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INDIAN POLITY

GROUP 4

Contents

Historical Background of Indian Constitution.....	18
Indian System of Administration.....	18
Regulating Act of 1773.....	18
Pitt's India Act of 1784.....	19
Charter Act of 1813.....	19
Charter Act of 1833.....	19
Charter Act of 1853.....	19
Government of India Act of 1858.....	20
Indian Councils Act of 1861.....	20
India Council Act of 1892.....	20
Indian Councils Act of 1909.....	21
Government of India Act of 1919.....	21
Government of India Act of 1935.....	22
Indian Independence Act of 1947.....	22
Points to be noted.....	23
Constitution of India: List of All Articles (1-395) and Parts (1-22)	24
PREAMBLE.....	24
PART I: THE UNION AND ITS TERRITORY	24
PART II: CITIZENSHIP	25
PART III : FUNDAMENTAL RIGHTS.....	25
PART IV: DIRECTIVE PRINCIPLES OF STATE POLICY	26
PART IVA: FUNDAMENTAL DUTIES.....	27
PART V: THE UNION.....	27
CHAPTER I: THE EXECUTIVE	27
CHAPTER II: PARLIAMENT	29
CHAPTER III: LEGISLATIVE POWERS OF THE PRESIDENT	31
CHAPTER IV: THE UNION JUDICIARY	31
CHAPTER V: COMPTROLLER AND AUDITOR-GENERAL OF INDIA.....	33
PART VI: THE STATES.....	33

CHAPTER I: GENERAL	33
CHAPTER II: THE EXECUTIVE	33
CHAPTER III: THE STATE LEGISLATURE.....	34
CHAPTER IV : LEGISLATIVE POWER OF THE GOVERNOR.....	36
CHAPTER V: THE HIGH COURTS IN THE STATES.....	37
CHAPTER VI : SUBORDINATE COURTS.....	37
PART VII: THE STATES IN PART B OF THE FIRST SCHEDULE.....	38
PART VIII: THE UNION TERRITORIES.....	38
PART IX: THE PANCHAYATS.....	38
PART IXA: THE MUNICIPALITIES	39
PART IXB: THE CO-OPERATIVE SOCIETIES.....	40
PART X: THE SCHEDULED AND TRIBAL AREAS.....	40
PART XI: RELATIONS BETWEEN THE UNION AND THE STATES.....	40
CHAPTER I: LEGISLATIVE RELATIONS.....	40
CHAPTER II : ADMINISTRATIVE RELATIONS.....	41
PART XII: FINANCE, PROPERTY, CONTRACTS AND SUITS.....	42
CHAPTER I: FINANCE	42
CHAPTER II: BORROWING.....	43
CHAPTER III: PROPERTY, CONTRACTS, RIGHTS, LIABILITIES, OBLIGATIONS AND SUITS.....	43
CHAPTER IV: RIGHT TO PROPERTY.....	44
PART XIII: TRADE, COMMERCE AND INTERCOURSE WITHIN THE TERRITORY OF INDIA.....	44
PART XIV: SERVICES UNDER THE UNION AND THE STATES.....	44
CHAPTER I: SERVICES.....	44
CHAPTER II: PUBLIC SERVICE COMMISSIONS	45
PART XIVA: TRIBUNALS	45
PART XV: ELECTIONS	45
PART XVI: SPECIAL PROVISIONS RELATING TO CERTAIN CLASSES	46
PART XVII: OFFICIAL LANGUAGE.....	47

CHAPTER I: LANGUAGE OF THE UNION.....	47
CHAPTER II: REGIONAL LANGUAGES	47
CHAPTER III: LANGUAGE OF THE SUPREME COURT, HIGH COURTS, ETC.	47
CHAPTER IV: SPECIAL DIRECTIVES	47
PART XVIII: EMERGENCY PROVISIONS	47
PART XIX: MISCELLANEOUS.....	48
PART XX: AMENDMENT OF THE CONSTITUTION	48
PART XXI: TEMPORARY, TRANSITIONAL AND SPECIAL PROVISIONS...	48
PART XXII: SHORT TITLE, COMMENCEMENT, AUTHORITATIVE TEXT IN HINDI AND REPEALS	50
Indian Constitution Parts vs Corresponding Articles	50
Parts of Indian Constitution	50
Parts of the Indian Constitution added as amendments	51
Schedules of Indian Constitution.....	52
Schedules of the Indian Constitution	52
Schedules of Indian Constitution	52
Model questions based on schedules of the Indian Constitution	53
Which are the must-know articles of the Indian Constitution?	53
Must-Know Articles of Indian Constitution	54
Other Important Articles of the Indian Constitution.....	54
Part 1 – Art. 1 to art. 4.....	54
Part 2 – Art. 5 to art. 11	54
Part 3 – Art.12 to art.35	55
Part.4 Directive Principle of states Policy: Art 36 to art. 51	56
Fundamental Duties: Part IV-A- Art 51A	57
Part 5 – Union (52-151).....	57
Part 6 – States (152-237)	59
Part 7 – 238 – Repealed	59
Part 8 – 239-242 – Union Territories.....	59
Part 9 – 243-243 O – Panchayats.....	59

Part 9A – 243 P-243 ZG – Municipalities	59
Part 9B – 243 ZH-243 ZT- Co-operative Societies	59
Part 10: Scheduled and Tribal Areas -244	59
Part 11: Center- State Relations 245 – 263.....	59
Part 12: Finance, Property, Contracts and Suits (264 – 300A).....	59
Part 13: Trade, Commerce and Intercourse within the territories of India (301-307)60	
Part 14: Services Under Center and State (308-323).....	60
Part 14A: Tribunals (323 A – 323 B)	60
Part 15 : Elections (324 – 329)	60
Part 16: Special Provisions to SC, ST, OBC, Minorities etc (330 -342).....	60
Part 17: Official Language (343- 351)	60
Part 18: Emergency (352-360)	61
Part 19: Miscellaneous (361-367).....	61
Part 20: Amendment of Constitution (368)	61
Part 21: Special, Transitional and Temporary Provisions (369 – 392)	61
Part 22: Short Text, Commencement, Authoritative Text in Hindi and Repeals (392 – 395).....	61
Indian Constitution	61
Preamble to the Indian Constitution	62
Nature of Indian state	62
Objectives of Indian State.....	63
Date of its adoption.....	63
Info Bits related to Preamble of Indian Constitution	63
The Union and its Territory : Part I (Articles 1- 4)	64
Info-bits related to Part I : The Union and the territory (Articles 1- 4).....	66
Citizenship: Part II : (Articles 5-11)	67
Info-bits related to Citizenship of India	69
Fundamental Rights : Part III (Articles 12-35)	71
Article 21A: Right to education.....	76
Directive Principles of Our State Policy: Part IV (Articles 36-51)	83
Fundamental Duties : Part IVA (Article 51A)	87

Article 51A: Fundamental duties	88
Info-bits related to Fundamental Duties	88
The President of India (Articles 52-62)	91
Part V The Union	91
Chapter I The Executive	91
Info-Bits Related to the President of India	95
Powers of Indian President	97
The Vice-President of India (Articles 63-73)	98
Info-Bits related with the Vice-President of India	102
Removal of Vice-President of India : Must Check	104
Cabinet Of Ministers, Prime Minister and Attorney General (Articles 74-78)	105
Council of Ministers	105
The Attorney-General for India	106
Conduct of Government Business	107
Info Bits Related with COM, PM and AG	108
Parliament (Articles 79-88/122)	109
Chapter II Parliament	109
Info- Bits related with Parliament	113
The Union Judiciary ie. The Supreme Court (Articles 124-147)	113
Article 125: Salaries, etc., of Judges	115
Article 126: Appointment of acting Chief Justice	115
Article 127: Appointment of ad hoc Judges	116
Article 128: Attendance of retired Judges at sittings of the Supreme Court	116
Article 129: Supreme Court to be a court of record	116
Article 130: Seat of Supreme Court	116
Article 131: Original jurisdiction of the Supreme Court	116
Article 131A: Executive jurisdiction of the Supreme Court in regard to questions as to constitutional validity of Central laws	117
—Repealed.	117
Article 132: Appellate jurisdiction of Supreme Court in appeals from High Court in certain cases	117

Article 133: Appellate jurisdiction of Supreme Court in appeals from High Courts in regard to civil matters	117
Article 134: Appellate jurisdiction of Supreme Court in regard to criminal matters	118
Article 134A: Certificate for appeal to the Supreme Court.....	119
Article 135: Jurisdiction and powers of the Federal Court under existing law to be exercisable by the Supreme Court	119
Article 136: Special leave to appeal by the Supreme Court	119
Article 137: Review of judgements or orders by the Supreme Court	119
Article 138: Enlargement of the jurisdiction of the Supreme Court.....	120
Article 139: Conferment on the Supreme Court of powers to issue certain writs...	120
Article 139A: Transfer of certain cases	120
Article 140: Ancillary powers of Supreme Court.....	120
Article 141: Law declared by Supreme Court to be binding on all courts	121
Article 142: Enforcement of decrees and orders of the Supreme Court and orders as to discovery, etc.	121
Article 143: Power of President to consult Supreme Court.....	121
Article 144: Civil and judicial authorities to act in aid of the Supreme Court	121
Article 144A: Special provisions as to disposal of questions relating to constitutional validity of laws	121
{...} — Repealed	121
Article 145: Rules of Court, etc.....	122
Article 146: Officers and servants and the expenses of the Supreme Court	123
Article 147: Interpretation	124
Info- Bits related with Supreme Court	124
Governor of States (Article 152-162)	124
CHAPTER I.—GENERAL	124
Article 152 : Definition.....	124
CHAPTER II.—THE EXECUTIVE	124
<i>The Governor</i>	124
Info-bits related to Governor of States	127
Council of Ministers in States (Articles 163-164)	128

Article 163: Council of Ministers to aid and advise Governor.....	128
Article 164: Other provisions as to Ministers.....	129
Info-bits related to Council of Ministers in States	130
The State Legislature – in General (Article 168-177)	130
Article 168: Constitution of Legislatures in States.....	130
Article 169: Abolition or creation of Legislative Councils in States.	130
Article 170: Composition of the Legislative Assemblies.....	131
Article 171: Composition of the Legislative Councils.	132
Article 172: Duration of State Legislatures.	133
Article 173: Qualification for membership of the State Legislature.	133
Article 174: Sessions of the State Legislature, prorogation and dissolution.	134
Article 175: Right of Governor to address and send messages to the House or Houses.	134
Article 176: Special address by the Governor.	134
Article 177: Rights of Ministers and Advocate-General as respects the Houses.	135
Info- Bits related with State Legislature.....	135
The 3 organs of the State	135
Adjournment, Prorogation, and Dissolution: Know the Difference	135
A Session of Indian Parliament	136
Summoning	136
Adjournment.....	136
Adjournment Sine Die.....	136
Prorogation.....	137
Dissolution	137
Summary	138
When Does a Bill Lapse in Indian Parliament?	138
When Does a Bill Lapse in Indian Parliament?.....	138
Cases when a bill lapse:.....	138
Cases when a bill does not lapse:	138
When Does a Bill Lapse in the State Legislative Assembly?.....	139

Cases when a bill lapse:	139
Cases when a bill does not lapse:	139
Points to note.....	139
Types of Majorities Used in the Indian Parliament – Absolute, Effective, Simple, and Special Majority	140
Types of Majorities as per the Indian Constitution	140
Absolute majority	140
Effective Majority	141
Simple Majority	141
Special Majority	142
Special Majority as Per Article 249.....	142
Special Majority as Per Article 368.....	143
Special Majority as Per Article 368 plus State ratification	143
Special Majority as Per Article 61.....	143
Parliamentary Committees in Lok Sabha and Rajya Sabha	144
Why Parliamentary Committees?	144
How Parliament transacts its business with Parliamentary Committees?	144
Types of Parliamentary Committees	145
Ad hoc Committees vs Standing Committees	145
Standing Committees in Lok Sabha (Select).....	146
Standing Committees in Rajya Sabha (Select)	147
Joint Standing Committees	148
Department related Standing Committees (Joint).....	149
Department Related Standing Committees (LS).....	149
Department Related Standing Committees (RS)	150
Functions of Department Related Standing Committees	150
Important Parliamentary Committees in Detail	151
Important Committees which act as Parliament’s ‘Watch Dogs’ over the executive (Select and Joint)	151
Committee on Estimates	151
Committee on Public Undertakings.....	152

Committee on Public Accounts	152
Business Advisory Committee (Lok Sabha)	153
Committee on Private Members' Bills and Resolutions (Lok Sabha).....	153
Rules Committee (Lok Sabha)	153
Committee of Privileges (Lok Sabha)	154
Committee on Papers Laid on the Table (Lok Sabha).....	154
Committee on Petitions (Lok Sabha).....	154
Committee on Subordinate Legislation (Lok Sabha)	155
Committee on Government Assurances (Lok Sabha)	155
Committee on Absence of Members from the Sitzings of the House (Lok Sabha) .	155
Joint Committee on Offices of Profit	155
Committee on the Welfare of Scheduled Castes and Scheduled Tribes (Joint)	156
Railway Convention Committee (Ad-hoc).....	156
Committee on Empowerment of Women.....	156
Elections to the Rajya Sabha: Know the procedure of electing a candidate to the upper house	157
Why Rajya Sabha or Council of States?.....	157
Composition of Rajya Sabha.....	157
Allocation of Seats to Rajya Sabha.....	158
Process of Rajya Sabha Election	159
Election to Rajya Sabha: Procedure Illustrated with an Example	160
Government Budgeting in India – The Process and Constitutional Requirements	160
What exactly is a budget?.....	160
Budget in the Indian Constitution	161
What are the constitutional requirements which make the Budget necessary?	161
FRBM Act.....	161
Budget Documents	161
Government Budgeting: Railway Budget Presentation.....	162
Government Budgeting: Union Budget Presentation	163
Vote on Account	163

So what exactly is Vote on Account?.....	163
Budget Speech.....	164
Budget Documents Made Simple: Key to Budget Documents	164
Annual Financial Statement	164
Demand For Grants.....	165
Appropriation Bill	165
Finance Bill	166
Memorandum Explaining the Provisions in the Finance Bill	166
Documents as per the requirements of FRBM act:	166
Macroeconomic Framework Statement	166
Fiscal Policy Strategy Statement.....	166
Medium-term Fiscal Policy Statement	167
Medium-term Expenditure Framework Statement.....	167
Explanatory Documents.....	167
Expenditure Budget Volume-1.....	167
Expenditure Budget Volume-2.....	167
Receipts Budget	168
Budget at a Glance.....	168
Highlights of Budget.....	168
Other Documents Along with Budget Statements	169
Detailed Demands for Grants.....	169
Outcome Budget.....	169
Annual Reports.....	169
Economic Survey	170
Conclusion:.....	170
Difference between Full Budget and Vote on Account	170
Rule: Executive (Government) needs the approval of Legislature (Parliament) for spending!	170
The Parliamentary Approval takes its time!	171

But the government needs money for its day to day functions...	171
Vote on Account	171
Can Vote on Account be granted for more than 2 months?.....	172
Difference between Full Budget and Vote on Account	172
What is an interim budget then?	173
Is it mandatory for the government to present a vote on account instead of a full budget in an election year?	173
Cut Motions: Policy Cut, Economy Cut, and Token Cut.....	173
What is meant by policy cut, economy cut, or token cut motions?	173
Cut motions	173
1. Disapproval of Policy Cut Motions	173
2. Economy Cut Motions	174
3. Token Cut Motions.....	174
Admissibility of cut motions	174
Speaker to decide admissibility	175
Notice of cut motions.....	176
Discretionary powers of the President: Not based on the advice of CoM.....	176
#1: Suspensive Veto:	176
#2: Pocket Veto:	176
#3: President can seek information from Prime Minister:.....	177
#4: Case of no sitting of both houses:	177
#5: Case of no majority:	177
#6: Case of no-confidence with CoM- dissolving Lok Sabha:	177
#7: Case of no-confidence with CoM- dissolving CoM:	177
#8: Case of a caretaker government.....	178
The advice given by CoM binding on Indian President: Article 74.....	178
Powers exercised on the advice of CoM (non-discretionary powers)	178
JUDICIARY	179
Basic Structure Doctrine	179

What is the Basic Structure Doctrine?	179
Timeline for Evolution of Basic Structure.....	180
Pre – Golak Nath Era	180
Golak Nath v. the State of Punjab.....	181
Constitution 24th Amendment.....	182
Kesavananda Bharati v. the State of Kerala.....	182
Evolution of Basic Structure Doctrine	184
Conclusion.....	185
Indian Judicial Doctrines – Principles of Constitutional Law Explained	185
Doctrine of Basic Structure.....	185
Doctrine of Harmonious Construction	185
Doctrine of Eclipse	186
Doctrine of Pith and Substance	186
Doctrine of Incidental or Ancillary Powers.....	187
Doctrine of Colourable Legislation.....	188
Doctrine of Severability	188
Doctrine of Territorial Nexus	188
Doctrine of Laches.....	189
Procedure Established by Law vs Due Process of Law	190
Article 21 in The Constitution Of India.....	190
Procedure Established by Law vs Due Process of Law	190
Case 1: Procedure Established by Law.....	190
Case 2: Due Process of Law	191
History of Due Process of law	191
Change of situation in India: Maneka Gandhi vs Union of India case (1978). 191	
Special Leave Petition vs Review Petition vs Curative Petition vs Mercy Petition	192
What is a Special Leave Petition (SLP)?	192
Constitutional Provisions behind Special Leave Petition.....	192
Can the High Court review its order if the SLP is rejected by the Supreme Court? 192	

What is a Review Petition?.....	193
Constitutional Provisions behind Review Petition	193
Who can file a review petition?.....	193
No oral arguments by lawyers except in death penalty cases.....	193
Who hears the review petitions?.....	194
Should the Court allow every review petition?	194
Grounds for seeking a review of a judgment.....	194
Examples of review petitions recently in the news	194
What if a review petition fails?.....	195
What is a Curative Petition?	195
The origin of curative petitions	195
Constitutional Provisions behind Curative Petition.....	195
Who hears the curative petitions?.....	195
Conditions for Curative Petition.....	195
What is a Mercy Petition?.....	196
Mercy petition in death sentence cases.....	196
Grounds upon pardon can be sought	197
Constitutional Provisions.....	197
Procedure for handling Mercy Petitions.....	197
Need for a Standard Procedure while handling Mercy Petition	198
International Standards	199
Mercy Plea vs Capital Punishment.....	199
Examples of Mercy Petitions recently in the news.....	199
Review Petition vs Curative Petition vs Mercy Petition: Conclusion	200
Capital Punishment, Mercy Pleas and the Supreme Court	200
Capital Punishment in India Overview	200
Rarest of the rare case doctrine	201
IPC 376A – Rape/Sexual Assault.....	201
Laws other than IPC for Capital Punishment	201
Clemency and Mercy Petition in the Indian Constitution	202

Who grants pardon? The President?	202
Is everything over, once the President rejects the mercy petition and signs his assent?	203
Highlights of recent SC judgment on Mercy Plea (Shatrughan Chauhan vs Union of India).....	204
Judicial Review vs Judicial Activism vs Judicial Overreach	205
Judicial Review	205
Judicial Activism	205
Judicial Overreach.....	206
Corruption in Public Life	207
What is Corruption?.....	207
Different Forms of Corruption	207
Reason for corruption in India:	207
What are the Reasons for the Prevalence of Corruption in Civil Service?.....	209
Impact of Corruption	209
What are the Related Indian Initiatives?.....	211
Steps to Reduce Corruption in Civil Service	212
“Zero Tolerance Against Corruption”	213
Need for the Reform in Civil Service.....	214
Evolution of the Civil Services Reform Since 2014.....	215
Mission Karmayogi.....	215
Six Pillars of Mission Karmayogi.....	215
iGOT-Karmayogi.....	217
Lokpal	218
Introduction: -	218
Jurisdiction And Functions of Lokpal: -.....	218
Structure of Lokpal: -	219
Lok Ayukta Act	219
What is LokAyukta?	219
How many members of Lok Ayukta?	219

How are members selected?	219
Who can become a Lokayukta Chairman/Member?	219
Are there any other definitions?.....	220
What is the tenure of the members?	220
Who else will be in the LokAyukta system?	220
Who can be investigated by Lokayukta?	220
What other powers are there?	220
What should not be investigated?.....	221
Can complaints be filed suo motu?	221
How will complaints be investigated?	221
Can the accused be dismissed during the investigation?.....	221
What happens after the investigation?.....	221
Which body has the authority to take action?.....	222
What if the complaint is proven false?	222
What if the complaint is against the Lokayukta itself?.....	222
What are its rules?	222
Right to Information	222
Scope	223
Private bodies.....	224
Political parties	224
Amendment	224
Supreme Court judgement.....	224
Governance and process	224
Fees	225
Digital right to information systems	225
Controversies	225
Attacks on RTI activists and protection suggestions	225
Intellectual property rights	226
Banned people from filing RTI.....	226

Rejection of RTIs	227
Benefits.....	227
Exempted organisations	227
Intelligence Bureau.....	228
Women Empowerment	228
List of Major Women Empowerment schemes in India	229
Women Empowerment in India – Recent News	232
Human rights	233
Aspects of human rights.....	233
Human rights are universal.....	233
Human rights treat all people equally	233
These rights essentially belong to individuals.....	234
Human rights, fundamental principles of humanity.....	234
Important days for human rights	234
Human Rights in Indian Constitution.....	235
Indian Polity: Recent Issues	236
Citizenship Amendment Act 2019: Why are people opposing it?	236
Government’s Clarification on Citizenship Amendment Act 2019	236
Consumer Protection Forum	239
Structure and Functions consumer protection forum: -	239
Appeals	240
Ambit of Consumer Protection act: -	240
Complaint allowed in respective consumer forum: -	240

Historical Background of Indian Constitution

Before 1947, India was divided into two main entities – The British India which consisted of 11 provinces and the Princely states ruled by Indian princes under subsidiary alliance policy. The two entities merged together to form the Indian Union, but many of the legacy systems in British India are followed even now. The historical underpinnings and evolution of the India Constitution can be traced to many regulations and acts passed before Indian Independence.

Indian System of Administration

Indian democracy is a Parliamentary form of democracy where the executive is responsible to the Parliament. The Parliament has two houses – Lok Sabha and Rajya Sabha. Also, the type of governance is Federal, i.e. there is separate executive and legislature at Center and States. We also have self-governance at local government levels. All these systems owe their legacy to the British administration. Let us see the historical background of the Indian Constitution and its development through the years.

Regulating Act of 1773

- The first step was taken by the British Parliament to control and regulate the affairs of the East India Company in India.
- It designated the Governor of Bengal (Fort William) as the Governor-General (of Bengal).
- Warren Hastings became the first Governor-General of Bengal.
- The Executive Council of the Governor-General was established (Four members). There was no separate legislative council.
- It subordinated the Governors of Bombay and Madras to the Governor-General of Bengal.
- The Supreme Court was established at Fort William (Calcutta) as the Apex Court in 1774.
- It prohibited servants of the company from engaging in any private trade or accepting bribes from the natives.

- The Court of Directors (the governing body of the company) should report its revenue.

Pitt's India Act of 1784

- Distinguished between commercial and political functions of the company.
- Court of Directors for Commercial functions and Board of Control for political affairs.
- Reduced the strength of the Governor General's council to three members.
- Placed the Indian affairs under the direct control of the British Government.
- The company's territories in India were called "the British possession in India".
- Governor's councils were established in Madras and Bombay.

Charter Act of 1813

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

Charter Act of 1833

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

Charter Act of 1853

- The legislative and executive functions of the Governor-General's Council were separated.
- 6 members in the Central legislative council. Four out of six members were appointed by the provisional governments of Madras, Bombay, Bengal and Agra.

- It introduced a system of open competition as the basis for the recruitment of civil servants of the Company (Indian Civil Service opened for all).

Government of India Act of 1858

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

Indian Councils Act of 1861

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

India Council Act of 1892

- Introduced indirect elections (nomination).
- Enlarged the size of the legislative councils.

- Enlarged the functions of the Legislative Councils and gave them the power of discussing the Budget and addressing questions to the Executive.

Indian Councils Act of 1909

1. This Act is also known as the Morley- Minto Reforms.
2. Direct elections to legislative councils; first attempt at introducing a representative and popular element.
3. It changed the name of the Central Legislative Council to the Imperial Legislative Council.
4. The number of members of the Central Legislative Council was increased to 60 from 16.
5. Introduced a system of communal representation for Muslims by accepting the concept of ‘separate electorate’.
6. Indians for the first time in Viceroy's executive council. (Satyendra Prasanna Sinha, as the law member)

Government of India Act of 1919

- This Act is also known as the Montague-Chelmsford Reforms.
- The Central subjects were demarcated and separated from those of the Provincial subjects.
- The scheme of dual governance, ‘Dyarchy’, was introduced in the Provincial subjects.
- Under the dyarchy system, the provincial subjects were divided into two parts – transferred and reserved. On reserved subjects, the Governor was not responsible to the Legislative council.
- The Act introduced, for the first time, bicameralism at the center.
- Legislative Assembly with 140 members and Legislative council with 60 members.
- Direct elections.

- The Act also required that the three of the six members of the Viceroy's Executive Council (other than Commander-in-Chief) were to be Indians.
- Provided for the establishment of the Public Service Commission.

Government of India Act of 1935

- The Act provided for the establishment of an All-India Federation consisting of the Provinces and the Princely States as units, though the envisaged federation never came into being.
- Three Lists: The Act divided the powers between the Centre and the units into items of three lists, namely the Federal List, the Provincial List and the Concurrent List.
- The Federal List for the Centre consisted of 59 items, the Provincial List for the provinces consisted of 54 items and the Concurrent List for both consisted of 36 items
- The residuary powers were vested with the Governor-General.
- The Act abolished the Dyarchy in the Provinces and introduced 'Provincial Autonomy'.
- It provided for the adoption of Dyarchy at the Centre.
- Introduced bicameralism in 6 out of 11 Provinces.
- These six Provinces were Assam, Bengal, Bombay, Bihar, Madras and the United Province.
- Provided for the establishment of Federal Court.
- Abolished the Council of India.

Indian Independence Act of 1947

- It declared India as an Independent and Sovereign State.
- Established responsible Governments at both the Centre and the Provinces.
- Designated the Viceroy India and the provincial Governors as the Constitutional (normal heads).

- It assigned dual functions (Constituent and Legislative) to the Constituent Assembly and declared this dominion legislature as a sovereign body.

