Constitutional Parts which speak about International Relations

Provisions related to international relations of India have been enshrined in the constitution in *preamble, DPSP, Part XI (Relations between Union and States) and seventh schedule*.

Directive Principles:

Article 51 (Directive Principles of State Policy): The State shall endeavour to— (a) promote international peace and security; (b) maintain just and honourable relations between nations; (c) foster respect for international law and treaty obligations in the dealings of organized peoples with one another; and (d) encourage settlement of international disputes by arbitration

Part XI:

253. Legislation for giving effect to international agreements.—

Notwithstanding anything in the foregoing provisions of this Chapter, Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body.

Seventh Schedule:

The International relations as a Union Subject.

Whip System

In India, the concept of the whip was inherited from colonial British rule. Every major political party appoints a whip who is responsible for the party's discipline and behaviour on the floor of the house. Usually, he/she directs the party members to stick to the party's stand on certain issues and directs them to vote as per the direction of senior party members. However, there are some cases such as Indian presidential election where no whip can be issued directing Member of Parliament or Member of Legislative Assembly on whom to vote. Political parties cannot issue any direction or whip to members to vote or not in Presidential poll as it would be an offence and MPs and MLAs will not risk disqualification under Anti-Defection law in the process.

Shadow Cabinet

'Shadow cabinet' is an unique institution of the British cabinet system. It is formed by the opposition party to balance the ruling cabinet and to prepare its members for future ministerial office. There is no such institution in India.

Railway Convention Committee

The Railway Convention Committee, which was first set up in 1949, is an *ad-hoc parliamentary committee* with 18 members (12 Lok Sabha+ 6 Rajya Sabha). The members are nominated by speaker / chairman of respective house. By convention the *Minister of Finance and the Minister of Railways are members of the Committee*.

The financial relationship between the Central Government and the Railways is governed by the recommendations of Railway Convention Committee. This committee's inputs are vital for preparation of Rail Budget. The major function is to review the Rate of Dividend payable by the Railways to General Reserves.

States with Constitutional Obligation to have a minister in charge of tribal welfare

As per Art. 164, the states of Bihar, Madhya Pradesh and Orissa there shall be a minister in charge of tribal welfare who shall also be in charge of the welfare of SC and other backward classes.

Bills / Motions that can be introduced only in Lok Sabha

Motion of No-confidence, Money Bills and Cut motion can be introduced only in Lok Sabha. No

Confidence Motion is governed by Rule 198 of Lok Sabha. The article 75 in constitution mentions that the Council of Minister has to be collectively responsible to Lok Sabha. A Money Bill can be introduced in Lok Sabha only. If any question arises whether a Bill is a Money Bill or not, the decision of Speaker thereon is final. Bills seeking to amend provisions of the Constitution as per article 368 are called by the title 'Constitution Amendment Bills'. These Bills can be introduced in either House of Parliament. Cut motions are called on Lok Sabha only.

Curative Petition

The concept of Curative petition was evolved by the Supreme Court of India in the matter of Rupa Ashok Hurra case where the question was whether an aggrieved person is entitled to any relief against the final judge-ment/order of the Supreme Court, after dismissal of a review petition.

The Supreme Court in the said case held that in order to prevent abuse of its process and to cure gross miscarriage of justice, it may reconsider its judgments in exercise of its inherent powers. For this purpose the Court has devised what has been termed as a "curative" petition.

In the Curative petition, the petitioner is required to aver specifically that the grounds mentioned therein had been taken in the review petition filed earlier and that it was dismissed by circulation. This has to be certified by a senior advocate. The Curative petition is then circulated to the three senior most judges and the judges who delivered the impugned judgement, if available. No time limit is given for filing Curative petition.

Parliament House Estate

The Parliament House Estate comprises Parliament House, the Reception Office building, the Parliament Library (*Sansadiya Gyanpeeth*), the Parliament House Annexe, and extensive lawns with fountains. The Parliament House Estate is enclosed by an ornamental red sandstone wall with lattice work.

Parliament House Estate: Important Facts

- The building was designed by Sir Edwin Lutyens and Sir Herbert Baker — who were responsible for the planning and construction of New Delhi.
- The foundation stone for Parliament House was laid on February 12, 1921 by the Duke of Connaught.
- The construction took six years, and the opening ceremony was done on January 18, 1927 by the then Governor-General of India, Lord Irwin. The total cost of construction was Rs. 83 lakh.
- The design liberally used Indian motifs and symbols in the carvings. The building was constructed with indigenous material and using Indian labour. The centre and focus of the building is the big circular edifice of the Central Hall.
- On the three axes, radiating from this centre, are placed the three chambers for the Lok Sabha

(House of the People), the Rajya Sabha (Council of States), and the erstwhile Library Hall (formerly the Princes Chamber), and among them lie garden courts.

Provisions Regarding SCs and STs in Constitution

Constitution *does not define* as to who are the persons who belong to scheduled castes and scheduled tribes. However, Articles 341 and 342, **empower the President of India** to draw up a list of these castes and tribes.