Points to be noted

- Laws made before the Charter Act of 1833 were called Regulations and those made after are called Acts.
- Lord Warren Hastings created the office of District Collector in 1772, but judicial powers were separated from District collector later by Cornwallis.
- From the powerful authorities of unchecked executives, the Indian administration developed into a responsible government answerable to the legislature and people.
- The development of the portfolio system and budget points to the separation of power.
- Lord Mayo's resolution on financial decentralization visualized the development of local self-government institutions in India (1870).
- 1882: Lord Ripon's resolution was hailed as the 'Magna Carta' of local self-government. He is regarded as the 'Father of local self-government in India'.
- 1924: Railway Budget was separated from the General Budget based on the Acworth Committee report (1921).
- From 1773 to 1858, the British tried for the centralization of power. It was from the 1861 Councils act they shifted towards devolution of power with provinces.
- The 1833 Charter act was the most important act before the act of 1909.
- Till 1947, the Government of India functioned under the provisions of the 1919 Act only. The provisions of the 1935 Act relating to Federation and Dyarchy were never implemented.
- The Executive Council provided by the 1919 Act continued to advise the Viceroy till 1947. The modern executive (Council of Ministers) owes its legacy to the executive council.

- The Legislative Council and Assembly developed into Rajya Sabha and Lok Sabha after independence..

Constitution of India: List of All Articles (1-395) and Parts (1-22)

The Constitution of India contains 395 articles in 22 parts. Additional articles and parts are inserted later through various amendments. There are also 12 schedules in the Indian Constitution.

Links are given against each Part to understand the purpose and background of each article of the Constitution of India. Titles are mentioned for all articles from 1-395, separated under various parts and chapters. Preamble and Repealed articles or parts are specially mentioned.

PREAMBLE

WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN, SOCIALIST, SECULAR, DEMOCRATIC, REPUBLIC and to secure to all its citizens:

JUSTICE, social, economic and political;

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

EQUALITY of status and of opportunity; and to promote among them all

FRATERNITY assuring the dignity of the individual and the unity and integrity of the nation;

IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November 1949, do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION.

PART I: THE UNION AND ITS TERRITORY

1 Name and territory of the Union.

2 Admission or establishment of new States.

2A [Repealed.]

3 Formation of new States and alteration of areas, boundaries or names of existing States.

4 Laws made under articles 2 and 3 to provide for the amendment of the First and the Fourth Schedules and supplemental, incidental and consequential matters.

PART II: CITIZENSHIP

- 5 Citizenship at the commencement of the Constitution.
- 6 Rights of citizenship of certain persons who have migrated to India from Pakistan.
- 7 Rights of citizenship of certain migrants to Pakistan.
- 8 Rights of citizenship of certain persons of Indian origin residing outside India.
- 9 Persons voluntarily acquiring citizenship of a foreign State not to be citizens.
- 10 Continuance of the rights of citizenship.
- 11 Parliament to regulate the right of citizenship by law.

PART III : FUNDAMENTAL RIGHTS

General

- 12 Definition.
 - 13 Laws inconsistent with or in derogation of fundamental rights.
- ### **Right to Equality**
- 14 Equality before law.
 - 15 Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.
 - 16 Equality of opportunity in matters of public employment.
 - 17 Abolition of Untouchability.
 - 18 Abolition of titles.

Right to Freedom

- 19 Protection of certain rights regarding freedom of speech, etc.
- 20 Protection in respect of conviction for offences.
- 21 Protection of life and personal liberty.
- 21A Right to education
- 22 Protection against arrest and detention in certain cases.

Right against Exploitation

23 Prohibition of traffic in human beings and forced labour.

24 Prohibition of employment of children in factories, etc.

Right to Freedom of Religion

25 Freedom of conscience and free profession, practice and propagation of religion.

26 Freedom to manage religious affairs.

27 Freedom as to payment of taxes for promotion of any particular religion.

28 Freedom as to attendance at religious instruction or religious worship in certain educational institutions.

Cultural and Educational Rights

29 Protection of the interests of minorities.

30 Right of minorities to establish and administer educational institutions.

31 [Repealed.]

Saving of Certain Laws

31A Saving of Laws providing for the acquisition of estates, etc.

31B Validation of certain Acts and Regulations.

31C Saving of laws giving effect to certain directive principles.

31D [Repealed.]

Right to Constitutional Remedies

32 Remedies for enforcement of rights conferred by this Part.

32A [Repealed.]

33 Power of Parliament to modify the rights conferred by this Part in their application to Forces, etc.

34 Restriction on rights conferred by this Part while martial law is in force in any area.

35 Legislation to give effect to the provisions of this Part.

PART IV: DIRECTIVE PRINCIPLES OF STATE POLICY

36 Definition.

- 37 Application of the principles contained in this Part.
- 38 States to secure a social order for the promotion of the welfare of the people.
- 39 Certain principles of policy to be followed by the State.
- 39A Equal justice and free legal aid.
- 40 The organisation of village panchayats.
- 41 Right to work, to education and to public assistance in certain cases.
- 42 Provision for just and humane conditions of work and maternity relief.
- 43 Living wage, etc., for workers.
- 43A Participation of workers in the management of industries.
- 43B Promotion of co-operative societies.
- 44 Uniform civil code for the citizens.
- 45 Provision for free and compulsory education for children.
- 46 Promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections.
- 47 Duty of the State to raise the level of nutrition and the standard of living and to improve public health.
- 48 The organisation of agriculture and animal husbandry.
- 48A Protection and improvement of environment and safeguarding of forests and wildlife.
- 49 Protection of monuments and places and objects of national importance.
- 50 Separation of judiciary from the executive.
- 51 Promotion of international peace and security.

PART IVA: FUNDAMENTAL DUTIES

- 51A Fundamental duties.

PART V: THE UNION

CHAPTER I: THE EXECUTIVE

The President and Vice-President

52 The President of India.

53 The executive power of the Union.

54 Election of President.

55 Manner of election of President.

56 Term of office of President.

57 Eligibility for re-election.

58 Qualifications for election as President.

59 Conditions of the President's office.

60 Oath or affirmation by the President.

61 Procedure for impeachment of the President.

62 Time of holding the election to fill the vacancy in the office of President and the term of office of the person elected to fill the casual vacancy.

63 The Vice-President of India.

64 The Vice-President to be ex officio Chairman of the Council of States.

65 The Vice-President to act as President or to discharge his functions during casual vacancies in the office, or during the absence of the President.

66 Election of Vice-President.

67 Term of office of Vice-President.

68 Time of holding the election to fill the vacancy in the office of Vice-President and the term of office of the person elected to fill the casual vacancy.

69 Oath or affirmation by the Vice-President.

70 Discharge of President's functions in other contingencies.

71 Matters relating to, or connected with, the election of a President or Vice-President.

72 Power of the President to grant pardons, etc., and to suspend, remit or commute sentences in certain cases.

73 The extent of executive power of the Union.

Council of Ministers

74 Council of Ministers to aid and advise the President.

75 Other provisions as to Ministers.

The Attorney-General for India

76 Attorney-General for India.

Conduct of Government Business

77 Conduct of business of the Government of India.

78 Duties of the Prime Minister as respects the furnishing of information to the President,
etc.

CHAPTER II: PARLIAMENT

General

79 Constitution of Parliament.

80 Composition of the Council of States.

81 Composition of the House of the People.

82 Readjustment after each census.

83 Duration of Houses of Parliament.

84 Qualification for membership of Parliament.

85 Sessions of Parliament, prorogation and dissolution.

86 Right of the President to address and send messages to Houses.

87 Special address by the President.

88 Rights of Ministers and Attorney-General as respects Houses.

Officers of Parliament

89 The Chairman and Deputy Chairman of the Council of States.

90 Vacation and resignation of, and removal from, the office of Deputy Chairman.

91 Power of the Deputy Chairman or other person to perform the duties of the office of, or to act as, Chairman.

92 The Chairman or the Deputy Chairman not to preside while a resolution for his removal from office is under consideration.

93 The Speaker and Deputy Speaker of the House of the People .

94 Vacation and resignation of, and removal from, the offices of Speaker and Deputy Speaker.

95 Power of the Deputy Speaker or other person to perform the duties of the office of, or to act as, Speaker.

96 The Speaker or the Deputy Speaker not to preside while a resolution for his removal from office is under consideration.

97 Salaries and allowances of the Chairman and Deputy Chairman and the Speaker and Deputy Speaker.

98 Secretariat of Parliament.

Conduct of Business

99 Oath or affirmation by members.

100 Voting in Houses, power of Houses to act notwithstanding vacancies and quorum.

Disqualifications of Members

101 Vacation of seats.

102 Disqualifications for membership.

103 Decision on questions as to disqualifications of members.

104 Penalty for sitting and voting before making oath or affirmation under article 99 or when not qualified or when disqualified.

Powers, Privileges and Immunities of Parliament and its Members

105 Powers, privileges, etc., of the Houses of Parliament and of the members and committees thereof.

106 Salaries and allowances of members.

Legislative Procedure

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 Definition of “Money Bills”.

111 Assent to Bills.

Procedure in Financial Matters

112 Annual financial statement.

113 Procedure in Parliament with respect to estimates.

114 Appropriation Bills.

115 Supplementary, additional or excess grants.

116 Votes on account, votes of credit and exceptional grants.

117 Special provisions as to financial Bills.

Procedure Generally

118 Rules of procedure.

119 Regulation by law of procedure in Parliament in relation to financial business.

120 Languages to be used in Parliament.

121 Restriction on discussion in Parliament.

122 Courts not to inquire into proceedings of Parliament.

CHAPTER III: LEGISLATIVE POWERS OF THE PRESIDENT

123 Power of President to promulgate Ordinances during recess of Parliament.

CHAPTER IV: THE UNION JUDICIARY

124 Establishment and constitution of the Supreme Court.

124A National Judicial Appointments Commission. *(Declared unconstitutional by the Supreme Court, however not repealed by the Parliament)*

- 124B Functions of Commission.
- 124C Power of Parliament to make law.
- 125 Salaries, etc., of Judges.
- 126 Appointment of acting Chief Justice.
- 127 Appointment of ad hoc judges.
- 128 Attendance of retired Judges at sittings of the Supreme Court.
- 129 Supreme Court to be a court of record.
- 130 Seat of Supreme Court.
- 131 Original jurisdiction of the Supreme Court.
- 131A [Repealed.]
- 132 Appellate jurisdiction of the Supreme Court in appeals from High Courts in certain cases.
- 133 Appellate jurisdiction of Supreme Court in appeals from High Courts in regard to Civil matters.
- 134 Appellate jurisdiction of the Supreme Court in regard to criminal matters.
- 134A Certificate for appeal to the Supreme Court.
- 135 Jurisdiction and powers of the Federal Court under existing law to be exercisable by the Supreme Court.
- 136 Special leave to appeal by the Supreme Court.
- 137 Review of judgments or orders by the Supreme Court.
- 138 Enlargement of the jurisdiction of the Supreme Court.
- 139 Conferment on the Supreme Court of powers to issue certain writs.
- 139 A Transfer of certain cases.
- 140 Ancillary powers of the Supreme Court.
- 141 Law declared by the Supreme Court to be binding on all courts.

142 Enforcement of decrees and orders of the Supreme Court and orders as to discovery, etc.

143 Power of the President to consult the Supreme Court.

144 Civil and judicial authorities to act in aid of the Supreme Court.

144A [Repealed.]

145 Rules of Court, etc.

146 Officers and servants and the expenses of the Supreme Court.

147 Interpretation.

CHAPTER V: COMPTROLLER AND AUDITOR-GENERAL OF INDIA

148 Comptroller and Auditor-General of India.

149 Duties and powers of the Comptroller and Auditor-General.

150 Form of accounts of the Union and of the States.

151 Audit reports.

PART VI: THE STATES

CHAPTER I: GENERAL

152 Definition.

CHAPTER II: THE EXECUTIVE

The Governor

153 Governors of States.

154 Executive power of State.

155 Appointment of Governor.

156 Term of office of Governor.

157 Qualifications for appointment as Governor.

158 Conditions of Governor's office

159 Oath or affirmation by the Governor.

160 Discharge of the functions of the Governor in certain contingencies.

161 Power of Governor to grant pardons, etc., and to suspend, remit or commute sentences in certain cases.

162 Extent of executive power of State.

Council of Ministers

163 Council of Ministers to aid and advise the Governor.

164 Other provisions as to Ministers.

The Advocate-General for the State

165 Advocate-General for the State.

Conduct of Government Business

166 Conduct of business of the Government of a State.

167 Duties of Chief Minister as respects the furnishing of information to the Governor, etc.

CHAPTER III: THE STATE LEGISLATURE

General

168 Constitution of Legislatures in States.

169 Abolition or creation of Legislative Councils in States.

170 Composition of the Legislative Assemblies.

171 Composition of the Legislative Councils.

172 Duration of State Legislatures.

173 Qualification for membership of the State Legislature.

174 Sessions of the State Legislature, prorogation and dissolution.

175 Right of Governor to address and send messages to the House or Houses.

176 Special address by the Governor.

177 Rights of Ministers and Advocate-General as respects the Houses.

Officers of the State Legislature

178 The Speaker and Deputy Speaker of the Legislative Assembly.

179 Vacation and resignation of, and removal from, the offices of Speaker and Deputy Speaker.

180 Power of the Deputy Speaker or other person to perform the duties of the office of, or to act as, Speaker.

181 The Speaker or the Deputy Speaker not to preside while a resolution for his removal from office is under consideration.

182 The Chairman and Deputy Chairman of the Legislative Council.

183 Vacation and resignation of, and removal from, the offices of Chairman and Deputy Chairman.

184 Power of the Deputy Chairman or other person to perform the duties of the office of, or to act as, Chairman.

185 The Chairman or the Deputy Chairman not to preside while a resolution for his removal from office is under consideration.

186 Salaries and allowances of the Speaker and Deputy Speaker and the Chairman and Deputy Chairman.

187 Secretariat of State Legislature.

Conduct of Business

188 Oath or affirmation by members.

189 Voting in Houses, power of Houses to act notwithstanding vacancies and quorum.

Disqualifications of Members

190 Vacation of seats.

191 Disqualifications for membership.

192 Decision on questions as to disqualifications of members.

193 Penalty for sitting and voting before making oath or affirmation under article 188 or when not qualified or when disqualified.

Powers, privileges and immunities of State Legislatures and their Members

194 Powers, privileges, etc., of the Houses of Legislatures and of the members and committees thereof.

195 Salaries and allowances of members.

Legislative Procedure

196 Provisions as to introduction and passing of Bills.

197 Restriction on powers of Legislative Council as to Bills other than Money Bills.

198 Special procedure in respect of Money Bills.

199 Definition of “Money Bills”.

200 Assent to Bills.

201 Bills reserved for consideration.

Procedure in Financial Matters

202 Annual financial statement.

203 Procedure in Legislature with respect to estimates.

204 Appropriation Bills.

205 Supplementary, additional or excess grants.

206 Votes on account, votes of credit and exceptional grants.

207 Special provisions as to financial Bills.

Procedure Generally

208 Rules of procedure.

209 Regulation by law of procedure in the Legislature of the State in relation to financial business.

210 Language to be used in the Legislature.

211 Restriction on discussion in the Legislature.

212 Courts not to inquire into proceedings of the Legislature.

CHAPTER IV : LEGISLATIVE POWER OF THE GOVERNOR

213 Power of Governor to promulgate Ordinances during recess of Legislature.

CHAPTER V: THE HIGH COURTS IN THE STATES

- 214 High Courts for States.
- 215 High Courts to be courts of record.
- 216 Constitution of High Courts.
- 217 Appointment and conditions of the office of a Judge of a High Court.
- 218 Application of certain provisions relating to the Supreme Court to High Courts.
- 219 Oath or affirmation by Judges of High Courts.
- 220 Restriction on practice after being a permanent Judge.
- 221 Salaries, etc., of Judges.
- 222 Transfer of a Judge from one High Court to another.
- 223 Appointment of acting Chief Justice.
- 224 Appointment of additional and acting Judges.
- 224A Appointment of retired Judges at sittings of High Courts.
- 225 Jurisdiction of existing High Courts.
- 226 Power of High Courts to issue certain writs.
- 226A [Repealed..]
- 227 Power of superintendence over all courts by the High Court.
- 228 Transfer of certain cases to the High Court.
- 228A [Repealed.]
- 229 Officers and servants and the expenses of High Courts.
- 230 Extension of jurisdiction of High Courts to Union territories.
- 231 Establishment of a common High Court for two or more States.

CHAPTER VI : SUBORDINATE COURTS

- 233 Appointment of district judges.

233A Validation of appointments of, and judgments, etc., delivered by, certain district judges.

234 Recruitment of persons other than district judges to the judicial service.

235 Control over subordinate courts.

236 Interpretation.

237 Application of the provisions of this Chapter to certain classes or classes of magistrates.

PART VII: THE STATES IN PART B OF THE FIRST SCHEDULE

238 [Repealed.]

PART VIII: THE UNION TERRITORIES

239 Administration of Union territories.

239 A Creation of local Legislatures or Council of Ministers or both for certain Union territories.

239 AA Special provisions with respect to Delhi.

239 AB Provision in case of failure of constitutional machinery.

239 B Power of the administrator to promulgate Ordinances during recess of Legislature.

240 Power of the President to make regulations for certain Union territories.

241 High Courts for Union territories.

242 [Repealed.]

PART IX: THE PANCHAYATS

243 Definitions.

243 A Gram Sabha.

243 B Constitution of Panchayats.

243 C Composition of Panchayats.

243 D Reservation of seats.

243 E Duration of Panchayats, etc.

243 F Disqualifications for membership.

243 G Powers, authority and responsibilities of Panchayats.

243 H Powers to impose taxes by, and Funds of, the Panchayats.

243- I Constitution of Finance Commission to review financial position.

243 J Audit of accounts of Panchayats.

243 K Elections to the Panchayats.

243 L Application to Union territories.

243 M Part not to apply to certain areas.

243 N Continuance of existing laws and Panchayats.

243- O Bar to interference by courts in electoral matters.

PART IXA: THE MUNICIPALITIES

243 P Definitions.

243 Q Constitution of Municipalities.

243 R Composition of Municipalities.

243 S Constitution and composition of Wards Committees, etc.

243 T Reservation of seats.

243 U Duration of Municipalities, etc.

243 V Disqualifications for membership.

243 W Powers, authority and responsibilities of Municipalities, etc.

243 X. Power to impose taxes by, and Funds of, the Municipalities.

243 Finance Commission.

243 Z Audit of accounts of Municipalities.

243 ZA Elections to the Municipalities.

243 ZB Application to Union territories.

243 ZC Part not to apply to certain areas.

- 243 ZD Committee for district planning.
- 243 ZE Committee for Metropolitan planning.
- 243 ZF Continuance of existing laws and Municipalities.
- 243 ZG Bar to interference by Courts in electoral matters.

PART IXB: THE CO-OPERATIVE SOCIETIES

- 243 ZH Definitions
- 243 ZI Incorporation of co-operative societies
- 243 ZJ Number and term of members of the board and its office bearers.
- 243 ZK Election of members of board.
- 243 ZL Supersession and suspension of the board and interim management.
- 243 ZM Audit of accounts of co-operative societies.
- 243 ZN Convening of general body meetings.
- 243 ZO Right of a member to get information,
- 243 ZP Returns.
- 243 ZQ Offences and penalties.
- 243 ZR Application to multi-state co-operative societies.
- 243 ZS Application to Union Territories.
- 243 ZT Continuance of existing laws.

PART X: THE SCHEDULED AND TRIBAL AREAS

- 244 Administration of Scheduled Areas and Tribal Areas.
- 244 A Formation of an autonomous State comprising certain tribal areas in Assam and creation of local Legislature or Council of Ministers or both therefore.

PART XI: RELATIONS BETWEEN THE UNION AND THE STATES

CHAPTER I: LEGISLATIVE RELATIONS

Distribution of Legislative Powers

245 Extent of laws made by Parliament and by the Legislatures of States.

246 Subject-matter of laws made by Parliament and by the Legislatures of States.

246 A Special provision with respect to goods and services tax.

247 Power of Parliament to provide for the establishment of certain additional courts.

248 Residuary powers of legislation.

249 Power of Parliament to legislate with respect to a matter in the State List in the national interest.

250 Power of Parliament to legislate with respect to any matter in the State List if a Proclamation of Emergency is in operation.

251 Inconsistency between laws made by Parliament under articles 249 and 250 and laws made by the Legislatures of States.

252 Power of Parliament to legislate for two or more States by consent and adoption of such legislation by any other State.

253 Legislation for giving effect to international agreements.

254 Inconsistency between laws made by Parliament and laws made by the Legislatures of States.

255 Requirements as to recommendations and previous sanctions to be regarded as matters of procedure only.

CHAPTER II : ADMINISTRATIVE RELATIONS

General

256 Obligation of States and the Union.

257 Control of the Union over States in certain cases.

257A [Repealed.]

258 Power of the Union to confer powers, etc., on States in certain cases.

258A Power of the States to entrust functions to the Union.

259 [Repealed.]

260 Jurisdiction of the Union in relation to territories outside India.

261 Public acts, records and judicial proceedings.

Disputes relating to Waters

262 Adjudication of disputes relating to waters of inter-State rivers or river valleys.

Coordination between States

263 Provisions with respect to an inter-State Council.

PART XII: FINANCE, PROPERTY, CONTRACTS AND SUITS

CHAPTER I: FINANCE

General

264 Interpretation.

265 Taxes not to be imposed save by authority of law.

266 Consolidated Funds and public accounts of India and of the States.

267 Contingency Fund.

Distribution of Revenues between the Union and the States

268 Duties levied by the Union but collected and appropriated by the State.

268A [Repealed.]

269 Taxes levied and collected by the Union but assigned to the States.

269A Levy and collection of goods and services tax in the course of inter-state trade or commerce.

270 Taxes levied and distributed between the Union and the States.

271 Surcharge on certain duties and taxes for purposes of the Union.

272 [Repealed.]

273 Grants in lieu of export duty on jute and jute products.

274 Prior recommendation of the President required Bills affecting taxation in which States are interested.

275 Grants from the Union to certain States.

276 Taxes on professions, trades, callings and employment.

277 Savings.

278 [Repealed.]

279 Calculation of “net proceeds”, etc.

279A Goods and Services Tax Council.

280 Finance Commission.

281 Recommendations of the Finance Commission.

Miscellaneous financial provisions

282 Expenditure defrayable by the Union or a State out of its revenues.

283 Custody, etc., of Consolidated Funds, Contingency Funds and money credited to the public accounts.

284 Custody of suitors’ deposits and other money received by public servants and courts.

285 Exemption of property of the Union from State taxation.

286 Restrictions as to imposition of tax on the sale or purchase of goods.

287 Exemption from taxes on electricity.

288 Exemption from taxation by States in respect of water or electricity in certain cases.

289 Exemption of property and income of a State from Union taxation.

290 Adjustment in respect of certain expenses and pensions.

290A Annual payment to certain Devaswom Funds.

291 [Repealed.]

CHAPTER II: BORROWING

292 Borrowing by the Government of India.

293 Borrowing by States.

CHAPTER III: PROPERTY, CONTRACTS, RIGHTS, LIABILITIES, OBLIGATIONS AND SUITS

294 Succession to property, assets, rights, liabilities and obligations in certain cases.

295 Succession to property, assets, rights, liabilities and obligations in other cases.

296 Property accruing by escheat or laps or as bona vacantia.

297 Things of value within territorial waters or continental shelf and resources of the exclusive economic zone to vest in the Union.

298 Power to carry on trade, etc.

299 Contracts.

300 Suits and proceedings.

CHAPTER IV: RIGHT TO PROPERTY

300A Persons not to be deprived of property save by authority of law.

PART XIII: TRADE, COMMERCE AND INTERCOURSE WITHIN THE TERRITORY OF INDIA

301 Freedom of trade, commerce and intercourse.

302 Power of Parliament to impose restrictions on trade, commerce and intercourse.

303 Restrictions on the legislative powers of the Union and of the States with regard to trade and commerce.

304 Restrictions on trade, commerce and intercourse among States.

305 Saving of existing laws and laws providing for State monopolies.

306 [Repealed.]

307 Appointment of authority for carrying out the purposes of articles 301 to 304.

PART XIV: SERVICES UNDER THE UNION AND THE STATES

CHAPTER I: SERVICES

308 Interpretation.

309 Recruitment and conditions of service of persons serving the Union or a State.

310 Tenure of office of persons serving the Union or a State.

311 Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State.

312 All-India services.

312A Power of Parliament to vary or revoke conditions of service of officers of certain services.

313 Transitional provisions.

314 [Repeated.]

CHAPTER II: PUBLIC SERVICE COMMISSIONS

315 Public Service Commissions for the Union and for the States.

316 Appointment and term of office of members.

317 Removal and suspension of a member of a Public Service Commission.

318 Power to make regulations as to conditions of service of members and staff of the Commission.

319 Prohibition as to the holding of offices by members of Commission on ceasing to be such members.

320 Functions of Public Service Commissions.

321 Power to extend functions of Public Service Commissions.

322 Expenses of Public Service Commissions.

323 Reports of Public Service Commissions.

PART XIVA: TRIBUNALS

323A Administrative tribunals.

323B Tribunals for other matters.

PART XV: ELECTIONS

324 Superintendence, direction and control of elections to be vested in an Election Commission.

325 No person to be ineligible for inclusion in, or to claim to be included in a special, electoral roll on grounds of religion, race, caste or sex.

326 Elections to the House of the People and to the Legislative Assemblies of States to be on the basis of adult suffrage.

327 Power of Parliament to make provision with respect to elections to Legislatures.

328 Power of Legislature of a State to make provision with respect to elections to such Legislature.

329 Bar to interference by courts in electoral matters.

329A [Repealed.]

PART XVI: SPECIAL PROVISIONS RELATING TO CERTAIN CLASSES

330 Reservation of seats for Scheduled Castes and Scheduled Tribes in the House of the People.

331 Representation of the Anglo-Indian community in the House of the People.

332 Reservation of seats for Scheduled Castes and Scheduled Tribes in the Legislative Assemblies of the States.

333 Representation of the Anglo-Indian community in the Legislative Assemblies of the States.

334 Reservation of seats and special representation to cease after sixty years.

335 Claims of Scheduled Castes and Scheduled Tribes to services and posts.

336 Special provision for the Anglo-Indian community in certain services.

337 Special provision with respect to educational grants for the benefit of the Anglo-Indian Community.

338 National Commission for Scheduled Castes.

338A National Commission for Scheduled Tribes.

338A National Commission for Backward Classes.

339 Control of the Union over the Administration of Scheduled Areas and the welfare of Scheduled Tribes.

340 Appointment of a Commission to investigate the conditions of backward classes.

341 Scheduled Castes.

342 Scheduled Tribes.

342A Socially and educationally backward classes.

PART XVII: OFFICIAL LANGUAGE

CHAPTER I: LANGUAGE OF THE UNION

343 Official language of the Union.

344 Commission and Committee of Parliament on official language.

CHAPTER II: REGIONAL LANGUAGES

345 Official language or languages of a State.

346 Official language for communication between one State and another or between a State and the Union.

347 Special provision relating to language spoken by a section of the population of a State.

CHAPTER III: LANGUAGE OF THE SUPREME COURT, HIGH COURTS, ETC.

348 Language to be used in the Supreme Court and in the High Courts and for Acts, Bills, etc.

349 Special procedure for enactment of certain laws relating to language.

CHAPTER IV: SPECIAL DIRECTIVES

350 Language to be used in representations for redress of grievances.

350A Facilities for instruction in mother-tongue at the primary stage.

350B Special Officer for linguistic minorities.

351 Directive for development of the Hindi language.

PART XVIII: EMERGENCY PROVISIONS

352 Proclamation of Emergency.

353 Effect of Proclamation of Emergency.

354 Application of provisions relating to distribution of revenues while a Proclamation of Emergency is in operation.

355 Duty of the Union to protect States against external aggression and internal disturbance.

356 Provisions in case of failure of constitutional machinery in States.

357 Exercise of legislative powers under Proclamation issued under article 356.

358 Suspension of provisions of article 19 during emergencies.

359 Suspension of the enforcement of the rights conferred by Part III during emergencies.

359A [Repealed.]

360 Provisions as to financial emergency.

PART XIX: MISCELLANEOUS

361 Protection of President and Governors and Rajprakhukhs.

361A Protection of publication of proceedings of Parliament and State Legislatures.

361B Disqualification for appointment to remunerative political post.

362 [Repealed.]

363 Bar to interference by courts in disputes arising out of certain treaties, agreements, etc.

363A Recognition granted to Rulers of Indian States to cease and privy purses to be abolished.

364 Special provisions as to major ports and aerodromes.

365 Effect of failure to comply with, or to give effect to, directions given by the Union.

366 Definitions.

367 Interpretation.

PART XX: AMENDMENT OF THE CONSTITUTION

368 Power of Parliament to amend the Constitution and procedure therefor.

PART XXI: TEMPORARY, TRANSITIONAL AND SPECIAL PROVISIONS

369 Temporary power to Parliament to make laws with respect to certain matters in the State List as if they were matters in the Concurrent List.

370 Temporary provisions with respect to the State of Jammu and Kashmir.

- 371 Special provision with respect to the States of Maharashtra and Gujarat.
- 371A Special provision with respect to the State of Nagaland.
- 371B Special provision with respect to the State of Assam.
- 371C Special provision with respect to the State of Manipur.
- 371D Special provisions with respect to the State of Andhra Pradesh.
- 371E Establishment of Central University in Andhra Pradesh.
- 371F Special provisions with respect to the State of Sikkim.
- 371G Special provision with respect to the State of Mizoram.
- 371H Special provision with respect to the State of Arunachal Pradesh.
- 371-I Special provision with respect to the State of Goa.
- 371J Special provision with respect to the State of Karnataka.
- 372 Continuance in force of existing laws and their adaptation.
- 372A Power of the President to adapt laws.
- 373 Power of the President to make order in respect of persons under preventive detention in certain cases.
- 374 Provisions as to Judges of the Federal Court and proceedings pending in the Federal Court or before His Majesty in Council.
- 375 Courts, authorities and officers continue to function subject to the provisions of the Constitution.
- 376 Provisions as to Judges of High Courts.
- 377 Provisions as Comptroller and Auditor-General of India.
- 378 Provisions as to Public Service Commissions.
- 378A Special provision as to the duration of Andhra Pradesh Legislative Assembly.
- 379-391 [Repealed.]
- 392 Power of the President to remove difficulties.

PART XXII: SHORT TITLE, COMMENCEMENT, AUTHORITATIVE TEXT IN HINDI AND REPEALS

393 Short title.

394 Commencement.

394A Authoritative text in the Hindi language.

395 Repeals.

Indian Constitution Parts vs Corresponding Articles

What are the parts of the Indian Constitution?

Original Indian Constitution had 22 parts and 395 articles. Later 3 parts were added to it as amendments making the tally 25.

Parts of Indian Constitution

The parts of the Indian Constitution along with Subject and Articles they cover are given below.

Part	Subject	Articles
Part I	The Union and its territory	Art. 1 to 4
Part II	Citizenship	Art. 5 to 11
Part III	Fundamental Rights	Art. 12 to 35
Part IV	Directive Principles	Art. 36 to 51
Part IVA	Fundamental Duties	Art. 51A
Part V	The Union	Art. 52 to 151
Part VI	The States	Art. 152 to 237
Part VII	Repealed by Const. (7th Amendment) Act, 1956	
Part VIII	The Union Territories	Art. 239 to 242

Part IX	The Panchayats	Art. 243 to 243O
Part IXA	The Municipalities	Art. 243P to 243ZG
Part IXB	Co-operative Societies	Art. 243H to 243ZT
Part X	The Scheduled and Tribal Areas	Art. 244 to 244A
Part XI	Relations between the Union and the States	Art. 245 to 263
Part XII	Finance, Property, Contracts and Suits	Art. 264 to 300A
Part XIII	Trade, Commerce and Intercourse within the Territory of India	Art. 301 to 307
Part XIV	Services under the Union and the States	Art. 308 to 323
Part XIVA	Tribunals	Art. 323A and 323B
Part XV	Elections	Art. 324 to 329A
Part XVI	Special provisions relation to certain classes	Art. 330 to 342
Part XVII	Official Language	Art. 343 to 351
Part XVIII	Emergency Provisions	Art. 352 to 360
Part XIX	Miscellaneous	Art. 361 to 367
Part XX	Amendment of the Constitution	Art. 368
Part XXI	Temporary, Transitional and Special Provisions	Art. 369 to 392
Part XXII	Short title, commencement, authoritative text in Hindi and repeals	Art. 393 to 395

Parts of the Indian Constitution added as amendments

Three parts – 9A Municipalities, 9B Co-operative societies and 14A tribunals – are added to the original constitution via amendments.

Various articles were also added under these 25 parts of the Indian constitution as amendments. At present, the total article count is around 450.

Schedules of Indian Constitution

Original Indian Constitution had 8 schedules. After various amendments, now the Indian Constitution has 12 schedules.

Schedules of the Indian Constitution

Which are the schedules of the Indian Constitution?

Schedules are basically tables which contain additional details not mentioned in the articles. The Indian Constitution originally had eight schedules. Four more schedules were added by different amendments, now making a total tally of twelve.

The post gives a brief idea about all the 12 Schedules of Indian Constitution.

Schedules of Indian Constitution

1. The first schedule contains the list of states and union territories and their territories
2. The second schedule contains provisions of the President, Governors of States, Speaker and the Deputy Speaker of the House of the People and the Chairman and the Deputy Chairman of the Council of States and the Speaker and the Deputy Speaker of the Legislative Assembly and the Chairman and the Deputy Chairman of the Legislative Council of a State, the Judges of the Supreme Court and of the High Courts and the Comptroller and Auditor-General of India.
3. The third Schedule contains the Forms of Oaths or Affirmations.
4. The fourth Schedule contains provisions as to the allocation of seats in the Council of States.
5. The fifth Schedule contains provisions as to the Administration and Control of Scheduled Areas and Scheduled Tribes.
6. The sixth Schedule contains provisions as to the Administration of Tribal Areas in the States of Assam, Meghalaya, Tripura and Mizoram.
7. The seventh Schedule contains the Union list, State list and the concurrent list.

8. The eighth Schedule contains the list of recognized languages.
9. Ninth Schedule contains provisions as to validation of certain Acts and Regulations.
10. The tenth Schedule contains provisions as to disqualification on grounds of defection.
11. The eleventh Schedule contains the powers, authority and responsibilities of Panchayats.
12. The twelfth Schedule contains the powers, authority and responsibilities of Municipalities.

PS: Earlier many acts were included in the ninth schedule to escape from the Judicial review, but after the Kesavananda Bharati case, the Court has taken steps to curtail that practice too.

Model questions based on schedules of the Indian Constitution

Q: Who among the following does not find mention in the 2nd schedule of the Indian Constitution?

1. Prime Minister.
2. Chief Ministers of states.
3. Attorney General.
4. Advocate General.

Ans = All of the above.

Q: Which schedule of the Indian Constitution deals with anti-defection?

Ans = 10th schedule.

Q: States which find mention in Schedule 6 of the Indian Constitution:

Ans: Assam, Meghalaya, Tripura and Mizoram.

Which are the must-know articles of the Indian Constitution?

Original Indian Constitution, when adopted by the Constituent Assembly in 1949, had 395 articles and 22 parts. Many other articles and three other parts were added to it by subsequent constitutional amendments. As of now, the Indian constitution has about 450 articles in 25 parts.

Must-Know Articles of Indian Constitution

It's not expected from a UPSC aspirant to by-heart all articles in the Indian Constitution. But he/she is expected to have a fair idea about the nature and salient features of the Indian Constitution like Federalism, Separation of Powers, Fundamental Rights etc.

Article	Importance
Article 12 –35	Specify the Fundamental Rights available
Article 36-51	Specify the Directive Principles of state policy
Article 51A	Specifies the Fundamental Duties of every citizen
Article 80	Specifies the number of seats in the Rajya Sabha
Article 81	Specifies the number of seats in the Lok Sabha
Article 343	Hindi as official language
Article 356	Imposition of President's Rule in states
Article 370	Special status to Kashmir
Article 395	Repeals India Independence Act and Government of India Act, 1935

Other Important Articles of the Indian Constitution

While learning, take a special note on the below articles.

Part 1 – Art. 1 to art. 4

- Article 1- Name and territory of the union.
- Article 2 – Admission and Establishment of the new state.
- Article 3 – Formation of new states and alteration of areas, boundaries, and the name of existing states.

Part 2 – Art. 5 to art. 11

- Article 5 – Citizenship at the commencement of the constitution.

- Article 6- Rights of citizenship of a certain person who has migrated to India from Pakistan.
- Article 10- continuance of rights of citizenship.
- Article 11- Parliament to regulate the right of citizenship by law.

Part 3 – Art.12 to art.35

- Article 12- Definition of the state
- Article 13 Laws inconsistent with or in derogation of the fundamental rights.
- Originally, the constitution provided for 7 basic fundamental rights, now there are only six rights, one Right to property U/A 31 was deleted from the list of fundamental rights by 44th amendment act 1978. It made a legal right U/A 300-A in Part XII of the constitution.

Some important Fundamental Rights are:

RIGHT TO EQUALITY: ART. 14 TO ART. 18

- Article 14- Equality before the law.
- Article 15- Prohibition of discrimination on the grounds of religion, race, caste, sex. Or place of birth.
- Article 16- Equality of opportunity in matters of public employment.
- Article 17- Abolition of untouchability.
- Article 18- Abolition of titles

RIGHT TO FREEDOM: ART. 19 TO ART. 22

- Art.19 guarantees to all the citizens the six rights
1. · (a) Right to freedom of speech and expression.
 2. · (b) Right to assemble peacefully and without arms.
 3. · (c) Right to form associations or unions.
 4. · (d) Right to move freely throughout the territory of India.
 5. · (e) Right to reside and settle in any part of the territory of India.

6. · (f) Right to practice any profession or to carry on any occupation, trade, and business.

- Article 20- Protection in respect of conviction for offences.
- Article 21-Protection of life and personal liberty.
- Article 21A – Right to education
- Article 22- Protection against arrest and detention in certain cases.

RIGHT AGAINST EXPLOITATION: ART.23 & ART. 24

- Article 23- Prohibition of traffic in human beings and forced labour.
- Article 24- Prohibition of employment of children in factories and mines under age of 14.

RIGHT TO FREEDOM OF RELIGION: ART.25 TO ART. 28

- Article 25- Freedom of conscience and free profession, practice and propagation of religion.
- Article 26- Freedom to manage religious affairs.
- Article 27- Freedom as to pay taxes for promotion of any particular religion.
- Article 28- Freedom from attending religious instruction.

CULTURAL AND EDUCATIONAL RIGHTS: ART.29 & ART. 30

- Article 29- Protection of interest of minorities.
- Article 30- Right of minorities to establish and administer educational institutions.
- Article 32- Remedies for enforcement of Fundamental Rights.

Part.4 Directive Principle of states Policy: Art 36 to art. 51

- Article 36- Definition
- Article 37- Application of DPSP
- Article 39A- Equal justice and free legal aid
- Article 40- Organisation of village panchayat

- Article 41- Right to work, to education, and to public assistance in certain cases
- Article 43- Living Wages, etc. for Workers.
- Article 43A- Participation of workers in management of industries.
- Article 44- Uniform civil code.(applicable in Goa only)
- Article 45- Provision for free and compulsory education for children.
- Article 46- Promotion of educational and economic interest of scheduled castes, ST, and OBC.
- Article 47-Duty of the state to raise the level of nutrition and the standard of living and to improve public health.
- Article 48-Organisation of agriculture and animal husbandry.
- Article 49- Protection of monuments and places and objects of natural importance.
- Article 50- Separation of judiciary from the executive.
- Article 51- Promotion of international peace and security.

Fundamental Duties: Part IV-A- Art 51A

It contains, originally 10 duties, now it contains 11 duties by 86th amendments act 2002.

Part 5 – Union (52-151)

- Article 52- The President of India
- Article 53- Executive Power of the union.
- Article 54- Election of President
- Article 61- Procedure for Impeachment of the President.
- Article 63- The Vice-president of India.
- Article 64- The Vice-President to be ex-officio chairman of the Council of States.
- Article 66-Election of Vice-president.
- Article 72-Pardoning powers of the President.

- Article 74- Council of Ministers to aid and advise the President.
- Article 76- Attorney-General for India.
- Article 79- Constitution of Parliament
- Article 80- Composition of Rajya Sabha.
- Article 81- Composition of Lok Sabha.
- Article 83- Duration of Houses of Parliament.
- Article 93- The speakers and Deputy speakers of the house of the people.
- Article 105- Powers, Privileges, etc of the House of Parliament.
- Article 109- Special procedure in respect of money bills
- Article 110- Definition of “Money Bills”.
- Article 112- Annual Financial Budget.
- Article 114-Appropriation Bills.
- Article 123- Powers of the President to promulgate Ordinances during recess of parliament.
- Article 124- Establishment of Supreme Court.
- Article 125- Salaries of Judges.
- Article 126- Appointment of acting Chief justice.
- Article 127- Appointment of ad-hoc judges.
- Article 128-Attendance of a retired judge at sitting of the Supreme Court.
- Article 129- Supreme court to be a court of Record.
- Article 130- Seat of the Supreme court.
- Article 136- Special leaves for appeal to the Supreme Court.
- Article 137- Review of judgement or orders by the Supreme court.
- Article 141-Decision of the Supreme Court binding on all the courts.

- Article 148- Comptroller and Auditor- General of India
- Article 149- Duties and Powers of CAG.

Part 6 – States (152-237)

- Article 153- Governors of State
- Article 154- Executive Powers of Governor.
- Article 161- Pardoning powers of the Governor.
- Article 165- Advocate-General of the State.
- Article 213- Power of Governor to promulgate ordinances.
- Article 214- High Courts for states.
- Article 215- High Courts to be a court of record.
- Article 226- Power of High Courts to issue certain writs.
- Article 233- Appointment of District judges.
- Article 235- Control over Subordinate Courts.

Part 7 – 238 – Repealed

Part 8 – 239-242 – Union Territories

Part 9 – 243-243 O – Panchayats

- Article 243A- Gram Sabha
- Article 243B- Constitution of Panchayats

Part 9A – 243 P-243 ZG – Municipalities

Part 9B – 243 ZH-243 ZT- Co-operative Societies

Part 10: Scheduled and Tribal Areas -244

Part 11: Center- State Relations 245 – 263

Part 12: Finance, Property, Contracts and Suits (264 – 300A)

- Article 266- Consolidated Fund and Public Accounts Fund

- Article 267- Contingency Fund of India
- Article 280- Finance Commission
- Article 300-A- Right to property.

Part 13: Trade, Commerce and Intercourse within the territories of India (301-307)

- Article 301-Freedom to trade, commerce, and intercourse.
- Article 302- Power of Parliament to impose restrictions on trade, commerce, and intercourse.

Part 14: Services Under Center and State (308-323)

- Article 312- All- India-Service.
- Article 315- Public service commissions for the union and for the states
- Article 320- Functions of Public Service Commission.

Part 14A: Tribunals (323 A – 323 B)

- Article 323A- Administrative Tribunals

Part 15 : Elections (324 – 329)

- Article 324-Superintendence, direction and control of Elections to be vested in an Election Commission.
- Article 325- No person to be ineligible for inclusion in or to claim to be included in a special, electoral roll on grounds of religion, race, caste, or sex.
- Article 326- Elections to the house of the people and to the legislative assemblies of states to be on the basis of adult suffrage.

Part 16: Special Provisions to SC, ST, OBC, Minorities etc (330 -342)

- Article 338- National Commission for the SC, & ST.
- Article 340- Appointment of a commission to investigate the conditions of backward classes.

Part 17: Official Language (343- 351)

- Article 343- Official languages of the Union.
- Article 345- Official languages or languages of states.
- Article 348- Languages to be used in the Supreme Court and in the High Courts.
- Article 351-Directive for development of the Hindi languages.

Part 18: Emergency (352-360)

- Article 352- Proclamation of emergency (National Emergency).
- Article 356- State Emergency (President's Rule)
- Article 360- Financial Emergency

Part 19: Miscellaneous (361-367)

- Article 361- Protection of President and Governors

Part 20: Amendment of Constitution (368)

- Article 368- Powers of Parliaments to amend the constitution.

Part 21: Special, Transitional and Temporary Provisions (369 – 392)

- Article 370 – Special provision of J&K.
- Article 371A – Special provision with respect to the State of Nagaland
- Article 371-J: Special Status for Hyderabad-Karnataka region

Part 22: Short Text, Commencement, Authoritative Text in Hindi and Repeals (392 – 395)

- Article 393 – Short title – This Constitution may be called the Constitution of India.

Indian Constitution

The below-mentioned posts follow the same order of the Constitution of India and hence we strongly suggest all aspirants follow the same for easy comprehension. Then build your concepts with respect to the three organs of the state, ie Executive, Legislature and Judiciary by reading the posts below.

Preamble to the Indian Constitution

The preamble to the Constitution of India is a brief introductory statement that sets out the guiding purpose, principles and philosophy of the constitution. The preamble gives an idea about the following : (1) the source of the constitution, (2) the nature of the Indian state (3) a statement of its objectives and (4) the date of its adoption.

The phrase “We the people of India” emphasizes that the constitution is made by and for the Indian people and not given to them by any outside power.

It also emphasizes the concept of popular sovereignty as laid down by Rousseau: All the power emanates from the people and the political system will be accountable and responsible to the people.

Nature of Indian state

1. **Sovereign:** India is internally and externally sovereign – externally free from the control of any foreign power and internally, it has a free government that is directly elected by the people and makes laws that govern the people. No external power can dictate the government of India.
2. **Socialist:** “Socialism” is an economic philosophy where means of production and distribution are owned by the State. India adopted a Mixed Economy, where apart from the state, there will be private production too. Socialism as a social philosophy stresses more on societal equality.
3. **Secular:** Features of secularism as envisaged in the Preamble is to mean that the state will have no religion of its own and all persons will be equally entitled to the freedom of conscience and the right freely to profess, practice and propagate the religion of their choice. (S R Bommai and Others v Union of India, AIR 1994 SC 1918)
4. **Democratic:** Indicates that the Constitution has established a form of government that gets its authority from the will of the people. The rulers are elected by the people and are responsible to them.
5. **Republic:** As opposed to a monarchy, in which the head of state is appointed on the hereditary basis for a lifetime or until he abdicates from the throne, a democratic republic is an entity in which the head of state is elected, directly or indirectly, for a

fixed tenure. The President of India is elected by an electoral college for a term of five years. The post of the President Of India is not hereditary. Every citizen of India is eligible to become the President of the country.

Objectives of Indian State

1. Justice: Social, Economic and Political.
2. Equality: status and opportunity.
3. Liberty: of thought, expression, belief, faith and worship
4. Fraternity (=Brotherhood): assuring the dignity of the individual and the unity and integrity of the nation.

Date of its adoption

The date of adoption of the Constitution is 26th November 1949. But most of the articles in the Constitution came into force on January 26th, 1950. Those articles which came into existence on 26th November 1949 are given by Article 394.

Article 394 states that this article (394) and articles 5, 6, 7, 8, 9, 60, 324, 366, 367, 379, 380, 388, 391, 392 and 393 shall come into force at once, and the remaining provisions of this Constitution shall come into force on the twenty-sixth day of January 1950, which day is referred to in this Constitution as the commencement of this Constitution.

26 January was selected for this purpose because it was this day in 1930 when the Declaration of Indian Independence (Purna Swaraj) was proclaimed by the Indian National Congress.

Info Bits related to Preamble of Indian Constitution

- Who was the Calligrapher of the Indian Constitution: Prem Behari Narain Raizada (1901–1966) was the calligrapher who hand-wrote the Constitution of India.
- Who was the chief artist behind the illustration of the original Indian Constitution: Nandalal Bose took up the historic task of beautifying/decorating the original manuscript of the Constitution of India. He was assisted by his disciple Beohar Rammanohar Sinha.

- Who designed and decorated the Preamble page of the Indian Constitution: The preamble page, along with other pages of the original Constitution of India, was designed and decorated solely by renowned painter Beohar Rammanohar Sinha of Jabalpur.
- The Supreme Court of India has, in the *Kesavananda* case, recognised that the preamble may be used to interpret ambiguous areas of the constitution where differing interpretations present themselves. (In the 1995 case of Union Government Vs LIC of India also the Supreme Court has once again held that Preamble is an integral part of the Constitution.
- As originally enacted the preamble described the state as a “sovereign democratic republic”. In 1976 the Forty-second Amendment changed this by adding words *socialist* and *secular* to read “sovereign *socialist secular* democratic republic”.

The Union and its Territory : Part I (Articles 1- 4)

Part I of the Indian Constitution is titled The Union and its Territory. It includes articles from 1- 4. Part I is a compilation of laws pertaining to the constitution of India as a country and the union of states that it is made of. This part of the constitution contains the law in the establishment, renaming, merging or altering the borders of the states. Articles under Part I were invoked when West Bengal was renamed, and for formation of relatively new states such as Jharkhand, Chattisgarh or Telangana.

ARTICLE 1 : NAME AND TERRITORY OF THE UNION

- (1) India, that is Bharat, shall be a Union of States.
- (2) The States and the territories thereof shall be as specified in the First Schedule.
- (3) The territory of India shall comprise –
 - (a) the territories of the States;
 - (b) the Union territories specified in the First Schedule; and
 - (c) such other territories may be acquired.

ARTICLE 2 : ADMISSION OR ESTABLISHMENT OF NEW STATES

Parliament may by law admit into the Union, or establish, new States on such terms and conditions as it thinks fit.

ARTICLE 2A : SIKKIM TO BE ASSOCIATED WITH THE UNION

ARTICLE 3 : FORMATION OF NEW STATES AND ALTERATION OF AREAS, BOUNDARIES OR NAMES OF EXISTING STATES

Parliament may by law –

(a) form a new State by separation of territory from any State or by uniting two or more States or parts of States or by uniting any territory to a part of any State;

(b) increase the area of any State;

(c) diminish the area of any State;

(d) alter the boundaries of any State;

(e) alter the name of any State:

Provided that no Bill for the purpose shall be introduced in either House of Parliament except on the recommendation of the President and unless, where the proposal contained in the Bill affects the area, boundaries or name of any of the States, the Bill has been referred by the President to the Legislature of that State for expressing its views thereon within such period as may be specified in the reference or within such further period as the President may allow and the period so specified or allowed has expired.

Explanation I: In this article, in clauses (a) to (e), “State” includes a Union territory, but in the proviso, “State” does not include a Union territory.

Explanation II: The power conferred on Parliament by clause (a) includes the power to form a new State or Union territory by uniting a part of any other State or Union territory to any other State or Union territory.

ARTICLE 4 : LAWS MADE UNDER ARTICLES 2 AND 3 TO PROVIDE FOR THE AMENDMENT OF THE FIRST AND THE FOURTH SCHEDULE AND SUPPLEMENTAL, INCIDENTAL AND CONSEQUENTIAL MATTERS

(1) Any law referred to in article 2 or article 3 shall contain such provisions for the amendment of the First Schedule and the Fourth Schedule as may be necessary to give effect to the provisions of the law and may also contain such supplemental, incidental and consequential

provisions (including provisions as to representation in Parliament and in the Legislature or Legislatures of the State or States affected by such law) as Parliament may deem necessary.

(2) No such law as aforesaid shall be deemed to be in amendment of this Constitution for the purposes of article 368.

Info-bits related to Part I : The Union and the territory (Articles 1- 4)

- Article under which Sikkim was made part of Indian Union : Article 2a.
- Article under which Telangana was made part of Indian Union : Article 3.
- Article 3 original provision was amended by the Constitution (fifth amendment) Act, 1955 on 24 December 1955.
- Nowhere under Part I, it is mentioned that India is a federal state. It rather uses the phrase “Union of States”.
- Territorial Waters vs International Waters: The territorial waters and the exclusive economic zones shall also become part of the states or union territories in the absence of any listing of them separately in Schedule 1 and 4 of the constitution.
- An economic zone (EEZ) is a seazone prescribed by the United Nations Convention on the Law of the Sea over which a state has special rights over the exploration and use of marine resources, including energy production from water and wind. It stretches from the baseline out to 200 nautical miles (370 km) from its coast.
- The difference between the territorial sea and the exclusive economic zone is that the first confers full sovereignty over the waters, whereas the second is merely a “sovereign right” which refers to the coastal state’s rights below the surface of the sea. The surface waters, as can be seen in the map, are international waters.
- The constitution (40th amendment) act, 1976, substituted a new Article 297 so as to vest in the Union of India all lands, minerals, and other things of value underlying the ocean within the territorial waters or continental shelf or exclusive economic zone of India.
- *The territorial waters, continental shelf, exclusive economic zone and other maritime zones act, 1976* was enacted by the Indian government to notify the sovereign rights on these areas for dealings with other countries.