- Scheduled castes and scheduled castes and scheduled tribes and those castes or tribes as the ***President*** *may by public notification specify.*
- If such a notification is related to a state, then also **President** will notify the same. However, it can be done after **consultation with the governor of the state**
- Any inclusion or exclusion from the presidential notification of any caste, race, or tribe can be done by Parliament by Law.
- If any question arises whether or not particular tribe is a tribe within the meaning of this article one has to look at the public notification issued by the president.

Reservation of seats for SC/ST

The Constitution of India provides for reservation of seats for scheduled castes and scheduled tribes (dalits) in –

- **Lok Sabha** (Article 330)
- **State Assemblies** {except in autonomous districts of Assam where there is only ST reservation} (Article 332)
- Gram Sabha and Panchayat (Article 243 D)
- Municipalities (Article 243T)
- Other local bodies such as Bodoland Territorial Council (Only ST)

Duration of the Reservations

When the Constitution was enacted in 1950, the reservations were to cease after 10 years. However, having regard to the conditions of scheduled castes and scheduled tribes, the Constitution has been amended from time to time, and the period of 10 years has been extended to 20 years, then to 30 years, then to 40 years and then to 50 years.

It was later provided that the reservation will cease after 60 years, i.e., after 2010 (79th Amendment Act, 1999 in Article 334). Then, once again the constitution was amended via 95th amendment act 2009, whereby the reservation will cease after 70 years

Provisions for welfare and protection of the Scheduled Castes and Tribes

Indian constitution abolishes any discrimination to any class of persons on ground or religion race or place of birth (Article 15(1)). It is in pursuance of this ideal that the constitution has abolished communal representation or reservation of seats in the legislatures or in any public office on the

basis of religion.

However, the **Article 46** of the directive principles enjoins the state to take special care in promoting the educational and economic interests of the weaker sections of the society and in particular the scheduled castes and scheduled tribes and to protect them from social injustice. Any such provision made by the state cannot be challenged on the ground of being discriminatory. Similarly, the Part III constitution guarantees fundamental rights and provides many provisions protecting minority rights.

The following provisions have been made in the constitution for welfare of the SC and ST

Fundamental Rights

Art. 15(4) says that government can make special provisions for SC and ST's in the name of "positive discrimination".

DPSP

Art. 46 says that educational and economic interests of SCs and STs shall be protected and promoted.

Minister of Tribal Welfare

Art. 164 says that in the states of Bihar, Madhya Pradesh and Orissa there shall be a minister in charge of tribal welfare **who shall also be in charge of the welfare of SC** and other backward classes.

Grants in aid to states promoting welfare of STs

Article 275 provides for grants-in-aid to the states for promoting the welfare of scheduled tribes.

Lowering standards of evaluation

Provisions for relaxation in qualifying marks in any examination or lowering the standards of evaluation, for reservation in matters or promotion for SCs and STs. Art. 335 says that claims of the members of SCs and STs shall be taken into consideration consistent with the maintenance of the efficiency in administration in appointments under the union and the states.

Separate National Commissions for SC and ST

- 338 says that there shall be a national commission for SCs.
- Article 338A says that there shall be a national commission for STs.

Other Notes

The Supreme Court of India in its verdicts has upheld that the term 'Scheduled Castes' does not mean some specific caste. The court has also declared that the authority to modify the lists of Scheduled Castes and Scheduled Tribes lies with Parliament and Court shall not consider the claims of any caste and community to be included in such lists.

Fundamental Rights for Citizens and Foreigners

Fundamental Rights available to only citizens and not foreigners

- Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth (Article 15).

- Equality of opportunity in matters of public employment (Article 16).
- Six basic freedoms subject to reasonable restrictions (Article 19).
- Protection of language, script and culture of minorities (Article 29).
- Right of minorities to establish and administer educational institutions (Article 30).

Fundamental rights available to both citizens and foreigners except enemy aliens

The Fundamental Rights guaranteed by Articles 14,20,21, 21A, 22, 23, 24, 25, 26, 27 and 28 are available to all persons whether citizens or foreigners. These are as follows:

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

Martial Law Versus National Emergency

Marital law is a state of affairs declared by a civilian government in which the military forces are empowered to rule, govern and control an area, which can be a small locality or the entire nation, in a way involving direct force, and without the usual constraints of democratic decision-making or the acceptance of civil rights. It is always seen as a temporary state of affairs and, unlike a military regime, has legitimacy, because it has been decided upon and granted by the civilian government. The difference between Martial Law and National Emergency in context with India is as follows:

- While Martial Law affects only fundamental rights, National Emergency has wider implications upon fundamental rights, federal scheme, distribution of power etc.
- Martial law suspends the government as well as ordinary courts of law. In National Emergency, ordinary courts of law keep working.
- Martial Law is imposed on account of breakdown or law and order. Emergency is imposed on account of war, external aggression or armed rebellion.
- The constitution of India has not specific provisions on martial law i.e. in what conditions or circumstances it will be imposed etc. On the other hand, a whole chapter has been dedicated to emergency provisions.