- However, it is not clear whether states are debarred from imposing taxes or royalty on the minerals extracted from the territorial waters and the exclusive economic zone (which are still under states jurisdiction) as per serial no. 50 of the states listed in the seventh schedule of the constitution.
- For creation or destruction of a state the permission from the concerned state is not mandatory under Indian Constitution. But the bill has to be referred to the concerned state legislature for expressing its views.
- Prior recommendation of the President of India is necessary for the state creation/renaming bill. (Article 3). No such provision is mandatory under Article 2 (new states).

Citizenship: Part II : (Articles 5-11)

Part II of the Constitution of India (Articles 5-11) deals with the Citizenship of India.

Article 5 speaks about the citizenship of India at the commencement of the Constitution (Nov 26, 1949). Article 11 gave powers to the Parliament of India to regulate the right of citizenship by law. This provision resulted in the enactment of the Citizenship Act 1955 by the Indian Parliament.

ARTICLE 5 : CITIZENSHIP AT THE COMMENCEMENT OF THE CONSTITUTION

At the commencement of this Constitution, every person who has his domicile in the territory of India and –

- (a) who was born in the territory of India; or
- (b) either of whose parents was born in the territory of India; or

(c) who has been ordinarily resident in the territory of India for not less than five years immediately preceding such commencement, shall be a citizen of India.

ARTICLE 6: RIGHTS OF CITIZENSHIP OF CERTAIN PERSONS WHO HAVE MIGRATED TO INDIA FROM PAKISTAN

Notwithstanding anything in article 5, a person who has migrated to the territory of India from the territory now included in Pakistan shall be deemed to be a citizen of India at the commencement of this Constitution if –

(a) he or either of his parents or any of his grand-parents was born in India as defined in the Government of India Act, 1935 (as originally enacted); and

(b)(i) in the case where such person has so migrated before the nineteenth day of July, 1948, he has been ordinarily resident in the territory of India since the date of his migration, or

(ii) in the case where such person has so migrated on or after the nineteenth day of July, 1948, he has been registered as a citizen of India by an officer appointed in that behalf by the Government of the Dominion of India on an application made by him therefore to such officer before the commencement of this Constitution in the form and manner prescribed by that Government:

Provided that no person shall be so registered unless he has been resident in the territory of India for at least six months immediately preceding the date of his application.

ARTICLE 7: RIGHTS OF CITIZENSHIP OF CERTAIN MIGRANTS TO PAKISTAN

Notwithstanding anything in articles 5 and 6, a person who has after the first day of March 1947, migrated from the territory of India to the territory now included in Pakistan shall not be deemed to be a citizen of India:

Provided that nothing in this article shall apply to a person who, after having so migrated to the territory now included in Pakistan, has returned to the territory of India under a permit for resettlement or permanent return issued by or under the authority of any law and every such person shall for the purposes of clause (b) of Article 6 be deemed to have migrated to the territory of India after the nineteenth day of July, 1948.

ARTICLE 8: RIGHTS OF CITIZENSHIP OF CERTAIN PERSONS OF INDIAN ORIGIN RESIDING OUTSIDE INDIA

Notwithstanding anything in article 5, any person who or either of whose parents or any of whose grandparents was born in India as defined in the Government of India Act, 1935 (as originally enacted), and who is ordinarily residing in any country outside India as so defined shall be deemed to be a citizen of India if he has been registered as a citizen of India by the diplomatic or consular representative of India in the country where he is for the time being residing on an application made by him therefore to such diplomatic or consular representative, whether before

or after the commencement of this Constitution, in the form and manner prescribed by the Government of the Dominion of India or the Government of India.

ARTICLE 9: PERSONS VOLUNTARILY ACQUIRING CITIZENSHIP OF A FOREIGN STATE NOT TO BE CITIZENS

No person shall be a citizen of India by virtue of article 5 or be deemed to be a citizen of India by virtue of article 6 or article 8 if he has voluntarily acquired the citizenship of any foreign State.

ARTICLE 10: CONTINUANCE OF THE RIGHTS OF CITIZENSHIP

Every person who is or is deemed to be a citizen of India under any of the foregoing provisions of this Part shall, subject to the provisions of any law that may be made by Parliament, continue to be such citizen.

ARTICLE 11: PARLIAMENT TO REGULATE THE RIGHT OF CITIZENSHIP BY LAW

Nothing in the foregoing provisions of this Part shall derogate from the power of Parliament to make any provision with respect to the acquisition and termination of citizenship and all other matters relating to citizenship.

Info-bits related to Citizenship of India

- The conferment of a person, as a citizen of India, is governed by Articles 5 to 11 (Part II) of the Indian Constitution.
- Apart from the above Articles of the Indian Constitution, citizenship is also deeply connected with the Citizenship Act, which was passed by the Indian Parliament in 1955.
- Citizenship Act 1955 speaks about the citizenship of India after the commencement of the Constitution. It is an act to provide for the acquisition and termination of Indian citizenship.
- The legislation related to this matter is the Citizenship Act 1955, which has been amended by the Citizenship (Amendment) Act 1986, the Citizenship (Amendment) Act 1992, the Citizenship (Amendment) Act 2003, the Citizenship (Amendment) Act, 2005, and the Citizenship (Amendment Act, 2019).

- Acquisition of Indian Citizenship as per Citizenship Act 1955: Indian Citizenship can be acquired under the following ways : (1) Citizenship at the commencement of the constitution of India (2) Citizenship by birth: NB – This provision has different clauses for different periods (3) Citizenship by descent (4) Citizenship by registration (5) Citizenship by naturalization.
- Termination of Indian Citizenship as per Citizenship Act 1955: One can lose citizenship of India in three ways – Renunciation, Termination and Deprivation
- Persons domiciled in the territory of India as on 26 November 1949 automatically became Indian citizens by virtue of the operation of the relevant provisions of the Indian Constitution coming into force. (Citizenship at the commencement of the constitution of India.)
- Any person born in India on or after 26 January 1950, but prior to the commencement of the 1986 Act on 1 July 1987, is a citizen of India by birth. [Citizenship by birth]
- A person born in India on or after 1 July 1987 is a citizen of India if either parent was a citizen of India at the time of the birth. [Citizenship by birth]
- Those born in India on or after 3 December 2004 are considered citizens of India only if both of their parents are citizens of India or if one parent is a citizen of India and the other is not an illegal migrant at the time of their birth. [Citizenship by birth].
- Indian nationality law largely follows the jus sanguinis (citizenship by right of blood) as opposed to the jus soli (citizenship by right of birth within the territory).
- Article 9 of Indian Constitution says that a person who voluntarily acquires citizenship of any other country is no longer an Indian citizen. Also, according to The Passports Act, a person has to surrender his Indian passport if he acquires citizenship of another country, it is a punishable offense under the act if he fails to surrender the passport.
- Persons of Indian Origin (PIO) Card: A PIO card applicant has to be a person of Indian origin who is a citizen of any country, other than Pakistan, Bangladesh, Sri Lanka, Bhutan, Afghanistan, China and Nepal; or a person who has held an Indian passport at any time or is the spouse of an Indian citizen or a person of Indian origin;

- Overseas Citizen of India (OCI) card: OCI Card is for foreign nationals who were eligible to become a citizen of India on 26.01.1950 or were a citizen of India on or after that date. Applications from citizens of Bangladesh and Pakistan are not allowed.
- Overseas Indian Card: A new Bill is pending in Parliament [The Citizenship (Amendment) Bill], which seeks to do away with the existing overseas citizen of India (OCI) card and the person of Indian origin (PIO) card, and replace them with a new overseas Indian card.
- While PIO cardholders do not require a separate visa and can enter India with multiple entry facility for 15 years; the OCI card is multiple entries, multi-purpose lifelong visa for visiting India. OCI card-holders have parity with non-resident Indians in respect of economic, financial and educational matters except in acquiring agricultural land.
- A PIO cardholder is required to register with local Police authorities for any stay exceeding 180 days in India on any single visit.
- OCI is not dual citizenship. There are no voting rights for an OCI cardholder.
- The President of India is termed the first Citizen of India.

Fundamental Rights : Part III (Articles 12-35)

Part III of the Indian Constitution talks about Fundamental Rights.

The fundamental rights were included in the constitution because they were considered essential for the development of the personality of every individual and to preserve human dignity.

All people, irrespective of race, religion, caste or sex, have been given the right to move the Supreme Court and the High Courts for the enforcement of their fundamental rights. There are seven categories of Fundamental Rights (FR) which are covered from Articles 12-35.

ARTICLE 12 : DEFINITION

In this Part, unless the context otherwise required, “the State” includes the Governmental and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India.

ARTICLE 13 : LAWS INCONSISTENT WITH OR IN DEROGATION OF THE FUNDAMENTAL RIGHTS

(1) All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void.

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

(3) In this article, unless the context otherwise required, – (a) “law” includes any Ordinance, order, bye-law, rule, regulation, notification, custom or usage having in the territory of India the force of law;

(b) “laws in force” includes laws passed or made by a Legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that any such law or any part thereof may not be then in operation either at all or in particular areas.

(4) Nothing in this article shall apply to any amendment of this Constitution made under article 368.

ARTICLE 14 : EQUALITY BEFORE LAW

The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

ARTICLE 15 : PROHIBITION OF DISCRIMINATION ON GROUNDS OF RELIGION, RACE, CASTE, SEX OR PLACE OF BIRTH

(1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

(2) No citizen shall, on ground only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to –

(a) access to shops, public restaurants, hotels and places of public entertainment; or

(b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained whole or partly out of State funds or dedicated to the use of the general public.

(3) Nothing in this article shall prevent the State from making any special provision for women and children.

(4) Nothing in this article or in clause (2) or article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.

ARTICLE 16 : EQUALITY OF OPPORTUNITY IN MATTERS OF PUBLIC EMPLOYMENT

(1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.

(2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.

(3) Nothing in this article shall prevent Parliament from making any law prescribing, in regard to a class or classes of employment or appointment to an office under the Government of, or any local or other authority within, a State or Union territory, any requirement as to residence within that State or Union territory prior to such employment or appointment.

(4) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favor of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State.

(4A) Nothing in this article shall prevent the State from making any provision for reservation in matters of promotion to any class or classes of posts in the services under the State in favor of the Scheduled Castes and the Scheduled Tribes which, in the opinion of the State, are not adequately represented in the services under the State.

(5) Nothing in this article shall affect the operation of any law which provides that the incumbent of an office in connection with the affairs of any religious or denominational institution or any member of the governing body thereof shall be a person professing a particular religion or belonging to a particular denomination.

ARTICLE 17 : ABOLITION OF UNTOUCHABILITY

“Untouchability” is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of “Untouchability” shall be an offence punishable in accordance with law.

ARTICLE 18 : ABOLITION OF TITLES

(1) No title, not being a military or academic distinction, shall be conferred by the State.

(2) No citizen of India shall accept any title from any foreign State.

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

(4) No person holding any office of profit or trust under the State shall, without the consent of the President, accept any present, emolument, or office of any kind from or under any foreign State.

ARTICLE 19 : PROTECTION OF CERTAIN RIGHTS REGARDING FREEDOM OF SPEECH, ETC.

(1) All citizens shall have the right –

- (a) to freedom of speech and expression;
- (b) to assemble peaceably and without arms;
- (c) to form associations or unions;
- (d) to move freely throughout the territory of India;
- (e) to reside and settle in any part of the territory of India; and
- (f) to practice any profession, or to carry on any occupation, trade or business.

(2) Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence.

(3) Nothing in sub-clause (b) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interest of

the sovereignty and integrity of India or public order, reasonable restrictions on the right conferred by the said sub-clause.

(4) Nothing in sub-clause (c) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the sovereignty and integrity of India or public order or morality, reasonable restrictions on the exercise of the right conferred by the said sub-clause.

(5) Nothing in sub-clause (d) and (e) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, reasonable restrictions on the exercise of any of the rights conferred by the said sub-clauses either in the interests of the general public or for the protection of the interests of any Schedule Tribe.

(6) Nothing in sub-clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub-clause, and, in particular, nothing in the said sub-clause shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to, –

(i) the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business, or

(ii) the carrying on by the State, or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise.

ARTICLE 20 : PROTECTION IN RESPECT OF CONVICTION FOR OFFENCES

(1) 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, not 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.

(2) No person shall be prosecuted and punished for the same offence more than once.

(3) No person accused of any offence shall be compelled to be a witness against himself.

ARTICLE 21 : PROTECTION OF LIFE AND PERSONAL LIBERTY

No person shall be deprived of his life or personal liberty except according to procedure established by law.

Article 21A: Right to education

The 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.

ARTICLE 22 : PROTECTION AGAINST ARREST AND DETENTION IN CERTAIN CASES

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

(2) Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate.

(3) Nothing in clauses (1) and (2) shall apply –

- (a) to any person who for the time being is an enemy alien; or
- (b) to any person who is arrested or detained under any law providing for preventive detention.

(4) No law providing for preventive detention shall authorize the detention of a person for a longer period than three months unless –

(a) an Advisory Board consisting of persons who are, or have been, or are qualified to be appointed as, Judges of a High Court has reported before the expiration of the said period of three months that there is in its opinion sufficient cause for such detention:

Provided that nothing in this sub-clause shall authorize the detention of any person beyond the maximum period prescribed by any law made by Parliament under sub-clause (b) of clause (7);
or

(b) such a person is detained in accordance with the provisions of any law made by Parliament under sub-clauses (a) and (b) of clause (7).

(5) When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order.

(6) Nothing in clause (5) shall require the authority making any such order as is referred to in that clause to disclose facts which such authority considers to be against the public interest to disclose.

(7) Parliament may by law prescribe –

(a) the circumstances under which, and the class or classes of cases in which, a person may be detained for a period longer than three months under any law providing for preventive detention without obtaining the opinion of an Advisory Board in accordance with the provisions of sub-clause (a) of clause (4);

(b) the maximum period for which any person may in any class or classes of cases be detained under any law providing for preventive detention; and

(c) the procedure to be followed by an Advisory Board in an inquiry under sub-clause (a) of clause (4).

ARTICLE 23 : PROHIBITION OF TRAFFIC IN HUMAN BEINGS AND FORCED LABOUR

(1) Traffic in human beings and beggars and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.

(2) Nothing in this article shall prevent the State from imposing compulsory service for public purposes, and in imposing such service the State shall not make any discrimination on ground only of religion, race, caste or class or any of them.

ARTICLE 24 : PROHIBITION OF EMPLOYMENT OF CHILDREN IN FACTORIES, ETC.

No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment.

ARTICLE 25 : FREEDOM OF CONSCIENCE AND FREE PROFESSION, PRACTICE AND PROPAGATION OF RELIGION

(1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion.

(2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law –

(a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;

(b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.

Explanation I: The wearing and carrying of kirpans shall be deemed to be included in the profession of the Sikh religion.

Explanation II: In sub-Clause (b) of clause (2), the reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jaina or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly.

ARTICLE 26 : FREEDOM TO MANAGE RELIGIOUS AFFAIRS

Subject to public order, morality and health, every religious denomination or any section thereof shall have the right –

(a) to establish and maintain institutions for religious and charitable purposes;

(b) to manage its own affairs in matters of religion;

(c) to own and acquire movable and immovable property; and

(d) to administer such property in accordance with the law.

ARTICLE 27 : FREEDOM AS TO PAYMENT OF TAXES FOR PROMOTION OF ANY PARTICULAR RELIGION

No person shall be compelled to pay any taxes, the proceeds of which are specifically appropriated in payment of expenses for the promotion or maintenance of any particular religion or religious denomination.

ARTICLE 28 : FREEDOM AS TO ATTENDANCE AT RELIGIOUS INSTRUCTION OR RELIGIOUS WORSHIP IN CERTAIN EDUCATIONAL INSTITUTIONS

(1) No religious instruction shall be provided in any educational institution wholly maintained out of State funds.

(2) Nothing in clause (1) shall apply to an educational institution which is administered by the State but has been established under any endowment or trust which requires that religious instruction shall be imparted in such institution.

(3) No person attending any educational institution recognised by the State or receiving aid out of State funds shall be required to take part in any religious instruction that may be imparted in such institution or to attend any religious worship that may be conducted in such institution or in any premises attached thereto unless such person or, if such person is minor, his guardian has given his consent thereto.

ARTICLE 29 : PROTECTION OF INTERESTS OF MINORITIES

(1) Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same.

(2) No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.

ARTICLE 30 : RIGHT OF MINORITIES TO ESTABLISH AND ADMINISTER EDUCATIONAL INSTITUTIONS

(1) All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.

(1A) In making any law providing for the compulsory acquisition of any property of an educational institution established and administered by a minority, referred to in clause (1), the State shall ensure that the amount fixed by or determined under such law for the acquisition of such property is such as would not restrict or abrogate the right guaranteed under that clause.

(2) The State shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language.

ARTICLE 31 : COMPULSORY ACQUISITION OF PROPERTY

ARTICLE 31A : SAVING OF LAWS PROVIDING FOR ACQUISITION OF ESTATES, ETC.

(1) Notwithstanding anything contained in article 13, no law providing for –

(a) the acquisition by the State of any estate or of any rights therein or the extinguishment or modification of any such rights, or

(b) the taking over of the management of any property by the State for a limited period either in the public interest or in order to secure the proper management of the property, or

(c) the amalgamation of two or more corporations either in the public interest or in order to secure the proper management of any of the corporations, or

(d) the extinguishment or modification of any rights of managing agents, secretaries and treasurers, managing directors, directors or managers of corporations, or of any voting rights of share-holders thereof, or

(e) the extinguishment or modification of any rights accruing by virtue of any agreement, lease or license for the purpose of searching for, or winning, any mineral or mineral oil, or the premature termination or cancellation of and such agreement, lease or license, shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by article 14 or article 19: Provided that where such law is a law made by the Legislature of a State, the provisions of this article shall not apply thereto unless such law, having been reserved for the consideration of the President, has received his assent:

Provided further that where any law makes any provision for the acquisition by the State of any estate and where any land comprised therein is held by a person under his personal cultivation, it shall not be lawful for the State to acquire any portion of such land as is within the ceiling limit applicable to him under any law for the time being in force or any building or structure standing thereon or appurtenant thereto, unless the law relating to the acquisition of such land, building or structure, provides for payment of compensation at a rate which shall not be less than the market value thereof.

(2) In this article, –

(a) the expression “estate” shall, in relation to any local area, have the same meaning as that expression or its local equivalent has in the existing law relating to land tenure in force in that area and shall also include –

(i) any jagir, inam or muafi or other similar grant and in the States of Tamil Nadu and Kerala, any janmam right;

(ii) any land held under ryotwari settlement;

(iii) any land held or let for purposes of agriculture or for purposes ancillary thereto, including waste land, forest land, land for pasture or sites of buildings and other structures occupied by cultivators of land, agricultural labourers and village artisans;

(b) the expression “rights”, in relation to an estate, shall include any rights vesting in a proprietor, sub-proprietor, under-proprietor, tenure-holder, raiyat, under-raiyat or other intermediary and any rights or privileges in respect of land revenue.

ARTICLE 31B : VALIDATION OF CERTAIN ACTS AND REGULATIONS

Without prejudice to the generality of the provisions contained in article 31A, none of the Acts and Regulations specified in the Ninth Schedule nor any of the provision thereof shall be deemed to be void, or even to have become void, on the ground that such Act, Regulation or provision is inconsistent with, or takes away or abridges any of the rights conferred by, any provisions of this part, and notwithstanding any judgment, decree or order of any court or tribunal to the contrary, each of the said Acts and Regulations shall, subject to the power of any competent Legislature to repeal or amend it, continue in force.

ARTICLE 31C : SAVING OF LAWS GIVING EFFECT TO CERTAIN DIRECTIVE PRINCIPLES

Notwithstanding anything contained in article 13, no law giving effect to the policy of the State towards securing all or any of the principles laid down in Part IV shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by article 14 or article 19; and no law containing a declaration that it is for giving effect to such policy shall be called in question in any court on the ground that it does not give effect to such policy:

Provided that where such law is made by the Legislature of a State, the provisions of this article shall not apply thereto unless such law, having been reserved for the consideration of the President, has received his assent.

ARTICLE 31D : SAVING LAWS IN RESPECT OF ANTI-NATIONAL ACTIVITIES {...}

ARTICLE 32 : REMEDIES FOR ENFORCEMENT OF RIGHTS CONFERRED BY THIS PART

(1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed.

(2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part.

(3) Without prejudice to the powers conferred on the Supreme Court by clauses (1) and (2), Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2).

(4) The right guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution.

ARTICLE 32A : CONSTITUTIONAL VALIDITY OF STATE LAWS NOT TO BE CONSIDERED IN PROCEEDINGS UNDER ARTICLE 32

ARTICLE 33 : POWER OF PARLIAMENT TO MODIFY THE RIGHTS CONFERRED BY THIS PART IN THEIR APPLICATION TO FORCES, ETC.

Parliament may, by law, determine to what extent any of the rights conferred by this Part shall, in their application to, –

- (a) the members of the Armed Forces; or
- (b) the members of the Forces charged with the maintenance of public order; or
- (c) persons employed in any bureau or other organisation established by the State for purposes of intelligence or counterintelligence; or
- (d) persons employed in, or in connection with, the telecommunication systems set up for the purposes of any Force, bureau or organisation referred to in clauses (a) to (c),

be restricted or abrogated so as to ensure the proper discharge of their duties and the maintenance of discipline among them.

ARTICLE 34 : RESTRICTION ON RIGHTS CONFERRED BY THIS PART WHILE MARTIAL LAW IS IN FORCE IN ANY AREA

Notwithstanding anything in the foregoing provisions of this Part, Parliament may by law indemnify any person in the service of the Union or of a State or any person in respect of any act

done by him in connection with the maintenance or restoration or order in any area within the territory of India where martial law was in force or validate any sentence passed, punishment inflicted, forfeiture ordered or other act done under martial law in such area.

ARTICLE 35 : LEGISLATION TO GIVE EFFECT TO THE PROVISIONS OF THIS PART

Notwithstanding anything in this Constitution, –

(a) Parliament shall have, and the Legislature of a State shall not have, power to make laws—

(i) With respect to any of the matters which under clause (3) of article 16, clause (3) of article 32, article 33 and article 34 may be provided for by law made by Parliament; and

(ii) for prescribing punishment for those acts which are declared to be offences under this part,

and Parliament shall, as soon as may be after the commencement of this Constitution, make laws for prescribing punishment for the acts referred to in sub-clause (ii);

(b) any law in force immediately before the commencement of this Constitution in the territory of India with respect to any of the matters referred to in sub-clause (i) of clause (a) or providing for punishment for any act referred to in sub-clause (ii) of that clause shall, subject to the terms thereof and to any adaptations and modifications that may be made therein under article 372, continue in force until altered or repealed or amended by Parliament.

Explanation: In this article, the expression “law in force” has the same meaning as in article 372.

Directive Principles of Our State Policy: Part IV (Articles 36-51)

Part IV of the Indian Constitution deals with Directive Principles of our State Policy (DPSP).

The provisions contained in this Part cannot be enforced by any court, but these principles are fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws.

The concept of Directive Principles of State Policy was borrowed from the Irish Constitution. While most of the Fundamental Rights are negative obligations on the state, DPSPs are positive obligations on the state, though not enforceable in a court of law.

ARTICLE 36: DEFINITION

In this Part, unless the context otherwise requires, “the State” has the same meaning as in Part III.

ARTICLE 37: APPLICATION OF THE PRINCIPLES CONTAINED IN THIS PART

The provisions contained in this Part shall not be enforced by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws.

ARTICLE 38: STATE TO SECURE A SOCIAL ORDER FOR THE PROMOTION OF THE WELFARE OF THE PEOPLE

(1) The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life.

(2) The State shall, in particular, strive to minimise the inequalities in income, and endeavour 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.

ARTICLE 39: CERTAIN PRINCIPLES OF POLICY TO BE FOLLOWED BY THE STATE

The State shall, in particular, direct its policy towards securing –

(a) that the citizen, men and women equally, have the right to an adequate means of livelihood;

(b) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;

(c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;

(d) that there is equal pay for equal work for both men and women;

(e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;

(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 39A: EQUAL JUSTICE AND FREE LEGAL AID

The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.

ARTICLE 40: ORGANIZATION OF VILLAGE PANCHAYATS

The State shall take steps to organise village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government.

ARTICLE 41: RIGHT TO WORK, TO EDUCATION AND TO PUBLIC ASSISTANCE IN CERTAIN CASES

The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.

ARTICLE 42: PROVISION FOR JUST AND HUMANE CONDITIONS OF WORK AND MATERNITY RELIEF

The State shall make provision for securing just and humane conditions of work and for maternity relief.

ARTICLE 43: LIVING WAGE, ETC., FOR WORKERS

The State shall endeavor to secure, by suitable legislation or economic organization or in any 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 and social and cultural

opportunities and, in particular, the State shall endeavour to promote cottage industries on an individual or co-operative basis in rural areas.

ARTICLE 43A: PARTICIPATION OF WORKERS IN MANAGEMENT OF INDUSTRIES

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.

ARTICLE 44: UNIFORM CIVIL CODE FOR THE CITIZEN

The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India.

ARTICLE 45: PROVISION FOR FREE AND COMPULSORY EDUCATION FOR CHILDREN

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 46: PROMOTION OF EDUCATIONAL AND ECONOMIC INTERESTS OF SCHEDULED CASTES, SCHEDULED TRIBES AND OTHER WEAKER SECTIONS

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.

ARTICLE 47: DUTY OF THE STATE TO RAISE THE LEVEL OF NUTRITION AND THE STANDARD OF LIVING AND TO IMPROVE PUBLIC HEALTH

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 endeavour to bring about prohibition of the consumption except for medicinal purpose of intoxicating drinks and of drugs which are injurious to health.

ARTICLE 48: ORGANIZATION OF AGRICULTURE AND ANIMAL HUSBANDRY

The State shall endeavour 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.

ARTICLE 48A: PROTECTION AND IMPROVEMENT OF ENVIRONMENT AND SAFEGUARDING OF FORESTS AND WILDLIFE

The State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country.

ARTICLE 49: PROTECTION OF MONUMENTS AND PLACES AND OBJECTS OF NATIONAL IMPORTANCE

It shall be the obligation of the State 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.

ARTICLE 50: SEPARATION OF JUDICIARY FROM THE EXECUTIVE

The State shall take steps to separate the judiciary from the executive in the public services of the State.

ARTICLE 51: PROMOTION OF INTERNATIONAL PEACE AND SECURITY

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 organised people with one another; and
- (d) encourage settlement of international disputes by arbitration.

Fundamental Duties : Part IVA (Article 51A)

Part IVA of the Indian Constitution deals with Fundamental Duties. As of now, there are 11 Fundamental duties.

Originally, the Constitution of India did not contain these duties. Fundamental duties were added by 42nd and 86th Constitutional Amendment acts.

Citizens are morally obligated by the Constitution to perform these duties. However, like the Directive Principles, these are non-justifiable, without any legal sanction in case of their violation or non-compliance.

Article 51A: Fundamental duties

It shall be the duty of every citizen of India –

- (a) to abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem;
- (b) to cherish and follow the noble ideals which inspired our national struggle for freedom;
- (c) to uphold and protect the sovereignty, unity and integrity of India;
- (d) to defend the country and render national service when called upon to do so;
- (e) to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women;
- (f) to value and preserve the rich heritage of our composite culture;
- (g) to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures;
- (h) to develop the scientific temper, humanism and the spirit of inquiry and reform;
- (i) to safeguard public property and to abjure violence;
- (j) to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement.
- (k) to provide opportunities for education by the parent, the guardian, to his child, or a ward between the age of 6-14 years as the case may be.

Info-bits related to Fundamental Duties

- The Fundamental Duties of citizens were added to the Constitution by the 42nd Amendment in 1976, upon the recommendations of the Swaran Singh Committee that was constituted by the government earlier that year.
- Fundamental duties are applicable only to citizens and not to the aliens.
- India borrowed the concept of Fundamental Duties from the USSR.

- The inclusion of Fundamental Duties brought our Constitution in line with article 29 (1) of the Universal Declaration of Human Rights and with provisions in several modern Constitutions of other countries.
- Out of the ten clauses in article 51A, six are positive duties and the other five are negative duties. Clauses (b), (d), (f), (h), (j) and (k) require the citizens to perform these Fundamental Duties actively.
- It is suggested that a few more Fundamental Duties, namely, duty to vote in an election, duty to pay taxes and duty to resist injustice may be added in due course to article 51A in Part IVA of the Constitution. (NATIONAL COMMISSION TO REVIEW THE WORKING OF THE CONSTITUTION: A Consultation Paper on EFFECTUATION OF FUNDAMENTAL DUTIES OF CITIZENS).
- It is no longer correct to say that Fundamental Duties enshrined in article 51A are not enforceable to ensure their implementation and are a mere reminder. Fundamental Duties have the element of compulsion regarding compliance.
- A number of judicial decisions are available towards the enforcement of certain clauses under Article 51A.
- Comprehensive legislation is needed for clauses (a), (c), (e), (g) and (i). The remaining 5 clauses, which are exhortations of basic human values, have to be developed amongst citizens through the education system by creating proper and graded curricular input from primary level of education to the higher and professional levels.
- Available Legal Provisions: Justice Verma Committee was constituted in 1998 “to work out a strategy as well as the methodology of operationalizing a countrywide programme for teaching fundamental Duties in every educational institution as a measure of in-service training”. The Verma Committee was conscious of the fact that any non-operationalization of Fundamental Duties might not necessarily be the lack of concern or non-availability of legal and other enforceable provisions, but it was more a case of lacuna in the strategy of implementation. It, therefore, thought it appropriate to list in brief some of the legal provisions already available in regard to enforcement of Fundamental Duties. A summary of such legal provisions is given below:

- In order to ensure that no disrespect is shown to the National Flag, Constitution of India and the National anthem, the Prevention of Insults to National Honour Act, 1971 was enacted.
- The Emblems and Names (Prevention of Improper Use) Act 1950 was enacted soon after independence, *inter alia*, to prevent improper use of the National Flag and the National Anthem.
- In order to ensure that the correct usage regarding the display of the National Flag is well understood, the instructions issued from time to time on the subject have been embodied in Flag Code of India, which has been made available to all the State Governments, and Union territory Administration (UTs).
- There are a number of provisions in the existing criminal laws to ensure that the activities which encourage enmity between different groups of people on grounds of religion, race, place of birth, residence, language, etc. are adequately punished. Writings, speeches, gestures, activities, exercise, drills, etc. aimed at creating a feeling of insecurity or ill-will among the members of other communities, etc. have been prohibited under Section 153A of the Indian Penal Code (IPC).
- Imputations and assertions prejudicial to the national integration constitute a punishable offence under Section 153 B of the IPC.
- A Communal organization can be declared unlawful association under the provisions of Unlawful Activities (Prevention) Act 1967.
- Offences related to religion are covered in Sections 295-298 of the IPC (Chapter XV).
- Provisions of the Protection of Civil Rights Act, 1955 (earlier the Untouchability (Offences) Act 1955).
- Sections 123(3) and 123(3A) of the Representation of People Act, 1951 declares that soliciting of vote on the ground of religion and the promotion or attempt to promote feelings of enmity or hatred between different classes of citizens of India on the grounds of religion, race, caste, community or language is a corrupt practice. A person indulging in a corrupt practice can be disqualified for being a Member of

Parliament or a State Legislature under Section 8A of the Representation of People Act, 1951.

The President of India (Articles 52-62)

Part V of the Constitution (The Union) under Chapter I (The Executive) lists out the qualification, election and impeachment of the President of India.

The President of India is the head of state of the Republic of India. The President is the formal head of the executive, legislature and judiciary of India and is also the commander-in-chief of the Indian Armed Forces.

Although Article 53 of the Constitution of India states that the President can exercise his or her powers directly or by subordinate authority, with few exceptions, all of the executive authority vested in the President are, in practice, exercised by the Council of Ministers (CoM).

Part V The Union

Chapter I The Executive

ARTICLE 52 : THE PRESIDENT OF INDIA

There shall be a President of India.

ARTICLE 53 : EXECUTIVE POWER OF THE UNION

(1) The executive power of the Union shall be vested in the President and shall be exercised by him either directly or through officers subordinate to him in accordance with this Constitution.

(2) Without prejudice to the generality of the foregoing provision, the supreme command of the Defence Forces of the Union shall be vested in the President and the exercise thereof shall be regulated by law.

(3) Nothing in this article shall –

(a) be deemed to transfer to the President any functions conferred by any existing law on the Government of any State or other authority; or

(b) prevent Parliament from conferring by law functions on authorities other than the President.

ARTICLE 54 : ELECTION OF PRESIDENT

The President shall be elected by the members of an electoral college consisting of –

(a) the elected members of both Houses of Parliament; and

(b) the elected members of the Legislative Assemblies of the States. Explanation: In this article and in article 55, “State” includes the National Capital Territory of Delhi and the Union territory of Pondicherry.

ARTICLE 55 : MANNER OF ELECTION OF PRESIDENT

(1) As far as practicable, there shall be uniformity in the scale of representation of the different States at the election of the President.

(2) For the purpose of securing such uniformity among the States inter se as well as parity between the States as a whole and the Union, the number of votes which each elected member of Parliament and of the legislative Assembly of each state is entitled to cast at such election shall be determined in the following manner; –

(a) every elected member of the Legislative Assembly of a State shall have as many votes as there are multiples of one thousand in the quotient obtained by dividing the population of the State by the total number of the elected members of the Assembly;

(b) if, after taking the said multiples of one thousand, the remainder is not less than five hundred, then the vote of each member referred to in sub-clause (a) shall be further increased by one;

(c) each elected member of either House of Parliament shall have such number of votes as may be obtained by dividing the total number of votes assigned to the members of the Legislative Assemblies of the States under sub-clauses (a) and (b) by the total number of the elected members of both Houses of Parliament, fractions exceeding one-half being counted as one and other fractions being disregarded.

(3) The election of the President shall be held in accordance with the system of proportional representation by means of the single transferable vote and the voting at such election shall be by secret ballot.

Explanation: In this article, the expression “population” means the population as ascertained at the last preceding census of which the relevant figures have been published:

Provided that the reference in this Explanation to the last preceding census of which the relevant figures have been published shall, until the relevant figures for the first census taken after the year 2000 have been published, be construed as a reference to the 1971 census.

ARTICLE 56 : TERM OF OFFICE OF PRESIDENT

(1) The President shall hold office for a term of five years from the date on which he enters upon his office:

Provided that – (a) the President may, by writing under his hand addressed to the Vice-President, resign his office;

(b) the President may, for violation of the Constitution, be removed from office by impeachment in the manner provided in article 61.

(c) the President shall, notwithstanding the expiration of his term, continue to hold office until his successor enters upon his office.

(2) Any resignation addressed to the Vice-President under clause (a) of the proviso to clause (1) shall forthwith be communicated by him to the Speaker of the House of the People.

ARTICLE 57 : ELIGIBILITY FOR RE-ELECTION

A person who holds, or who has held, office as President shall, subject to the other provisions of this Constitution be eligible for re-election to that office.

ARTICLE 58 : QUALIFICATIONS FOR ELECTION AS PRESIDENT

(1) No person shall be eligible for election as President unless he –

(a) is a citizen of India;

(b) has completed the age of thirty-five years, and

(c) is qualified for election as a member of the House of the People.

(2) A person shall not be eligible for election as President if he holds any office of profit under the Government of India or the Government of any State or under any local or other authority subject to the control of any of the said Governments.

Explanation: For the purposes of this article, a person shall not be deemed to hold any office of profit by reason only that he is the President or Vice-President of the Union or the Governor of any State or is a Minister either for the Union or for any State.

ARTICLE 59 : CONDITIONS OF PRESIDENT'S OFFICE

(1) The President shall not be a member of either House of Parliament or of a House of the Legislature of any State, and if a member of either House of Parliament or of a House of the Legislature of any State be elected President, he shall be deemed to have vacated his seat in that House on the date on which he enters upon his office as President.

(2) The President shall not hold any other office of profit.

(3) The President shall be entitled without payment of rent to the use of his official residences and shall be also entitled to such emoluments, allowances and privileges as may be determined by Parliament by law and until provision in that behalf is so made, such emoluments, allowances and privileges as are specified in the Second Schedule.

(4) The emoluments and allowances of the President shall not be diminished during his term of office.

ARTICLE 60 : OATH OR AFFIRMATION BY THE PRESIDENT

Every President and every person acting as President or discharging the functions of the President shall, before entering upon his office, make and subscribe in the presence of the Chief Justice of India or, in his absence, the senior most Judge of the Supreme Court available, an oath or affirmation in the following form, that is to say – “I, A.B., do swear in the name of God / solemnly affirm that I will faithfully execute the office of President (or discharge the function of the President) of India and will to the best of my ability preserve, protect and defend the Constitution and the law and that I will devote myself to the service and well-being of the people of India.”

ARTICLE 61 : PROCEDURE FOR IMPEACHMENT OF THE PRESIDENT

(1) When a President is to be impeached for violation of the Constitution, the charge shall be preferred by either House of Parliament.

(2) No such charge shall be preferred unless –

(a) the proposal to prefer such charge is contained in a resolution which has been moved after at least fourteen days' notice in writing signed by not less than one-fourth of the total number of members of the House has been given of their intention to move the resolution, and

(b) such resolution has been passed by a majority of not less than two-thirds of the total membership of the House.

(3) When a charge has been so preferred by either House of Parliament, the other House shall investigate the charge or cause the charge to be investigated and the President shall have the right to appear and to be represented at such investigation.

(4) If as a result of the investigation a resolution is passed by a majority of not less than two-thirds of the total membership of the House by which the charge was investigated or caused to be investigated, declaring that the charge preferred against the President has been sustained, such resolution shall have the effect of removing the President from his office as from the date on which the resolution is so passed.

ARTICLE 62 : TIME OF HOLDING ELECTION TO FILL VACANCY IN THE OFFICE OF PRESIDENT AND THE TERM OF OFFICE OR PERSON ELECTED TO FILL CASUAL VACANCY

(1) An election to fill a vacancy caused by the expiration of the term of office of President shall be completed before the expiration of the term.

(2) An election to fill a vacancy in the office of President occurring by reason of his death, resignation or removal, or otherwise shall be held as soon as possible after, and in no case later than six months from, the date of occurrence of the vacancy; and the person elected to fill the vacancy shall, subject to the provisions of article 56, be entitled to hold office for the full term of five years from the date on which he enters upon his office.

Info-Bits Related to the President of India

1. Salary of an Indian President is Rs.5 lakh. Until 2017, the President used to get Rs 1.50 lakh per month. In Budget 2018, it was increased to Rs 5 lakh per month.
2. In addition to the salary, the President receives many other allowances and free facilities which include free medical, housing, and treatment facilities (whole life).

3. The Government of India spends around Rs.2.25 crore rupees annually on other expenses like the President's housing, staff, food and hosting of guests.
4. Indian President's salary is $7000\$ \times 12 = 84,000\$$, which is much lower when compared to the US President's salary of 4,00,000\$.
5. The president of the United States of America is also indirectly elected by the people through the Electoral College, but to a four-year term. He is one of only two nationally elected federal officers, the other being the Vice President of the United States. (In total, there are 538 electors, corresponding to the 435 members of the House of Representatives, 100 senators, and the three additional electors from the District of Columbia.)
6. Under The Presidential and Vice-Presidential Elections Act, 1952, a candidate, to be nominated for the office of president of India needs 50 electors as proposers and 50 electors as seconders for his or her name to appear on the ballot.
7. The general principle in Indian Presidential elections is that the total number of votes cast by Members of Parliament equals the total number of votes cast by State Legislators.
8. There are a total of 776 voters in both the Houses of Parliament. The Electoral College also consisted of 4120 MLAs in the states.
9. The formula to determine the value of the vote of an MLA = $\text{Population of the state} \div (\text{No. of M.L.A.s in the state} \times 1000)$.
10. The formula to determine the value of the vote of an MP = $\text{Total value votes assigned to all the M.L.A.s} \div \text{Total number of MPs}$.
11. Each MP had a vote value of 708 in the Presidential Election 2012.
12. Legislators from larger states cast more votes than those from smaller states.
13. If a state has few legislators, then each legislator has more votes; if a state has many legislators, then each legislator has fewer votes.
14. The President of India moves around in a custom built heavily armoured Mercedes Benz S600 Pullman Guard (which costs around Rs. 12 Crore).

15. Nominated members cannot vote in the Presidential election. But they can participate in the President's impeachment.
16. PS: Nominated members can participate in Vice-President's election and removal.
17. MLAs are involved in the Presidential election, but they have no role in the President's impeachment. The President's impeachment resolution requires a special majority of both houses of the parliament to pass.

Powers of Indian President

Powers of the Indian President can be broadly classified under 8 headings. They are :

1. Legislative
2. Executive or Appointment powers
3. Judicial powers
4. Financial powers
5. Diplomatic powers
6. Military powers
7. Pardoning Powers
8. Emergency powers

There are articles outside Chapter 1 of Part V related to powers of the President of India like Article 72 and Articles 352-360. We shall discuss in detail each of them later.

Article 72: Power of President to grant pardons, etc., and to suspend, remit or commute sentences in certain cases

(1) 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 persons convicted of any offence – (a) in all cases where the punishment of sentence is by a Court Martial;

(b) in all cases where the punishment or sentence is for an offence against any law relating to a matter to which the executive power of the Union extends;

(c) in all cases where the sentence is a sentence of death.

(2) Nothing in sub-clause (a) of clause (1) shall affect the power conferred by law on any officer of the Armed Forces of the Union to suspend, remit or commute a sentence passed by a Court martial.

(3) Nothing in sub-clause (c) of clause (1) shall affect the power to suspend, remit or commute a sentence of death exercisable by the Governor of a State under any law for the time being in force.

The Vice-President of India (Articles 63-73)

Part V of the Constitution of India under Chapter I (Executive) also discusses the office of the Vice-President of India. The Vice-President of India is the second highest constitutional office in the country. He serves for a five-year term, but can continue to be in office, irrespective of the expiry of the term, until the successor assumes office. Let's see the articles 63-73 which deal with the qualifications, election and removal of Vice-President of India.

ARTICLE 63 : THE VICE-PRESIDENT OF INDIA

There shall be a Vice-President of India.

ARTICLE 64 : THE VICE-PRESIDENT TO BE EX-OFFICIO CHAIRMAN OF THE COUNCIL OF STATES

The Vice-President shall be ex-officio Chairman of the Council of States and shall not hold any other office of profit:

Provided that during any period when the Vice-President acts as President or discharges the functions of the President under article 65, he shall not perform the duties of the office of Chairman of the Council of States and shall not be entitled to any salary or allowance payable to the Chairman of the Council of States under article 97.

ARTICLE 65 : THE VICE-PRESIDENT TO ACT AS PRESIDENT OR TO DISCHARGE HIS FUNCTIONS DURING CASUAL VACANCIES IN THE OFFICE, OR DURING THE ABSENCE, OF PRESIDENT

(1) In the event of the occurrence of any vacancy in the office of the President by reason of this death, resignation or removal, or otherwise, the Vice-President shall act as President until the date on which a new President elected in accordance with the provisions of this Chapter to fill such vacancy enters upon his office.

(2) When the President is unable to discharge his functions owing to absence, illness or any other cause, the Vice-President shall discharge his functions until the date on which the President resumes his duties.

(3) The Vice-President shall, during, and in respect of, the period while he is so acting as, or discharging the functions of, President have all the powers and immunities of the President and be entitled to such emoluments, allowances and privileges as may be determined by Parliament by law and, until provision in that behalf is so made, such emoluments, allowances and privileges as are specified in the Second Schedule.

ARTICLE 66 : ELECTION OF VICE-PRESIDENT

(1) The Vice-President shall be elected by the members of an electoral college consisting of the members of both Houses of Parliament in accordance with the system of proportional representation by means of a single transferable vote and the voting at such election shall be by secret ballot.

(2) The Vice-President shall not be a member of either House of Parliament or of a House of the Legislature of any State, and if a member of either House of Parliament or of a House of the Legislature of any State be elected Vice-President, he shall be deemed to have vacated his seat in that House on the date on which he enters upon his office as Vice-President.

(3) No person shall be eligible for election as Vice-President unless he –

- (a) is a citizen of India;
- (b) has completed the age of thirty-five years; and
- (c) is qualified for election as a member of the Council of States.

(4) A person shall not be eligible for election as Vice-President if he holds any office of profit under the Government of India or the Government of any State or under any local or other authority subject to the control of any of the said Governments.

Explanation: For the purposes of this article, a person shall not be deemed to hold any office of profit by reason only that he is the President or Vice-President of the Union or the Governor of any State or is a Minister either for the Union or for any State.

ARTICLE 67 : TERM OF OFFICE OF VICE-PRESIDENT

The Vice-President shall hold office for a term of five years from the date on which he enters upon his office:

Provided that – (a) A Vice-President may, by writing under his hand addressed to the President, resign his office;

(b) a Vice-President may be removed from his office by a resolution of the Council of States passed by a majority of all the then members of the Council and agreed to by the House of the People; but no resolution for the purpose of this clause shall be moved unless at least fourteen days' notice has been given of the intention to move the resolution;

(c) A Vice-President shall, notwithstanding the expiration of his term, continue to hold office until his successor enters upon his office.

ARTICLE 68 : TIME OF HOLDING ELECTION TO FILL VACANCY IN THE OFFICE OF VICE-PRESIDENT AND THE TERM OF OFFICE OF PERSON ELECTED TO FILL CASUAL VACANCY

(1) An election to fill a vacancy caused by the expiration of the term of office of Vice-President shall be completed before the expiration of the term.

(2) An election to fill a vacancy in the office of Vice-President occurring by reason of his death, resignation or removal, or otherwise shall be held as soon as possible after the occurrence of the vacancy, and the person elected to fill the vacancy shall, subject to the provisions of article 67, be entitled to hold office for the full term of five years from the date on which he enters upon his office.

ARTICLE 69 : OATH OR AFFIRMATION BY THE VICE-PRESIDENT

Every Vice-President shall, before entering upon his office, make and subscribe before the President, or some person appointed in that behalf by him, an oath or affirmation in the following form, that is to say – “I, A.B., do swear in the name of God /solemnly affirm that I will bear true faith and allegiance to the Constitution of India as by law established and that I will discharge the duty upon which I am about to enter.”

ARTICLE 70 : DISCHARGE OF PRESIDENT’S FUNCTIONS IN OTHER CONTINGENCIES

Parliament may make such provision as it thinks fit for the discharge of the functions of the President in any contingency not provided for in this Chapter.

ARTICLE 71 : MATTERS RELATING TO, OR CONNECTED WITH, THE ELECTION OF A PRESIDENT OR VICE-PRESIDENT

(1) All doubts and disputes arising out of or in connection with the election of a President or Vice-President shall be inquired into and decided by the Supreme Court whose decision shall be final.

(2) If the election of a person as President or Vice-President is declared void by the Supreme Court, acts done by him in the exercise and performance of the powers and duties of the office of President or Vice-President, as the case may be, on or before the date of the decision of the Supreme Court shall not be invalidated by reason of that declaration.

(3) Subject to the provisions of this Constitution, Parliament may by law regulate any matter relating to or connected with the election of a President or Vice-President.

(4) The election of a person as President or Vice-President shall not be called in question on the ground of the existence of any vacancy for whatever reason among the members of the electoral college electing him.

ARTICLE 72 : POWER OF PRESIDENT TO GRANT PARDONS, ETC., AND TO SUSPEND, REMIT OR COMMUTE SENTENCES IN CERTAIN CASES

(1) 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 persons convicted of any offence – (a) in all cases where the punishment of sentence is by a Court Martial;

(b) in all cases where the punishment or sentence is for an offence against any law relating to a matter to which the executive power of the Union extends;

(c) in all cases where the sentence is a sentence of death.

(2) Nothing in sub-clause (a) of clause (1) shall affect the power conferred by law on any officer of the Armed Forces of the Union to suspend, remit or commute a sentence passed by a Court martial.

(3) Nothing in sub-clause (c) of clause (1) shall affect the power to suspend, remit or commute a sentence of death exercisable by the Governor of a State under any law for the time being in force.

ARTICLE 73 : EXTENT OF EXECUTIVE POWER OF THE UNION*

(1) Subject to the provisions of this Constitution, the executive power of the Union shall extend—

(a) to the matters with respect to which Parliament has power to make laws; and

(b) to the exercise of such rights, authority and jurisdiction as are exercisable by the Government of India by virtue of any treaty or agreement:

Provided that the executive power referred to in sub-clause (a) shall not, save as expressly provided in this Constitution or in any law made by Parliament,

extend in any State to matters with respect to which the Legislature of the State has also power to make laws.

(2) Until otherwise provided by Parliament, a State and any officer or authority of a State may, notwithstanding anything in this article, continue to exercise in matters with respect to which Parliament has power to make laws for that State such executive power or functions as the State or officer or authority thereof could exercise immediately before the commencement of this Constitution.

Info-Bits related with the Vice-President of India

The office of the Vice-President of India is special because of multiple reasons. It would be interesting to explore the constitutional provisions related to the Vice - President of India. Try, if you can find the answers of the following questions, yourself.

1. Can Vice-President of India continue to be in office irrespective of the expiry of his term of 5 years?
2. Who performs the duties of the Vice-President, when a vacancy occurs in the office of the Vice-President of India, before the expiry of his term?

3. Who performs the duties of the Vice-President, when a vacancy occurs in the office of the Vice-President of India, when the Vice-President acts as the President of India?
4. Who performs the Vice-President's function as the Chairperson of the Council of States (Rajya Sabha) when a vacancy occurs in the office of the Vice-President of India?
5. Salary for Vice-President for his role as Vice-President of India?
6. Salary for Vice-President for his role as ex-officio Chairperson of the Council of States (Rajya Sabha)?
7. Salary for Vice-President when Vice-President acts as President of India?
8. Can nominated members participate in the election and removal process of the Vice President?
9. Vice-President is neither an elected nor nominated member of Rajya Sabha. But being the chairman of Rajya Sabha, can he cast vote?
10. How can the Vice-President of India be removed from his office?

Answers:

1. Can Vice-President of India continue to be in office irrespective of the expiry of his term of 5 years? Ans : Yes. Until the successor assumes office.
2. Who performs the duties of the Vice-President, when a vacancy occurs in the office of the Vice-President of India, before the expiry of his term? Ans : The Constitution is silent on this matter.
3. Who performs the duties of the Vice-President, when a vacancy occurs in the office of the Vice-President of India, when the Vice-President acts as the President of India? Ans : The Constitution is silent on this matter.
4. Who performs the Vice-President's function as the Chairperson of the Council of States (Rajya Sabha) when a vacancy occurs in the office of the Vice-President of India? Ans : Deputy Chairperson of the Rajya Sabha, or any other member of the Rajya Sabha authorised by the President of India.

5. Salary for Vice-President for his role as Vice-President of India? Ans : No salary for the role as Vice-President. Salary is for the role as ex-officio Chairperson of the Council of States (Rajya Sabha).
6. Salary for Vice-President for his role as ex-officio Chairperson of the Council of States (Rajya Sabha)? Ans : Rs.1.25 lakhs.
7. Salary for Vice-President when Vice-President acts as President of India? Ans : He will get the salary of the Indian President, i.e. Rs.1.5 lakh. But he will stop getting the salary of the ex-officio chairman of Rajya Sabha.
8. Can nominated members participate in the election and removal process of the Vice President? Ans: Yes. (NB: For Presidential elections, nominated members cannot participate.)
9. Vice-President is neither an elected nor nominated member of Rajya Sabha. But being the chairman of Rajya Sabha, can he cast vote? Ans : Yes. The Chairman has a casting vote in the case of an equality of votes.
10. How can the Vice-President of India be removed from his office? Ans : Vice-President may be removed from his office by a resolution of the Council of States passed by a majority of all the then members of the Council and agreed to by the House of the People; but no resolution for the purpose of this clause shall be moved unless at least fourteen days' notice has been given of the intention to move the resolution.

Removal of Vice-President of India : Must Check

Aspirants are requested to note a mistake which you might find in many textbooks on Indian Polity, under the topic 'Removal of the Vice-President of India'. I have seen text-books mentioning that removal of Vice-President needs absolute majority (half of the total strength of the house). But this cannot be right.

Let's check once again what is mentioned in the Constitution, Article 67(b).

A Vice-President may be removed from his office by a resolution of the Council of States passed by a majority of all the then members of the Council and agreed to by the House of the

People; but no resolution for the purpose of this clause shall be moved unless at least fourteen days' notice has been given of the intention to move the resolution.

Let's see what is the importance of the word "then" here. Suppose the present strength of Rajya Sabha is 245 seats. And if 45 seats are vacant, then the strength of the house gets reduced to 200. So a majority of all the then members of the Council means that removal of Vice-President needs the approval of 101 Rajya Sabha MPs.

As shown above, this majority is not Absolute Majority (Total Strength of the House), but Effective Majority (Total Strength of the House – Vacancies). Whether the phrase "a majority of all the then members of the Council " can be interpreted as Simple Majority (Majority among those who are present and voting) is a matter of debate. But anyways, the removal does not need absolute majority or special majority. It can be said that resolution for removal of Vice-President requires an effective majority in Rajya Sabha and a simple majority in Lok Sabha.

NB: The President's impeachment resolution requires a special majority (2/3rd of total strength of the house) at both houses to get itself passed.

Cabinet Of Ministers, Prime Minister and Attorney General (Articles 74-78)

Chapter I (Executive) of Part V of the Constitution (Union) deals with the President, Vice-President, Council of Ministers (COM) headed by Prime Minister and Attorney General. Having already discussed the President and Vice-President, let's concentrate now on COM, Prime Minister and Attorney General. While the Indian President is the head of the state, the Indian Prime Minister is the head of the government.

Council of Ministers

ARTICLE 74 : COUNCIL OF MINISTERS TO AID AND ADVISE PRESIDENT

(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:

Provided that the President may require the Council of Ministers to reconsider such advice, either generally or otherwise, and the President shall act in accordance with the advice tendered after such reconsideration.

(2) The question whether any, and if so what, advice was tendered by Ministers to the President shall not be inquired into in any court.

ARTICLE 75: OTHER PROVISIONS AS TO MINISTERS

(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.

(1A) The total number of Ministers, including the Prime Minister, in the Council of Ministers shall not exceed fifteen per cent. of the total number of members of the House of the People.

(1B) A member of either House of Parliament belonging to any political party who is disqualified for being a member of that House under paragraph 2 of the Tenth Schedule shall also be disqualified to be appointed as a Minister under clause (1) for duration of the period commencing from the date of his disqualification till the date on which the term of his office as such member would expire or where he contests any election to either House of Parliament before the expiry of such period, till the date on which he is declared elected, whichever is earlier.

(2) The Ministers shall hold office during the pleasure of the President.

(3) The Council of Ministers shall be collectively responsible to the House of the People.

(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.

(5) A Minister who for any period of six consecutive months is not a member of either House of Parliament shall at the expiration of that period cease to be a Minister.

(6) The salaries and allowances of Ministers shall be such as Parliament may from time to time by law determine and, until Parliament so determines, shall be as specified in the Second Schedule.

The Attorney-General for India

ARTICLE 76 : ATTORNEY-GENERAL FOR INDIA.

(1) The President shall appoint a person who is qualified to be appointed a Judge of the Supreme Court to be Attorney- General for India.

(2) It shall be the duty of the Attorney-General to give advice to the Government of India upon such legal matters, and to perform such other duties of a legal character, as may from time to time be referred or assigned to him by the President, and to discharge the functions conferred on him by or under this Constitution or any other law for the time being in force.

(3) In the performance of his duties the Attorney-General shall have the right of audience in all courts in the territory of India.

(4) The Attorney-General shall hold office during the pleasure of the President, and shall receive such remuneration as the President may determine.

Conduct of Government Business

77. Conduct of business of the Government of India.—(1) All executive action of the Government of India shall be expressed to be taken in the name of the President.

(2) Orders and other instruments made and executed in the name of the President shall be authenticated in such manner as may be specified in rules to be made by the President, and the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the President.

(3) The President shall make rules for the more convenient transaction of the business of the Government of India, and for the allocation among Ministers of the said business.

ARTICLE 78: DUTIES OF PRIME MINISTER AS RESPECTS THE FURNISHING OF INFORMATION TO THE PRESIDENT, ETC.

—It shall be the duty of the Prime Minister—

(a) to communicate to the President all decisions of the Council of Ministers relating to the administration of the affairs of the Union and proposals for legislation;

(b) to furnish such information relating to the administration of the affairs of the Union and proposals for legislation as the President may call for; and

(c) if the President so requires, to submit for the consideration of the Council of Ministers any matter on which a decision has been taken by a Minister but which has not been considered by the Council.

Info Bits Related with COM, PM and AG

- The prime minister is responsible for aiding and advising the president in distribution of work of the Government to various ministries and offices and in terms of the *Government of India (Allocation of Business) Rules, 1961*. The coordinating work is generally allocated to the Cabinet Secretariat.
- By Article 75 of the constitution of India, remuneration of the prime minister as well as other ministers are to be decided by the Parliament. In 2010, the prime minister's office reported that he did not receive a formal salary, but was only entitled to monthly allowances.
- The Attorney General, like an Advocate General of a State is not supposed to be a political appointee, in spirit, but this is not the case in practice. Every time a party comes to power in the general elections, all the law officers resign and law officers loyal to the new party are appointed.
- The Attorney General has the right of audience in all Courts in India as well as the right to participate in the proceedings of the Parliament, though not to vote.
- Unlike the Attorney General of the United States, the Attorney General of India does not have any executive authority, and is not a political appointee, those functions are performed by the Law Minister of India.
- The Attorney General is assisted by a Solicitor General and four Additional Solicitors General. (Non-constitutional posts.)
- The Cabinet is a smaller body than the Council of Ministers which consists of a few important senior ministers who are in charge of separate departments. The Cabinet is described as “a wheel within a wheel”. It is the nucleus of the Council of Ministers.
- Cabinet exercises all powers on behalf of the Council of Ministers. The policy decisions are taken in the Cabinet.
- There are three categories of ministers (COM), in descending order of rank:

- Union Cabinet Minister: senior minister in-charge of a ministry. A cabinet minister may also hold additional charges of other Ministries, where no other Cabinet minister is appointed.
- Minister of State (Independent Charges): with no overseeing Union cabinet minister for that portfolio.
- Minister of State (MoS): junior minister to oversee cabinet ministers, usually tasked with a specific responsibility in that ministry. For instance, an MoS in the Finance Ministry may only handle taxation.

Parliament (Articles 79-88/122)

Though Article 79-122 deals with Chapter II (Parliament) of Part V (Union), we shall break the topic into subsections. In this post, we are covering only articles 79-88, which deals with the General provisions regarding the Parliament. Parliament consists of the President of India, Lok Sabha and Rajya Sabha. Normally, three Sessions of Parliament are held in a year: (i) Budget Session (February-May); (ii) Monsoon Session (July-August); and (iii) Winter Session (November-December).

Chapter II Parliament

ARTICLE 79 : CONSTITUTION OF PARLIAMENT

There shall be a Parliament for the Union which shall consist of the President and two Houses to be known respectively as the Council of States and the House of the People.

ARTICLE 80 : COMPOSITION OF THE COUNCIL OF STATES –

- (1) The Council of States shall consists of –
 - (a) twelve members to be nominated by the President in accordance with the provisions of clause (3); and
 - (b) not more than two hundred and thirty-eight representatives of the States and of the Union territories.

(2) The allocation of seats in the Council of States to be filled by representatives of the States and of the Union territories shall be in accordance with the provisions in that behalf contained in the Fourth Schedule.

(3) The members to be nominated by the President under sub-clause (a) and clause (1) shall consists of persons having special knowledge or practical experience in respect of such matters as the following, namely: –

Literature, science, art and social service.

(4) The representatives of each State in the Council of States shall be elected members of the Legislative Assembly of the State in accordance with the system of proportional representation by means of the single transferable vote.

(5) The representatives of the Union territories in the Council of States shall be chosen in such manner as Parliament may by law prescribe.

ARTICLE 81 : COMPOSITION OF THE HOUSE OF THE PEOPLE

(1) Subject to the provisions of article 331, the House of the People shall consists of – (a) not more than five hundred and thirty members chosen by direct election from territorial constituencies in the States, and

(b) not more than twenty members to represent the Union territories, chosen in such manner as Parliament may by law provide.

(2) For the purposes of sub-clause (a) of clause (1), –

(a) there shall be allotted to each State a number of seats in the House of the People in such manner that the ration between that number and the population of the State is, so far as practicable, the same for all States; and

(b) each State shall be 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:

Provided that the provisions of sub-clause (a) of this clause shall not be applicable for the purpose of allotment of seats in the House of the People to any State so long as the population of that State does not exceed six millions.

(3) In this article, the expression “population” means the population as ascertained at the last preceding census of which the relevant figures have been published:

Provided that the reference in this clause to the last preceding census of which the relevant figures have been published shall, until the relevant figures for the first census taken after the year 2000 have been published, be construed as a reference to the 1971 census.

ARTICLE 82 : READJUSTMENT AFTER EACH CENSUS

Upon the completion of each census, the allocation of seats in the House of the People to the States and the division of each state into territorial constituencies shall be readjusted by such authority and in such manner as Parliament may by law determine:

Provided that such readjustment shall not affect representation in the House of the People until the dissolution of the then existing House:

Provided further that such readjustment shall take effect from such date as the President may, by order, specify and until such readjustment takes effect, any election to the House may be held on the basis of the territorial constituencies existing before such readjustment:

Provided also that until the relevant figures for the first census taken after the year 2000 have been published, it shall not be necessary to readjust the allocation of seats in the House of the People to the States and the division of each State into territorial constituencies under this article.

ARTICLE 83 : DURATION OF HOUSES OF PARLIAMENT

(1) The Council of States shall not be subject to dissolution, but as nearly as possible one-third of the members thereof shall retire as soon as may be on the expiration of every second year in accordance with the provisions made in that behalf by Parliament by law.

(2) The House of the People, unless sooner dissolved, shall continue for five years from the date appointed for its first meeting and no longer and the expiration of the said period of 5 years shall operate as a dissolution of the House:

Provided that the said period may, while a Proclamation of Emergency is in operation, be extended by Parliament by law for a period not exceeding one year at a time and not extending in any case beyond a period of six months after the Proclamation has ceased to operate.

ARTICLE 84 : QUALIFICATION FOR MEMBERSHIP OF PARLIAMENT

A person shall not be qualified to be chosen to fill a seat in Parliament unless he –

(a) is a citizen of India, and makes and subscribed before some person authorised in that behalf by the Election Commission an oath or affirmation according to the form set out for the purpose in the Third Schedule;

(b) is, in the case of a seat in the Council of States, not less than thirty years of age and, in the case of a seat in the House of the People, not less than twenty-five years of age; and

(c) possesses such other qualifications as may be prescribed in that behalf by or under any law made by Parliament.

ARTICLE 85 : SESSIONS OF PARLIAMENT, PROROGATION AND DISSOLUTION

(1) The President shall from time to time summon each House of Parliament to meet at such time and place as he thinks fit, but six months shall not intervene between its lasting sitting in one session and the date appointed for its first sitting in the next session.

(2) The President may from time to time –

(a) prorogue the Houses or either House;

(b) dissolve the House of the People.

ARTICLE 86 : RIGHT OF PRESIDENT TO ADDRESS AND SEND MESSAGES TO HOUSES

(1) The President may address either House of Parliament or both Houses assembled together, and for that purpose require the attendance of members.

(2) The President may send messages to either House of Parliament, whether with respect to a Bill then pending in Parliament or otherwise, and a House to which any message is so sent shall with all convenient dispatch consider any matter required by the message to be taken into consideration.

ARTICLE 87 : SPECIAL ADDRESS BY THE PRESIDENT

(1) At the commencement of the first session after each general election to the House of the People and at the commencement of the first session of each year the President shall address both Houses of Parliament assembled together and inform Parliament of the causes of its summons.

(2) Provision shall be made by the rules regulating the procedure of either House for the allotment of time for discussion of the matters referred to in such address.

ARTICLE 88: RIGHTS OF MINISTERS AND ATTORNEY-GENERAL AS RESPECTS HOUSES

Every Minister and the Attorney-General of India shall have the right to speak in, and otherwise to 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, but shall not by virtue of this article be entitled to vote.

Info- Bits related with Parliament

- The total elective membership is distributed among the States in such a way that the 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.
- The Council of States is designed to maintain the federal character of the country. The number of members from a state depends on the population of the state (e.g. 31 from Uttar Pradesh and one from Nagaland).
- The Supreme Court can strike down certain provisions/amendments of the Indian Constitution, if it feels that the provisions are unconstitutional or alter the basic structure of the constitution. But striking down does not take away the provisions from the Constitution. To take away the provisions, Parliament has to present a Constitution Amendment bill to repeal the provisions.

The Union Judiciary ie. The Supreme Court (Articles 124-147)

Chapter IV under Part V of the constitution (Union) deals with the The Union Judiciary. The constitution and jurisdiction of the Supreme Court is stated in detail from articles 124-147. Unlike the other two branches, executive and legislature, in India Judiciary is integrated. This means that even though there may be High Courts in states, the law declared by the Supreme Court shall be binding on all courts within the territory of India (Article 141). Now let's look into the details of each article dealing with the Union Judiciary.

Article 124: Establishment and Constitution of Supreme Court

(1) There shall be a Supreme Court of India consisting of a Chief Justice of India and, until Parliament by law prescribes a larger number, of not more than seven other Judges.

(2) Every Judge of the Supreme Court shall be appointed by the President by warrant under his hand and seal after consultation with such of the Judges of the Supreme Court and of the High Courts in the States as the President may deem necessary for the purpose and shall hold office until he attains the age of sixty-five years:

Provided that in the case of appointment of a Judge other than the Chief Justice, the Chief Justice of India shall always be consulted:

Provided further that –

(a) a Judge may, by writing under his hand addressed to the President, resign his office;

(b) a judge may be removed from his office in the manner provided in clause (4).

(2A) The age of a Judge of the Supreme Court shall be determined by such authority and in such manner as Parliament may by law provide.

(3) A person shall not be qualified for appointment as a Judge of the Supreme Court unless he is a citizen of India and –

(a) has been for at least five years a Judge of a High Court or of two or more such Courts in succession; or

(b) has been for at least ten years an advocate of a High Court or of two or more such Courts in succession; or

(c) is, in the opinion of the President, a distinguished jurist.

Explanation I: In this clause “High Court” means a High Court which exercises, or which at any time before the commencement of this Constitution exercised, jurisdiction in any part of the territory of India.

Explanation II: In computing for the purpose of this clause the period during which a person has been an advocate, any period during which a person has held judicial office not inferior to that of a district judge after he became an advocate shall be included.

(4) 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 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 misbehaviour or incapacity.

(5) Parliament may by law regulate the procedure for the presentation of an address and for the investigation and proof of the misbehaviour or incapacity of a Judge under clause (4).

(6) Every person appointed to be a Judge of the Supreme Court shall, before he enters upon his office, make and subscribe before the President, or some person appointed in that behalf by him, an oath or affirmation according to the form set out for the purpose in the Third Schedule.

(7) No person who has held office as a Judge of the Supreme Court shall plead or act in any court before any authority within the territory of India.

Article 125: Salaries, etc., of Judges

(1) There shall be paid to the Judges of the Supreme Court such salaries as may be determined by Parliament by law and, until provision in that behalf is so made, such salaries as are specified in the Second Schedule.

(2) Every Judge shall be entitled to such privileges and allowances and to such rights in respect of leave of absence and pension as may from time to time be determined by or under law made by Parliament and, until so determined, to such privileges, allowances and rights as are specified in the Second Schedule:

Provided that neither the privileges nor the allowances of a Judge nor his rights in respect of leave of absence or pension shall be varied to his disadvantage after his appointment.

Article 126: Appointment of acting Chief Justice

When the office of Chief Justice of India is vacant or when the Chief Justice is, by reason of absence or otherwise, unable to perform the duties of his office, the duties of the office shall be performed by such one of the other Judges of the Court as the President may appoint for the purpose.

Article 127: Appointment of ad hoc Judges

(1) If at any time there should not be a quorum of the Judges of the Supreme Court available to hold or continue any session of the Court, the Chief Justice of India may, with the previous consent of the President and after consultation with the Chief Justice of the High Court concerned, request in writing the attendance at the sittings of the Court, as an ad hoc Judge, for such period as may be necessary, of a Judge of a High Court duly qualified for appointment as a Judge of the Supreme Court to be designated by the Chief Justice of India.

(2) It shall be the duty of the Judge who has been so designated, in priority to other duties of his office to attend the sittings of the Supreme Court at the time and for the period for which his attendance is required, and while so attending he shall have all the jurisdiction, powers and privileges, and shall discharge the duties, of a Judge of the Supreme Court.

Article 128: Attendance of retired Judges at sittings of the Supreme Court

Notwithstanding anything in this Chapter, the Chief Justice of India may at any time, with the previous consent of the President, request any person who has held the office of a Judge of the Supreme Court or of the Federal Court or who has held the office of a Judge of a High Court and is duly qualified for appointment as a Judge of the Supreme Court to sit and act as a Judge of the Supreme Court, and every such person so requested shall, while so sitting and acting, be entitled to such allowances as the President may by order determine and have all the jurisdiction, powers and privileges of, but shall not otherwise be deemed to be, a Judge of that Court:

Provided that nothing in this article shall be deemed to require any such person as aforesaid to sit and act as a Judge of that Court unless he consents to do so.

Article 129: Supreme Court to be a court of record

The Supreme Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself.

Article 130: Seat of Supreme Court

The Supreme Court shall sit in Delhi or in such other places or places, as the Chief Justice of India may, with the approval of the President, from time to time, appoint.

Article 131: Original jurisdiction of the Supreme Court

Subject to the provisions of this Constitution, the Supreme Court shall, to the exclusion of any other court, have original jurisdiction in any dispute –

(a) between the Government of India and one or more States; or

(b) between the Government of India and any State of States on one side and one or more other States on the other; or

(c) between two or more States.

if and in so far as the dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends:

Provided that the said jurisdiction shall not extend to a dispute arising out of any treaty, agreement, covenant, engagement, sanad or other similar instrument which, having been entered into or executed before the commencement of this Constitution, continues in operation after such commencement or which provides that the said jurisdiction shall not extend to such a dispute.

Article 131A: Executive jurisdiction of the Supreme Court in regard to questions as to constitutional validity of Central laws

—Repealed.

Article 132: Appellate jurisdiction of Supreme Court in appeals from High Court in certain cases

(1) An appeal shall lie to the Supreme Court from any judgement, decree or final order of a High Court in the territory of India, whether in a civil, criminal or other proceeding, if the High Court certifies under article 134A that the case involves a substantial question of law as to the interpretation of this Constitution.

(3) Where such a certificate is given, any party in the case may appeal to the Supreme Court on the ground that any such question as aforesaid has been wrongly decided.

Explanation: For the purpose of this article, the expression “final order” includes an order deciding an issue which, if decided in favour of the appellant, would be sufficient for the final disposal of the case.

Article 133: Appellate jurisdiction of Supreme Court in appeals from High Courts in regard to civil matters

(1) An appeal shall lie to the Supreme Court from any judgement, decree or final order in a civil proceeding of a High Court in the territory of India if the High Court certifies under article 134A –

(a) that the case involves a substantial question of law of general importance; and

(b) that in the opinion of the High Court the said question needs to be decided by the Supreme Court.

(2) Notwithstanding anything in article 132, any party appealing to the Supreme Court under clause (1) may urge as one of the grounds in such appeal that a substantial question of law as to the interpretation of this Constitution has been wrongly decided.

(3) Notwithstanding anything in this article, no appeal shall, unless Parliament by law otherwise provides, lie to the Supreme Court from the judgement, decree or final order of one Judge of a High Court.

Article 134: Appellate jurisdiction of Supreme Court in regard to criminal matters

(1) An appeal shall lie to the Supreme Court from any judgement, final order or sentence in a criminal proceeding of a High Court in the territory of India if the High Court –

(a) has on appeal reversed an order of acquittal of an accused person and sentenced him to death; or

(b) has withdrawn for trial before itself any case from any court subordinate to its authority and has in such trial convicted the accused person and sentenced him to death; or

(c) certified under article 134A that the case is a fit one for appeal to the Supreme Court:

Provided that an appeal under sub-clause (c) shall lie subject to such provisions as may be made in that behalf under clause (1) of article 145 and to such conditions as the High Court may establish or require.

(2) Parliament may by law confer on the Supreme Court any further powers to entertain and hear appeals from any judgment, final order or sentence in a criminal proceeding of a High Court in the territory of India subject to such conditions and limitations as may be specified in such law.

Article 134A: Certificate for appeal to the Supreme Court

Every High Court, passing or making a judgment, decree, final order, or sentence, referred to in clause (1) of article 132 or clause (1) of article 133, or clause (1) of article 134, –

(a) may, if it deems fit so to do, on its own motion; and

(b) shall, if an oral application is made, by or on behalf of the party aggrieved, immediately after the passing or making of such judgment, decree final order or sentence,

determine, as soon as may be after such passing or making, the question whether a certificate of the nature referred to in clause (1) of article 132, or clause (1) or article 133 or, as the case may be, sub-clause (c) of clause (1) of article 134, may be given in respect of that case.

Article 135: Jurisdiction and powers of the Federal Court under existing law to be exercisable by the Supreme Court

Until Parliament by law otherwise provides, the Supreme Court shall also have jurisdiction and powers with respect to any matter to which the provisions of article 133 or article 134 do not apply if jurisdiction and powers in relation to that matter were exercisable by the Federal Court immediately before the commencement of this Constitution under any existing law.

Article 136: Special leave to appeal by the Supreme Court

(1) Notwithstanding anything in this Chapter, the Supreme 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.

(2) Nothing in clause (1) shall apply to any judgment, determination, sentence or order passed or made by any court or tribunal constituted by or under any law relating to the Armed Forces.

Article 137: Review of judgements or orders by the Supreme Court

Subject to the provisions of any law made by Parliament or any rules made under article 145, the Supreme Court shall have power to review any judgment pronounced or order made by it.

Article 138: Enlargement of the jurisdiction of the Supreme Court

(1) The Supreme Court shall have such further jurisdiction and powers with respect to any of the matters in the Union List as Parliament may by law confer.

(2) The Supreme Court shall have such further jurisdiction and powers with respect to any matter as the Government of India and the Government of any State may by special agreement confer if Parliament by law provides for the exercise of such jurisdiction and powers by the Supreme Court.

Article 139: Conferment on the Supreme Court of powers to issue certain writs

Parliament may by law confer on the Supreme Court power to issue directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for any purposes other than those mentioned in clause (2) of article 32.

Article 139A: Transfer of certain cases

(1) Where cases involving the same or substantially the same questions of law are pending before the Supreme Court and one or more High Courts or before two or more High Courts and the Supreme Court is satisfied on its own motion or on an application made by the Attorney-General of India or by a party to any such case that such questions are substantial questions of general importance, the Supreme Court may withdraw the case or cases pending before the High Court of the High Courts and dispose of all the cases itself:

Provided that the Supreme Court may after determining the said questions of law return any case so withdrawn together with a copy of its judgment on such questions to the High Court from which the case has been withdrawn, and the High Court shall on receipt thereof, proceed to dispose of the case in conformity with such judgment.

(2) The Supreme Court may, if it deems it expedient to do so for the ends of justice, transfer any case, appeal or other proceedings pending before any High Court to any other High Court.

Article 140: Ancillary powers of Supreme Court

Parliament may by law make provision for conferring upon the Supreme Court such supplemental powers not inconsistent with any of the provisions of this Constitution as may appear to be necessary or desirable for the purpose of enabling the Court more effectively to exercise the jurisdiction conferred upon it by or under this Constitution.

Article 141: Law declared by Supreme Court to be binding on all courts

The law declared by the Supreme Court shall be binding on all courts within the territory of India.

Article 142: Enforcement of decrees and orders of the Supreme Court and orders as to discovery, etc.

(1) The Supreme Court in the exercise of its jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it, and any decree so passed or order so made shall be enforceable throughout the territory of India in such manner as may be prescribed by or under any law made by Parliament and, until provision in that behalf is so made, in such manner as the President may by order prescribe.

(2) Subject to the provisions of any law made in this behalf by Parliament, the Supreme Court shall, as respects the whole of the territory of India, have all and every power to make any order for the purpose of securing the attendance of any person, the discovery or production of any documents, or the investigation or punishment of any contempt of itself.

Article 143: Power of President to consult Supreme Court

(1) If at any time it appears to the President that a question of law or fact has arisen, or is likely to arise, which 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 may refer the question to that Court for consideration and the Court may, after such hearing as it thinks fit, report to the President its opinion thereon.

(2) The President may, notwithstanding anything in the proviso to article 131, refer a dispute of the kind mentioned in the said proviso to the Supreme Court for opinion and the Supreme Court shall, after hearing as it thinks fit, report to the President its opinion thereon.

Article 144: Civil and judicial authorities to act in aid of the Supreme Court

All authorities, civil and judicial, in the territory of India shall act in aid of the Supreme Court.

Article 144A: Special provisions as to disposal of questions relating to constitutional validity of laws

{...} — Repealed

Article 145: Rules of Court, etc.

(1) Subject to the provisions of any law made by Parliament, the Supreme Court may from time to time, with the approval of the President, make rules for regulating generally the practice and procedure of the Court including –

- (a) rules as to the persons practising before the Court;
- (b) rules as to the procedure for hearing appeals and other matters pertaining to appeals including the time within which appeals to the Court are to be entered;
- (c) rules as to the proceedings in the Court for the enforcement of any of the rights conferred by Part III;
- (cc) rules as to the proceedings in the Court under article 139A;
- (d) rules as to the entertainment of appeals under sub-clause (c) of clause (1) of article 134;
- (e) rules as to the conditions subject to which any judgement pronounced or order made by the Court may be reviewed and the procedure for such review including the time within which applications to the Court or such review are to be entered;
- (f) rules as to the costs of and incidental to any proceedings in the Court and as to the fees to be charged in respect of proceedings therein;
- (g) rules as to the granting of bail;
- (h) rules as to stay of proceedings;
- (i) rules providing for the summary determination of any appeal which appears to the Court to be frivolous or vexatious or brought for the purpose of delay;
- (j) rules as to the procedure for inquiries referred to in clause (1) of article 317.

(2) Subject to the provisions of clause (3), rules made under this article may fix the minimum number of Judges who are to sit for any purpose, and may provide for the powers of single Judges and Division Courts.

(3) The minimum number of Judges who are to sit for the purpose of deciding any case involving a substantial question of law as to the interpretation of this Constitution or for the purpose of hearing any reference under article 143 shall be five:

Provided that, where the Court hearing an appeal under any of the provisions of this Chapter other than article 132 consists of less than five Judges and in the course of the hearing of the appeal of the Court is satisfied that the appeal involves a substantial question of law as to the interpretation of this Constitution the determination of which is necessary for the disposal of the appeal, such Court shall refer the question for opinion to a Court constituted as required by this clause for the purpose of deciding any case involving such a question and shall on receipt of the opinion dispose of the appeal in conformity with such opinion.

(4) No judgement shall be delivered by the Supreme Court save in open Court, and no report shall be made under article 143 save in accordance with an opinion also delivered in open Court.

(5) No judgement and so such opinion shall be delivered by the Supreme Court save with the concurrence of a majority of the Judges present at the hearing of the case, but nothing in this clause shall be deemed to prevent a Judge who does not concur from delivering a dissenting judgement or opinion.

Article 146: Officers and servants and the expenses of the Supreme Court

(1) Appointments of officers and servants of the Supreme Court shall be made by the Chief Justice of India or such other Judge or officer of the Court as he may direct:

Provided that the President may by rule require that in such cases as may be specified in the rule, no person not already attached to the Court shall be appointed to any office connected with the Court, save after consultation with the Union Public Service Commission.

(2) Subject to the provisions of any law made by Parliament, the conditions of service of officers and servants of the Supreme Court shall be such as may be prescribed by rules made by the Chief Justice of India or by some other Judge or officer of the Court authorised by the Chief Justice of India to make rules for the purpose:

Provided that the rules made under this clause shall, so far as they relate to salaries, allowances, leave or pensions, require the approval of the President.

(3) The administrative expenses of the Supreme Court, including all salaries, allowances and pensions payable to or in respect of the officers and servants of the Court, shall be charged

upon the Consolidated Fund of India, and any fees or other moneys taken by the Court shall form part of that Fund.

Article 147: Interpretation

In this Chapter and in Chapter V of Part VI, references to any substantial question of law as to the interpretation of this Constitution shall be construed as including references to any substantial question of law as to the interpretation of the Government of India Act, 1935 (including any enactment amending or supplementing that Act), or of any Order in Council or order made thereunder, or of the Indian Independence Act, 1947, or of any order made thereunder.

Info- Bits related with Supreme Court

- The Supreme Court can strike down certain provisions/amendments of the Indian Constitution, if it feels that the provisions are unconstitutional or alter the basic structure of the constitution. But striking down does not take away the provisions from the Constitution. To take away the provisions, Parliament has to present a Constitution Amendment bill to repeal the provisions.

Governor of States (Article 152-162)

PART VI of the Constitution deals with the other half of Indian federalism, ie the States. Article from 152-237 deals with various provisions related to States. It covers the executive, legislature and judiciary wings of the states. Article 152 clarifies about the definition of state, while the next set of articles lists the roles and responsibilities of the Governors of states.

CHAPTER I.—GENERAL

Article 152 : Definition

In this Part, unless the context otherwise requires, the expression “State” does not include the State of Jammu and Kashmir.

CHAPTER II.—THE EXECUTIVE

The Governor

ARTICLE 153: GOVERNORS OF STATES

There shall be a Governor for each State:

Provided that nothing in this article shall prevent the appointment of the same person as Governor for two or more States.

ARTICLE 154: EXECUTIVE POWER OF STATE

(1) The executive power of the State shall be vested in the Governor and shall be exercised by him either directly or through officers subordinate to him in accordance with this Constitution.

(2) Nothing in this article shall—

(a) be deemed to transfer to the Governor any functions conferred by any existing law on any other authority; or

(b) prevent Parliament or the Legislature of the State from conferring by law functions on any authority subordinate to the Governor.

ARTICLE 155: APPOINTMENT OF GOVERNOR

The Governor of a State shall be appointed by the President by warrant under his hand and seal.

ARTICLE 156: TERM OF OFFICE OF GOVERNOR

(1) The Governor shall hold office during the pleasure of the President.

(2) The Governor may, by writing under his hand addressed to the President, resign his office.

(3) Subject to the foregoing provisions of this article, a Governor shall hold office for a term of five years from the date on which he enters upon his office:

Provided that a Governor shall, notwithstanding the expiration of his term, continue to hold office until his successor enters upon his office.

ARTICLE 157: QUALIFICATIONS FOR APPOINTMENT AS GOVERNOR

No person shall be eligible for appointment as Governor unless he is a citizen of India and has completed the age of thirty-five years.

ARTICLE 158: CONDITIONS OF GOVERNOR'S OFFICE

(1) The Governor shall not be a member of either House of Parliament or of a House of the Legislature of any State specified in the First Schedule, and if a member of either House of

Parliament or of a House of the Legislature of any such State be appointed Governor, he shall be deemed to have vacated his seat in that House on the date on which he enters upon his office as Governor.

(2) The Governor shall not hold any other office of profit.

(3) The Governor shall be entitled without payment of rent to the use of his official residences and shall be also entitled to such emoluments, allowances and privileges as may be determined by Parliament by law and, until provision in that behalf is so made, such emoluments, allowances and privileges as are specified in the Second Schedule.

(3A) Where the same person is appointed as Governor of two or more States, the emoluments and allowances payable to the Governor shall be allocated among the States in such proportion as the President may by order determine.

(4) The emoluments and allowances of the Governor shall not be diminished during his term of office.

ARTICLE 159: OATH OR AFFIRMATION BY THE GOVERNOR

Every Governor and every person discharging the functions of the Governor shall, before entering upon his office, make and subscribe in the presence of the Chief Justice of the High Court exercising jurisdiction in relation to the State, or, in his absence, the senior most Judge of that Court available, an oath or affirmation in the following form, that is to say—

“I, A. B., do swear in the name of God that I will solemnly affirm
faithfully execute the office of Governor (or discharge the functions of the Governor) of
.....(name of the State) and will to the best of my ability preserve, protect and defend the
Constitution and the law and that I will devote myself to the service and well-being of the people
of(name of the State).”

ARTICLE 160: DISCHARGE OF THE FUNCTIONS OF THE GOVERNOR IN CERTAIN CONTINGENCIES

The President may make such provision as he thinks fit for the discharge of the functions of the Governor of a State in any contingency not provided for in this Chapter.

ARTICLE 161: POWER OF GOVERNOR TO GRANT PARDONS, ETC., AND TO SUSPEND, REMIT OR COMMUTE SENTENCES IN CERTAIN CASES

The Governor of a State 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 against any law relating to a matter to which the executive power of the State extends.

ARTICLE 162: EXTENT OF EXECUTIVE POWER OF STATE

Subject to the provisions of this Constitution, the executive power of a State shall extend to the matters with respect to which the Legislature of the State has power to make laws:

Provided that in any matter with respect to which the Legislature of a State and Parliament have power to make laws, the executive power of the State shall be subject to, and limited by, the executive power expressly conferred by this Constitution or by any law made by Parliament upon the Union or authorities thereof.

Info-bits related to Governor of States

- Powers of the Governor can be broadly classified into executive, legislative (including financial powers) and judicial powers.
- Though the Governor has the power to pardon, he cannot pardon a death sentence.
- There are also related articles like 163 -167, 174-176, 200-201, 213, 217, 233-234 which touch on the sphere of influence of the Governor of a state.
- When the governor reserves a bill for the consideration of the President, the assent of the Governor is no longer required (only the President's assent would be needed then).
- The president is not bound to give his assent to a state bill reserved by the governor for the Consideration of the President and he can return the bill to the houses for reconsideration 'n' times.
- Removal of Governors by Center : Disapproving the practice of replacing Governors after a new government comes to power at the Centre, the Supreme Court in 2010 had said that the Governors of states cannot be changed in an *arbitrary and capricious manner* with the change of power. A five-judge Constitution bench headed by Chief Justice K G

Balakrishnan held that a Governor can be replaced only under “*compelling*” reasons for *proven misconduct or other irregularities*. The Bench also said the Governor can be removed only under “compelling reasons” and what the compelling reasons are depends on facts and situations of a particular case. The landmark decision came on a PIL filed in 2004 by then BJP MP B P Singhal challenging the removal of Governors of Uttar Pradesh, Gujarat, Haryana and Orissa by the previous UPA government.

- NB : The judgment had provided an important exception, which now allows the Union government to build a file containing the reasons for a governor’s removal prior to the council of ministers headed by the PM making such a recommendation to the President. Though the President can return the file, he must sign the recommendation in the event of the Cabinet reiterating its decision. (The case is even then open for Judicial review on grounds of “compelling” reasons for proven misconduct or other irregularities.)

Council of Ministers in States (Articles 163-164)

PART VI of the Constitution deals with the other half of Indian federalism, ie the States. Article from 152-237 deals with various provisions related to States. It covers the executive, legislature and judiciary wings of the states. Articles 163-164 deals with the Council of Ministers (CoM) in states.

Article 163: Council of Ministers to aid and advise Governor

(1) There shall be a Council of Ministers with the Chief Minister at the head to aid and advise the Governor in the exercise of his functions, except in so far as he is by or under this Constitution required to exercise his functions or any of them at his discretion.

(2) If any question arises whether any matter is or is not a matter as respects which the Governor is by or under this Constitution required to act in his discretion, the decision of the Governor in his discretion shall be final, and the validity of anything done by the Governor shall not be called in question on the ground that he ought or ought not to have acted in his discretion.

(3) The question whether any, and if so what, advice was tendered by Ministers to the Governor shall not be inquired into in any court.

Article 164: Other provisions as to Ministers

(1) The Chief Minister shall be appointed by the Governor and the other Ministers shall be appointed by the Governor on the advice of the Chief Minister, and the Ministers shall hold office during the pleasure of the Governor:

Provided that in the States of Bihar, Madhya Pradesh and Orissa, there shall be a Minister in charge of tribal welfare who may in addition be in charge of the welfare of the Scheduled Castes and backward classes or any other work.

(1A) The total number of Ministers, including the Chief Minister, in the Council of Ministers in a State shall not exceed fifteen per cent. of the total number of members of the Legislative Assembly of that State:

Provided that the number of Ministers, including the Chief Minister in a State shall not be less than twelve:

Provided further that where the total number of Ministers including the Chief Minister in the Council of Ministers in any State at the commencement of the Constitution (Ninety-first Amendment) Act, 2003 exceeds the said fifteen per cent. or the number specified in the first proviso, as the case may be, then the total number of Ministers in that State shall be brought in conformity with the provisions of this clause within six months from such date* (7.1.2004: vide Notification No. S.O. 21(E), dated 7.1.2004.) as the President may by public notification.

(1B) A member of the Legislative Assembly of a State or either House of the Legislature of a State having Legislative Council belonging to any political party who is disqualified for being a member of that House under paragraph 2 of the Tenth Schedule shall also be disqualified to be appointed as a Minister under clause (1) for duration of the period commencing from the date of his disqualification till the date on which the term of his office as such member would expire or where he contests any election to the Legislative Assembly of a State or either House of the Legislature of a State having Legislative Council, as the case may be, before the expiry of such period, till the date on which he is declared elected, whichever is earlier.

(2) The Council of Ministers shall be collectively responsible to the Legislative Assembly of the State.

(3) Before a Minister enters upon his office, the Governor shall administer to him the oaths of office and of secrecy according to the forms set out for the purpose in the Third Schedule.

(4) A Minister who for any period of six consecutive months is not a member of the Legislature of the State shall at the expiration of that period cease to be a Minister.

(5) The salaries and allowances of Ministers shall be such as the Legislature of the State may from time to time by law determine and, until the Legislature of the State so determines, shall be as specified in the Second Schedule.

Info-bits related to Council of Ministers in States

- The President of India does not exist without a council of ministers, but the Governor has (at the time of President's rule).
- The minimum strength of council of ministers in a state as per Constitution is 12 and maximum is 15 percent of the Legislative Assembly.
- Oaths for ministers : oaths of office and of secrecy.
- The Governor has discretionary powers and the validity of acts done using the discretionary powers cannot be questioned.

The State Legislature – in General (Article 168-177)

Article 168: Constitution of Legislatures in States.

(1) For every State there shall be a Legislature which shall consist of the Governor, and—

(a) in the States of Andhra Pradesh, Telangana, Uttar Pradesh, Bihar, Maharashtra, Karnataka and Jammu and Kashmir, two Houses;

(b) in other States, one House.

(2) Where there are two Houses of the Legislature of a State, one shall be known as the Legislative Council and the other as the Legislative Assembly, and where there is only one House, it shall be known as the Legislative Assembly.

Article 169: Abolition or creation of Legislative Councils in States.

(1) Notwithstanding anything in article 168, 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 and by a majority of not less than two-thirds of the members of the Assembly present and voting.

(2) Any law referred to in clause (1) shall contain such provisions for the amendment of this Constitution as may be necessary to give effect to the provisions of the law and may also contain such supplemental, incidental and consequential provisions as Parliament may deem necessary.

(3) No such law as aforesaid shall be deemed to be an amendment of this Constitution for the purposes of article 368.

Article 170: Composition of the Legislative Assemblies.

(1) Subject to the provisions of article 333, the Legislative Assembly of each State shall consist of not more than five hundred, and not less than sixty, members chosen by direct election from territorial constituencies in the State.

(2) For the purposes of clause (1), each State shall be divided into territorial constituencies in such manner that the ratio between the population of each constituency and the number of seats allotted to it shall, so far as practicable, be the same throughout the State.

Explanation.—In this clause, the expression “population” means the population as ascertained at the last preceding census of which the relevant figures have been published:

Provided that the reference in this Explanation to the last preceding census of which the relevant figures have been published shall, until the relevant figures for the first census taken after the year 2026 have been published, be construed as a reference to the 2001 census.

(3) Upon the completion of each census, the total number of seats in the Legislative Assembly of each State and the division of each State into territorial constituencies shall be readjusted by such authority and in such manner as Parliament may by law determine:

Provided that such readjustment shall not affect representation in the Legislative Assembly until the dissolution of the then existing Assembly:

Provided further that such readjustment shall take effect from such date as the President may, by order, specify and until such readjustment takes effect, any election to the Legislative

Assembly may be held on the basis of the territorial constituencies existing before such readjustment:

Provided also that until the relevant figures for the first census taken after the year 2026 have been published, it shall not be necessary to readjust—

(i) the total number of seats in the Legislative Assembly of each State as readjusted on the basis of the 1971 census; and

(ii) the division of such State into territorial constituencies as may be readjusted on the basis of the 2001 census, under this clause.

Article 171: Composition of the Legislative Councils.

(1) The total number of members in the Legislative Council of a State having such a Council shall not exceed one third of the total number of members in the Legislative Assembly of that State:

Provided that the total number of members in the Legislative Council of a State shall in no case be less than forty.

(2) Until Parliament by law otherwise provides, the composition of the Legislative Council of a State shall be as provided in clause (3).

(3) Of the total number of members of the Legislative Council of a State—

(a) as nearly as may be, one-third shall be elected by electorates consisting of members of municipalities, district boards and such other local authorities in the State as Parliament may by law specify;

(b) as nearly as may be, one-twelfth shall be elected by electorates consisting of persons residing in the State who have been for at least three years graduates of any university in the territory of India or have been for at least three years in possession of qualifications prescribed by or under any law made by Parliament as equivalent to that of a graduate of any such university;

(c) as nearly as may be, one-twelfth shall be elected by electorates consisting of persons who have been for at least three years engaged in teaching in such educational institutions within the State, not lower in standard than that of a secondary school, as may be prescribed by or under any law made by Parliament;

(d) as nearly as may be, one-third shall be elected by the members of the Legislative Assembly of the State from amongst persons who are not members of the Assembly;

(e) the remainder shall be nominated by the Governor in accordance with the provisions of clause (5).

(4) The members to be elected under sub-clauses (a), (b) and (c) of clause (3) shall be chosen in such territorial constituencies as may be prescribed by or under any law made by Parliament, and the elections under the said sub-clauses and under sub-clause (d) of the said clause shall be held in accordance with the system of proportional representation by means of the single transferable vote.

(5) The members to be nominated by the Governor under sub-clause (e) of clause (3) shall consist of persons having special knowledge or practical experience in respect of such matters as the following, namely:— Literature, science, art, co-operative movement and social service.

Article 172: Duration of State Legislatures.

(1) Every Legislative Assembly of every State, unless sooner dissolved, shall continue for five years from the date appointed for its first meeting and no longer and the expiration of the said period of five years shall operate as a dissolution of the Assembly:

Provided that the said period may, while a Proclamation of Emergency is in operation, be extended by Parliament by law for a period not exceeding one year at a time and not extending in any case beyond a period of six months after the Proclamation has ceased to operate.

(2) The Legislative Council of a State shall not be subject to dissolution, but as nearly as possible one-third of the members thereof shall retire as soon as may be on the expiration of every second year in accordance with the provisions made in that behalf by Parliament by law.

Article 173: Qualification for membership of the State Legislature.

A person shall not be qualified to be chosen to fill a seat in the Legislature of a State unless he—

(a) is a citizen of India, and makes and subscribed before some person authorised in that behalf by the Election Commission an oath or affirmation according to the form set out for the purpose in the Third Schedule;

(b) is, in the case of a seat in the Legislative Assembly, not less than twenty-five years of age and, in the case of a seat in the Legislative Council, not less than thirty years of age; and

(c) possesses such other qualifications as may be prescribed in that behalf by or under any law made by Parliament.

Article 174: Sessions of the State Legislature, prorogation and dissolution.

(1) The Governor shall from time to time summon the House or each House of the Legislature of the State to meet at such time and place as he thinks fit, but six

months shall not intervene between its last sitting in one session and the date appointed for its first sitting in the next session.

(2) The Governor may from time to time—

(a) prorogue the House or either House;

(b) dissolve the Legislative Assembly.

Article 175: Right of Governor to address and send messages to the House or Houses.

(1) The Governor may address the Legislative Assembly or, in the case of a State having a Legislative Council, either the House of the Legislature of the State, or both Houses assembled together, and may for that purpose require the attendance of members.

(2) The Governor may send messages to the House or Houses of the Legislature of the State, whether with respect to a Bill then pending in the Legislature or otherwise, and a House to which any message is so sent shall with all convenient dispatch consider any matter required by the message to be taken into consideration.

Article 176: Special address by the Governor.

(1) At the commencement of the first session after each general election to the Legislative Assembly and at the commencement of the first session of each year, the Governor shall address the Legislative Assembly or, in the case of a State having a Legislative Council, both Houses assembled together and inform the Legislature of the causes of its summons.

(2) Provision shall be made by the rules regulating the procedure of the House or either House for the allotment of time for discussion of the matters referred to in such address.

Article 177: Rights of Ministers and Advocate-General as respects the Houses.

Every Minister and the Advocate-General for a State shall have the right to speak in, and otherwise to take part in the proceedings of, the Legislative Assembly of the State or, in the case of a State having a Legislative Council, both Houses, and to speak in, and otherwise to take part in the proceedings of, any committee of the Legislature of which he may be named a member, but shall not, by virtue of this article, be entitled to vote.

Info- Bits related with State Legislature

1. At present there are seven states which have bicameral legislature – Andhra Pradesh, Telangana, Uttar Pradesh, Bihar, Maharashtra, Karnataka and Jammu and Kashmir.
2. The permissible strength of a Legislative Assembly (LA) is between 60 and 500.
3. Total number of Members in the Legislative Council (LC) of a State shall not exceed one third of the total number of Members in the Legislative Assembly.
4. Of the total number of Members of the Legislative Council, 1/3 of Members are elected by electorates consisting of the Members of Local Authorities, 1/12 are elected by electorates consisting of graduates residing in the State, 1/12 are elected by electorates consisting of persons engaged in teaching, 1/3 are elected by the Members of Legislative Assembly and the remaining are nominated by the Governor. (For example, if the total strength of L.C is 48, 16 will be elected by members of local authorities, 16 will be elected by L.A, 4 will be elected by graduates, 4 will be elected by teachers and 8 will be nominated by Governor.)

The 3 organs of the State

The 3 organs of the state – Legislature, Executive, and Judiciary are very important. Also, understand the Fundamental Rights and DPSPs.

LEGISLATURE

- Sessions of Parliament: Adjournment, Prorogation, Dissolution etc.

Adjournment, Prorogation, and Dissolution: Know the Difference

We often see the terms Adjournment, Prorogation, and Dissolution in news. How are these terms different?

A Session of Indian Parliament

A session of the Indian Parliament is the time period during which a House meets almost every day continuously to transact business.

There are usually three sessions in a year. They are the Budget Session (February to May); the Monsoon Session (July to September); and the Winter Session (November to December).

A session contains many meetings. Each meeting has two sittings – morning sitting from 11 am to 1 pm and post-lunch sitting from 2 pm to 6 pm.

A sitting of Parliament can be terminated by adjournment, adjournment sine die, prorogation or dissolution.

Technically, a session of the Indian Parliament is the period between the first sitting of a House and its prorogation or dissolution.

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

Summoning

Summoning is the process of calling all members of Parliament to meet. It is the duty of the Indian President to summon each House of the Parliament from time to time.

The maximum gap between two sessions of Parliament cannot be more than six months. In other words, the Parliament should meet at least twice a year.

Adjournment

An adjournment suspends the work in a sitting for a specified time, which may be hours, days or weeks. In this case, the time of reassembly is specified.

An adjournment only terminates a sitting and not a session of the House.

The power of adjournment lies with the presiding officer of the House.

Adjournment Sine Die

Adjournment sine die means terminating a sitting of Parliament for an indefinite period. In other words, when the House is adjourned without naming a day for reassembly, it is called adjournment sine die.

The power of adjournment sine die lies with the presiding officer of the House.

Note: The presiding officer of a House can call a sitting of the House before the date or time to which it has been adjourned or at any time after the House has been adjourned sine die.

Prorogation

Prorogation means the termination of a session of the House by an order made by the President under article 85(2)(a) of the Constitution. Prorogation terminates both the sitting and session of the House.

Usually, within a few days after the House is adjourned sine die by the presiding officer, the President issues a notification for the prorogation of the session. However, the President can also prorogate the House while in session.

Note: All pending notices (other than those for introducing bills) lapse on prorogation and fresh notices have to be given for the next session.

Dissolution

A dissolution ends the very life of the existing House, and a new House is constituted after general elections are held.

Rajya Sabha, being a permanent House, is not subject to dissolution. Only the Lok Sabha is subject to dissolution.

The dissolution of the Lok Sabha may take place in either of two ways:

1. Automatic dissolution: On the expiry of its tenure – five years or the terms as extended during a national emergency.
2. Order of President: If the President is authorized by CoM, he can dissolve Lok Sabha, even before the end of the term. He may also dissolve Lok Sabha if CoM loses confidence and no party is able to form the government. Once the Lok Sabha is dissolved before the completion of its normal tenure, the dissolution is irrevocable.

Note: When the Lok Sabha is dissolved, all business including bills, motions, resolutions, notices, petitions and so on pending before it or its committees lapse.

Summary

- Adjournment – terminates a sitting.
- Prorogation – terminates a session.
- Dissolution – terminates the life of a House.

When Does a Bill Lapse in Indian Parliament?

When Does a Bill Lapse in Indian Parliament?

Please remember that only the Lok Sabha and the Legislative Assemblies are subject to dissolution (and there is no dissolution for Rajya Sabha and State Legislative Council).

When the Lok Sabha is dissolved, all business including bills, motions, resolutions, notices, petitions and so on pending before it or its committees lapse. They must be reintroduced in the newly-constituted Lok Sabha to be pursued further. Articles 107 and 108 of the Indian Constitution deals with these provisions. The position with respect to lapsing of bills is as follows:

Cases when a bill lapse:

1. A bill originated in the Lok Sabha but pending in the Lok Sabha – lapses.
2. A bill originated and passed by the Rajya Sabha but pending in Lok Sabha – lapses.
3. A bill originated and passed by the Lok Sabha but pending in the Rajya Sabha – lapses.
4. A bill originated in the Rajya Sabha and returned to that House by the Lok Sabha with amendments and still pending in the Rajya Sabha on the date of the dissolution of Lok Sabha- lapses.

Cases when a bill does not lapse:

1. A bill pending in the Rajya Sabha but not passed by the Lok Sabha does not lapse.
2. If the president has notified the holding of a joint sitting before the dissolution of Lok Sabha, it does not lapse.
3. A bill passed by both Houses but pending assent of the president does not lapse.
4. A bill passed by both Houses but returned by the president for reconsideration of Rajya Sabha does not lapse.

5. Some pending bills and all pending assurances that are to be examined by the Committee on Government Assurances do not lapse on the dissolution of the Lok Sabha.

When Does a Bill Lapse in the State Legislative Assembly?

The legislative council, being a permanent house, is not subject to dissolution. Only the legislative assembly is subject to dissolution. The position with respect to lapsing of bills on the dissolution of the assembly is mentioned below:

Cases when a bill lapse:

1. A bill originated in the Assembly but pending in the Assembly – lapses.
2. A bill originated and passed by the Council but pending in Assembly – lapses.
3. A bill originated and passed by the Assembly but pending in the Council – lapses.

Cases when a bill does not lapse:

1. A bill pending in the Council but not passed by the Assembly does not lapse.
2. A bill passed by one or both Houses but pending assent of the Governor does not lapse.
3. A bill passed by one or both Houses but returned by the president for reconsideration of the Council does not lapse.

Points to note

- Adjournment (of a sitting) does not affect the bills or any other business pending before the House and the same can be resumed when the House meets again.
- Prorogation (of a session) does not affect the bills or any other business pending before the House. However, all pending notices (other than those for introducing bills) lapse on prorogation and fresh notices have to be given for the next session.
- When Lok Sabha is dissolved, all business including bills, motions, resolutions, notices, petitions and so on pending before it or its committees lapse.
- A bill becomes an act only after passing through various legislative stages.

- 68 bills lapsed at the end of the 15th Lok Sabha. Examples include – (1) The Constitution (108th Amendment) Bill to reserve 50 per cent of seats in Parliament and the legislatures for women. (2) The Constitution (110th Amendment) Bill for reserving half the seats in panchayats for women. (3) The Constitution (112th Amendment) Bill reserving one-third of elected seats in municipalities for women.

Types of Majorities Used in the Indian Parliament – Absolute, Effective, Simple, and Special Majority

What is the difference between the absolute majority and effective majority? How is the simple majority different from the special majority required by article 368? Confusing questions!

The majority required to pass a resolution, motion, or a bill varies depending upon the purpose.

As this is one of the most confusing areas for most students, we are coming up with a new post on the type of majorities used while voting in the Indian Parliament as well as State Legislatures.

Types of Majorities as per the Indian Constitution

There is no explicit classification of majorities in the Indian Constitution. But a careful reading of different articles in the Indian Constitution would provide an idea about four types of majorities.

They are Absolute Majority, Effective Majority, Simple Majority and Special Majority. For ease of understanding, we have again classified Special Majority into four subtypes.

Absolute majority

It refers to a majority of more than 50% of the total membership of the house. For example, as the total membership of Lok Sabha is 545, an absolute majority in Lok Sabha means – 50% of 545 plus 1, ie. 273.

Cases, where the absolute majority is used: In the normal business of the Parliament or State Legislature absolute majority, is not generally used. But this majority is used during the general election, for the formation of government at Center and States.

Effective Majority

Effective Majority of the house means more than 50% of the effective strength of the house. This implies that out of the total strength, we deduct the vacant seats. When the Indian Constitution mentions “all the then members”, that refers to the effective majority.

For example, in Rajya Sabha, out of the total strength of 245 members, if there are 45 vacancies, then the effective strength of the house is 200. Then the effective majority is 50% of 200 plus 1, i.e. 101.

Cases where the effective majority is used:

1. Removal of Vice-president in RS – Article 67(b).
2. Removal of Speaker and Deputy Speaker of Lok Sabha and State Legislative Assembly.

Simple Majority

This refers to the majority of more than 50% of the members present and voting. This is also known as functional majority or working majority. The simple majority is the most frequently used form of majority in Parliamentary business. When the constitution or the laws do not specify the type of majority needed, the simple majority is considered for voting.

To understand the simple majority, let us consider the situation in Lok Sabha. On a particular day, out of the total strength of 545, 45 were absent and 100 abstained from voting on an issue. So only 400 members were present and voting. Then the simple majority is 50% of 400 plus 1, ie. 201.

Ordinary bills need to be passed with a simple majority in both Houses of the Parliament before it is sent to the Indian President for his assent.

Cases where the simple majority is used:

1. To pass Ordinary/Money/Financial bills.
2. To pass Non-Confidence Motion/Adjournment Motion/Censure Motion/Confidence Motion.
3. For the removal of the Vice President majority required in Lok Sabha is the simple majority – A67(b).
4. To declare a financial emergency.
5. To declare a state emergency (President's rule).
6. Election of Speaker/Deputy Speaker of Lok Sabha and State legislatures.
7. Constitution Amendment Bill under Article 368 which needs to be ratified by states, requires only a simple majority at State Legislatures.

Special Majority

All types of majorities other than the absolute, effective or simple majority are known as the special majority. A special majority are of 4 types, with different clauses.

- Type 1 – Special Majority as Per Article 249.
- Type 2 – Special Majority as per Article 368.
- Type 3 – Special Majority as per Article 368 + 50 percent state ratification by a simple majority.
- Type 4 – Special Majority as per A61.

Special Majority as Per Article 249

Special majority as per article 249 requires a majority of 2/3rd members present and voting. For example, if out of the 245 members in Rajya Sabha, if only 150 are present and voting, then the special majority required as per article 249 would be 101.

Cases where special majority as per article 249 is used: To pass the Rajya Sabha resolution to empower the parliament to make laws in the state list. (valid up to 1 year, but can be extended any number of times).

Special Majority as Per Article 368

Special majority as per article 368 requires a majority of 2/3rd members present and voting supported by more than 50% of the total strength of the house. This type of majority is used for most of the Constitutional amendment bills. To pass a constitution amendment bill in Rajya Sabha, in addition to getting the support of 123 members, the bill should be favoured by more than 2/3rd of the members present and voting.

Cases where special majority as per article 368 is used:

1. To pass a constitutional amendment bill which does not affect federalism.
2. Removal of judges of SC/HC.
3. Removal of CEC/CAG.
4. Approval of national emergency requires a special majority as per Article 368 in both houses.
5. Resolution by the state legislature for the creation/abolition of the Legislative Council (Article 169).

Special Majority as Per Article 368 plus State ratification

This type of special majority is required when a constitutional amendment bill tries to change the federal structure. Special majority as per article 368 plus state ratification requires a majority of 2/3rd members present and voting supported by more than 50% of the state legislatures by a simple majority. A good example would be the bill which introduced the National Judicial Appointments Commission (NJAC). It required the support of at least 15 state legislatures out of the 29 states.

Cases where special majority as per article 368 plus state ratification is used: To pass a constitutional amendment bill which affects federalism like the position of High Court Judges.

Special Majority as Per Article 61

Special majority as per article 61 requires a majority of 2/3rd members of the total strength of the house. In Lok Sabha, the special majority as per article 61 is 364 while in Rajya Sabha, the special majority as per article 61 is 164.

Cases where special majority as per article 61 is used: For the impeachment of the Indian President.

Parliamentary Committees in Lok Sabha and Rajya Sabha

What do you mean by the Parliamentary Committee? What are the types of committees in the Parliament of India?

You all are familiar with Parliament as a major organ of the state dealing with lawmaking. Parliament is also the authority to check the Executive (government). Every Executive is answerable to the Parliament. Our discussion and analysis on Parliament will be incomplete if we don't touch the Parliamentary Committees.

Parliamentary Committees are committees, with MPs as members, for specialized work on behalf of the entire Parliament.

Why Parliamentary Committees?

The work done by the Parliament in modern times is considerable in volume and varied in nature.

The time at its disposal is limited (Remember that our Parliament normally meets only for 3 sessions, that too only for around 100 days each year!). It cannot, therefore, give close consideration to the details of all the legislative and other matters that come up before it.

Hence Parliamentary Committees are necessary for a detailed study on specific matters.

How Parliament transacts its business with Parliamentary Committees?

1. When a Bill comes up before a House for general discussion, it is open to that House to refer it to a Select Committee of the House or a Joint Committee of the two Houses.
2. A motion has to be moved and adopted to this effect in the House in which the Bill comes up for consideration.
3. In case the motion adopted is for reference of the Bill to a Joint Committee, the decision is conveyed to the other House requesting them to nominate members of the other House to serve on the Committee.

4. The Select or Joint Committee considers the Bill clause by clause just as the two Houses do. Amendments can be moved to various clauses by members of the Committee.
5. The Committee can also take evidence of associations, public bodies or experts who are interested in the Bill.
6. After the Bill has thus been considered the Committee submits its report to the House.
7. Members who do not agree with the majority report may append their minutes of dissent to the report.

Types of Parliamentary Committees

- Based on purpose and duration.
 1. Ad Hoc.
 2. Standing – Advisory and Enquiry.
- Based on composition.
 1. Select – Single House, ie either LS or RS.
 2. Joint – Both Houses.

Committee Types	Standing Committee	Ad Hoc Committee
Select Committee	Eg: Estimate (LS), Ethics Committee (RS)	Committees on Bills (Select)
Joint Committee	Eg: PAC	Committees on Bills (Joint)

Ad hoc Committees vs Standing Committees

Ad hoc Committees are appointed for a specific purpose and they cease to exist when they finish the task assigned to them and submit a report.

Examples of ad hoc committees

1. Committees on Bills (Select and Joint).
2. Railway Convention Committee.

3. Committees on the Draft Five Year Plans.
4. Hindi Equivalents Committee.

Standing Committees are permanent committees. Each House of Parliament has Standing Committees.

Examples of standing committees:

1. Business Advisory Committee.
2. Committee on Petitions.
3. Committee of Privileges.
4. Rules Committee.

Standing Committees in Lok Sabha (Select)

1. Absence of Members from the sitting of the House
2. Business Advisory Committee
3. Committee on Welfare of Other Backward Classes
4. Empowerment of Women
5. General Purposes Committee
6. Government Assurances
7. House Committee
8. Library Committee
9. Papers Laid on the Table
10. Petitions
11. Private Members Bills and Resolutions
12. Privileges
13. Rules Committee
14. Subordinate Legislation
15. The welfare of Scheduled Castes and Scheduled Tribes

Standing Committees in Rajya Sabha (Select)

1. Committees to enquire—

- (a) Committee on Petitions;
- (b) Committee of Privileges; and
- (c) Ethics Committee.

2. Committees to scrutinize and control—

- (a) Committee on Government Assurances;
- (b) Committee on Subordinate Legislation; and
- (c) Committee on Papers Laid on the Table.

3. Committees relating to the day-to-day business of the House—

- (a) Business Advisory Committee; and
- (b) Rules Committee.

4. Housekeeping Committees—

- (a) House Committee;
- (b) General Purposes Committee; and
- (c) Committee on Provision of Computers to Members of Rajya Sabha.

PS: The 12th committee in Rajya Sabha is Committee on Members of Parliament Local Area Development Scheme.

Sl. No.	Name of the Committee	No. of members in the Committee
1.	Business Advisory Committee	11
2.	Committee on Papers Laid on the Table	10
3.	Committee on Petitions	10
4.	Committee of Privileges	10

5.	Committee on Rules	16
6.	Committee on Subordinate Legislation	15
7.	Committee on Government Assurances	10
8.	General Purposes Committee	Not fixed
9.	House Committee	10
10.	Ethics Committee	10
11.	Committee on Provision of Computers for Members of Rajya Sabha	7
12.	Committee on Members of Parliament Local Area Development Scheme	10

Joint Standing Committees

All Department related standing committees are joint. Also, two of the three Financial committees are Joint (PAC and PUC). In addition to these the below mentioned are the important joint committees in Parliament.

- (a) Committee on the Welfare of Scheduled Castes and Scheduled Tribes.
- (b) Committee on Offices of Profit.
- (c) [Parliamentary Committee to review the rate of dividend payable by the Railway Undertaking to the General Revenues] (Railway Convention Committee).
- (d) Committee on Empowerment of Women.
- (e) Library Committee.
- (f) Committee on Food Management in Parliament House Complex.
- (g) Committee on Installation of Portraits/Statues of National Leaders and Parliamentarians in the Parliament House Complex.
- (h) Committee on Security Matters in Parliament House Complex.

Department related Standing Committees (Joint)

Out of the 24 Committees, 18 Committees are serviced by the Lok Sabha Secretariat and 6 Committees by the Rajya Sabha Secretariat. Each of these Standing Committees consists of not more than 45 members—30 to be nominated by the Speaker from amongst the members of Lok Sabha and 15 to be nominated by the Chairman, Rajya Sabha from amongst the members of Rajya Sabha. A Minister is not eligible to be nominated to these Committees. The term of members of these Committees is one year.

Department Related Standing Committees (LS)

Sl No.	Name of the Department Related Standing Committee (LS)
1	Committee on Agriculture
2	Committee on Chemicals & Fertilizers
3	Committee on Coal & Steel
4	Committee on Defence
5	Committee on Energy
6	Committee on External Affairs
7	Committee on Finance
8	Committee on Food, Consumer Affairs & Public Distribution
9	Committee on Information Technology
10	Committee on Labour
11	Committee on Petroleum & Natural Gas
12	Committee on Railways
13	Committee on Rural Development
14	Committee on Social Justice & Empowerment
15	Committee on Urban Development
16	Committee on Water Resources

Department Related Standing Committees (RS)

Sl No	Name of the Department Related Standing Committee (RS)
1	Committee on Commerce
2	Committee on Health and Family Welfare
3	Committee on Home Affairs
4	Committee on Human Resource Development
5	Committee on Industry
6	Committee on Personnel, Public Grievances, Law and Justice
7	Committee on Science & Technology, Environment & Forests
8	Committee on Transport, Tourism and Culture

Functions of Department Related Standing Committees

The newly constituted departmentally related Standing Committee System is a path-breaking endeavor of Parliamentary surveillance over administration. With the emphasis of their functioning to concentrate on long-term plans, policies and the philosophies guiding the working of the Executive, these Committees will be in a very privileged position to provide necessary direction, guidance and inputs for broad policy formulations and in the achievement of the long-term national perspective by the Executive. With reference to the Ministries/Departments under their purview, the functions of these committees are:

1. Consideration of Demands for Grants.
2. Examination of Bills referred to by the Chairman, Rajya Sabha or the Speaker, Lok Sabha as the case may be.
3. Consideration of Annual Reports.
4. Consideration of national basic long term policy documents presented to the House and referred to the Committee by the Chairman, Rajya Sabha or the Speaker, Lok Sabha, as the case may be.

NB: These Committees do not consider matters of the day-to-day administration of the concerned Ministries/Departments.

Important Parliamentary Committees in Detail

We have so far seen the list of Parliamentary Committees in Lok Sabha and Rajya Sabha. We have also seen the difference between Joint Committees and Select Committees. In this article, let us explore the details of some of the important Parliamentary Committees like Committee on Estimates, Committee on Public Undertakings, Committee on Public Accounts etc.

Important Committees which act as Parliament's 'Watch Dogs' over the executive (Select and Joint)

1. Committees on Subordinate Legislation
2. Committee on Government Assurances
3. Committee on Estimates (Select committee of LS)
4. Committee on Public Accounts (PAC)
5. Committee on Public Undertakings (PUC)
6. Department Related Standing Committees (DRSCs) – (covered in our last post on Parliamentary Committees Basics)

PS: The Committee on Estimates, the Committee on Public Accounts, the Committee on Public Undertakings (NB: These three come under the category of Finance Committees) and DRSCs play an important role in exercising a check over governmental expenditure and Policy formulation.

Committee on Estimates

This Committee consists of 30 members who are elected by the Lok Sabha every year from among its members. A Minister is not eligible for election to this Committee. The term of the Committee is one year. The main function of the Committee on Estimates is to report what improvements in organisation, efficiency, or administrative reform, consistent with the policy underlying the estimates may be effected. They suggest alternative policies in order to bring about efficiency and economy in administration.

- NB: From time to time the Committee selects such of the estimates pertaining to a Ministry or a group of Ministries or the statutory and other Government bodies as may seem fit to the Committee.

- NB: The Committee also examines matters of special interest which may arise or come to light in the course of its work or which are specifically referred to by the House or the Speaker.

Committee on Public Undertakings

The Committee on Public Undertakings consists of 15 members elected by the Lok Sabha and 7 members of Rajya Sabha. A Minister is not eligible for election to this Committee. The term of the Committee is one year.

The functions of the Committee on Public Undertakings are—

- (a) to examine the reports and accounts of Public Undertakings.
- (b) to examine the reports, if any, of the Comptroller and Auditor General on the Public Undertakings.
- (c) to examine in the context of the autonomy and efficiency of the Public Undertakings whether the affairs of the Public Undertakings are being managed in accordance with sound business principles and prudent commercial practices.
- (d) such other functions vested in the Committee on Public Accounts and the Committee on Estimates in relation to the Public Undertakings as are not covered by clauses (a), (b) and (c) above and as may be allotted to the Committee by the Speaker from time to time.

NB: The Committee does not, however, examine matters of major Government policy and matters of day-to-day administration of the Undertakings.

Committee on Public Accounts

This Committee consists of 15 members elected by the Lok Sabha and 7 members of the Rajya Sabha. A Minister is not eligible for election to this Committee. The term of the Committee is one year.

The main duty of the Committee is to ascertain whether the money granted by Parliament has been spent by Government “within the scope of the Demand”. The Appropriation Accounts of the Government of India and the Audit Reports presented by the Comptroller and Auditor General mainly form the basis for the examination of the Committee. Cases involving losses, nugatory

expenditure and financial irregularities come in for severe criticism by the Committee. The Committee is not concerned with questions of policy. It is concerned only with the execution of the policy laid down by Parliament and its results.

Business Advisory Committee (Lok Sabha)

The Business Advisory Committee of Lok Sabha consists of 15 members including the Speaker who is the ex-officio Chairman. The members are nominated by the Speaker. Almost all sections of the House are represented on the Committee as per the respective strength of parties in the House. The function of the Committee is to recommend the time that should be allotted for the discussion of such Government legislative and other business as the Speaker, in consultation with the Leader of the House, may direct to be referred to the Committee. The Committee, on its own initiative, may also recommend to the Government to bring forward particular subjects for discussion in the House and recommend allocation of time for such discussions. The decisions reached by the Committee are always unanimous in character and representative of the collective view of the House. The Committee generally meets at the beginning of each Session and thereafter as and when necessary.

Committee on Private Members' Bills and Resolutions (Lok Sabha)

This Committee consists of 15 members and the Deputy Speaker is its Chairman when nominated as a member of the Committee. The Committee is nominated by the Speaker. The functions of the Committee are to allot time to Private Members' Bills and Resolutions, to examine Private Members' Bills seeking to amend the Constitution before their introduction in Lok Sabha, to examine all Private Members' Bills after they are introduced and before they are taken up for consideration in the House and to classify them according to their nature, urgency and importance into two categories namely, category A and category B and also to examine such Private Members' Bills where the legislative competence of the House is challenged. *The Committee, thus, performs the same function in relation to Private Members' Bills and Resolutions as the Business Advisory Committee does in regard to Government Business.* The Committee holds office for a term not exceeding one year.

Rules Committee (Lok Sabha)

The Rules Committee consists of 15 members including the Speaker who is the ex-officio Chairman of the Committee. The members are nominated by the Speaker. The Committee

considers matters of procedure and conduct of business in the House and recommends any amendments or additions to the Rules of Procedure and Conduct of Business in Lok Sabha that are considered necessary.

Committee of Privileges (Lok Sabha)

This Committee consists of 15 members nominated by the Speaker. The function is to examine every question involving breach of privilege of the House or of the members of any Committee therefore referred to it by the House or by the Speaker. It determines with reference to the facts of each case whether a breach of privilege is involved and makes suitable recommendations in its report.

Committee on Papers Laid on the Table (Lok Sabha)

This Committee consists of 15 members nominated by the Speaker. Its function is to examine all papers laid on the Table of the House by Ministers (other than those which fall within the purview of the Committee on Subordinate Legislation or any other Parliamentary Committee) and to report to the House—(a) whether there has been compliance of the provisions of the Constitution, Act, rule or regulation under which the paper has been laid, (b) whether there has been any unreasonable delay in laying the paper, (c) if there has been such delay, whether a statement explaining the reasons for delay has been laid on the Table of the House and whether those reasons are satisfactory, (d) whether both the Hindi and English versions of the paper have been laid on the Table, (e) whether a statement explaining the reasons for not laying the Hindi version has been given and whether such reasons are satisfactory, (f) such other functions in respect of the papers laid on the Table as may be assigned to it by the Speaker from time to time.

Committee on Petitions (Lok Sabha)

The Committee consists of 15 members nominated by the Speaker. A Minister is not nominated to this Committee. The function of the Committee is to consider and report on petitions presented to the House. Besides, it also considers representations from individuals and associations, etc. on subjects which are not covered by the rules relating to petitions and gives directions for their disposal.

Committee on Subordinate Legislation (Lok Sabha)

The Committee consists of 15 members nominated by the Speaker. A Minister is not nominated to this Committee. The Committee scrutinizes and reports to the House whether the powers to make regulations, rules, sub-rules, by-laws etc. conferred by the Constitution or delegated by Parliament are being properly exercised by the executive within the scope of such delegation.

Committee on Government Assurances (Lok Sabha)

This Committee consists of 15 members nominated by the Speaker. A Minister is not nominated to this Committee. While replying to questions in the House or during discussions on Bills, Resolutions, Motions etc., Ministers at times give assurances or undertakings either to consider a matter or to take action or to furnish the House further information later. The functions of this Committee are to scrutinize the assurances, promises, undertakings etc. given by Ministers from time to time and to report to Lok Sabha on the extent to which such assurances etc. have been implemented and to see whether such implementation has taken place within the minimum time necessary for the purpose.

Committee on Absence of Members from the Sitzings of the House (Lok Sabha)

The Committee consists of 15 members who hold office for one year. The members are nominated by the Speaker. This Committee considers all applications from members for leave of absence from the sittings of the House and examines every case where a member has been absent for a period of 60 days or more, without permission, from the sittings of the House. In its report it makes recommendations with respect to each case as to whether the absence should be condoned or leave applied granted or whether the circumstances of the case justify that the House should declare the seat of the member vacant.

Joint Committee on Offices of Profit

This Committee consists of 15 members. Ten members are elected from Lok Sabha and five from Rajya Sabha. The Committee is constituted for the duration of each Lok Sabha.

The main functions of the Committee are to examine the composition and character of the Committees appointed by the Central and State Governments and to recommend what offices

should disqualify and what offices should not disqualify a person for being chosen as, and for being, a member of either House of Parliament under article 102 of the Constitution.

Committee on the Welfare of Scheduled Castes and Scheduled Tribes (Joint)

The Committee on the Welfare of Scheduled Castes and Scheduled Tribes consists of 20 members elected by the Lok Sabha and 10 members of Rajya Sabha are associated with it. The term of the Committee is one year. A Minister is not eligible for election to this Committee. The main functions of the Committee are to consider all matters concerning the welfare of the Scheduled Castes and Scheduled Tribes, falling within the purview of the Union Government and the Union Territories, to consider the reports submitted by the National Commission for Scheduled Castes and Scheduled Tribes and to examine the measures taken by the Union Government to secure due representation of the Scheduled Castes and Scheduled Tribes in services and posts under its control.

Railway Convention Committee (Ad-hoc)

The Railway Convention Committee is an ad-hoc Committee. It consists of 18 members. Out of these, 12 members are from Lok Sabha nominated by the Speaker and 6 members are from Rajya Sabha nominated by the Chairman. By convention the Minister of Finance and the Minister of Railways are members of the Committee. Besides this, Ministers of State in the Ministry of Finance and Ministry of Railways respectively are also its members.

The main function of the Committee is to review the Rate of Dividend payable by the Railways undertaking to General Revenues as well as other ancillary matters in connection with the Railway Finance vis-a-vis the General Finance and make recommendations thereon. The Railway Convention Committee, 1949 was the first Committee after independence. This Committee and subsequent Committees confined themselves to determining the rate of dividend payable by Railways to General Revenues. Since 1971 the Railway Convention Committees have been taking up subjects for examination and reports which have a bearing on the working of Railways.

Committee on Empowerment of Women

The Committee consists of 30 members, 20 nominated by the Speaker from amongst the members of Lok Sabha and 10 nominated by the Chairman, Rajya Sabha from amongst the

members of the Rajya Sabha. The term of the Committee is one year. The Committee has been primarily mandated with the task of reviewing and monitoring the measures taken by the Union Government in the direction of securing for women equality, status and dignity in all matters. The Committee would also suggest necessary correctives for improving the status/condition of women in respect of matters within the purview of the Union Government. Besides, another important function of the Committee is to examine the measures taken by the Union Government for comprehensive education and adequate representation of women in Legislative bodies/services and other fields. The Committee would also consider the report of the National Commission for Women. The Committee may also examine such other matters as may seem fit to them or are specifically referred to them by the Lok Sabha or the Speaker and the Rajya Sabha or the Chairman, Rajya Sabha.

Elections to the Rajya Sabha: Know the procedure of electing a candidate to the upper house

Most of us know how elections are conducted in Lok Sabha. But how is a candidate elected to Rajya Sabha? What is the election procedure of the upper house, Rajya Sabha, also known as the Council of States? Procedure for Rajya Sabha elections are more complex when compared to Lok Sabha elections.

Why Rajya Sabha or Council of States?

A single directly elected House was considered inadequate to meet the challenges before free India by the Constituent Assembly. A second chamber, known as the 'Council of States', therefore, was created with altogether different composition and method of election from that of the directly elected House of the People. It was meant to be the federal chamber *i.e.*, a House elected by the elected members of Assemblies of the States and two Union Territories in which States were not given equal representation (unlike many other federal countries). Apart from the elected members, provision was also made for the nomination of twelve members to the House by the President.

Composition of Rajya Sabha

Article 80 of the Constitution lays down the maximum strength of Rajya Sabha as 250, out of which 12 members are nominated by the President and 238 are representatives of the States and

of the two Union Territories. The present strength of Rajya Sabha, however, is 245, out of which 233 are representatives of the States and Union territories of Delhi and Puducherry and 12 are nominated by the President. The members nominated by the President are persons having special knowledge or practical experience in respect of such matters as literature, science, art and social service.

Allocation of Seats to Rajya Sabha

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

Name of State	No. of Seats
Andhra Pradesh	18
Arunachal Pradesh	1
Assam	7
Bihar	16
Chhattisgarh	5
Goa	1
Gujarat	11
Haryana	5
Himachal Pradesh	3
Jammu & Kashmir	4
Jharkhand	6
Karnataka	12
Kerala	9
Madhya Pradesh	11

Maharashtra	19
Manipur	1
Meghalaya	1
Mizoram	1
Nagaland	1
National Capital Territory (Delhi)	3
Nominated	12
Odisha	10
Pondicherry	1
Punjab	7
Rajasthan	10
Sikkim	1
Tamil Nadu	18
Tripura	1
Uttar Pradesh	31
Uttarakhand	3
West Bengal	16

Process of Rajya Sabha Election

The representatives of the States and of the Union Territories in the Rajya Sabha are elected by the method of indirect election. The representatives of each State and two Union territories are elected by the elected members of the Legislative Assembly of that State and by the members of the Electoral College for that Union Territory, as the case may be, in accordance with the system of proportional representation by means of the single transferable vote.

Election to Rajya Sabha: Procedure Illustrated with an Example

The Rajya Sabha seat quota for each state is fixed as per Schedule 4 of the constitution. Elections to 1/3 of these seats occur every 2 years. Let's take an example of a state where there is a Rajya Sabha election for 3 seats. Let there be only two parties in the legislative assembly. Party A has 100 seats and party B has 40 seats. Both parties can field three candidates each for the three Rajya Sabha seats.

To win a Rajya Sabha seat, a candidate should get a required number of votes. That number (quotient) is found out using the below formula.

Quotient = Total number of votes *divided by* (Number of Rajya Sabha seats + 1) + 1.

In the illustrated case, a candidate requires $(140/4)+1$, ie. 36 votes to win.

NB: Members don't vote for each seat. If that had been the case then only the ruling party representatives would make it through. Rather, the members give preferences for each candidate (as 1, 2, 3, 4, 5 and 6). If 36 or more members choose a candidate as their first choice, he gets elected. So the Party B (opposition party in Lok Sabha assembly) with 40 seats can get one member elected if the members give preference for a candidate as first preference. The ruling party (Party A) on the other hand can get 2 members elected (72 votes from their 100 members).

Government Budgeting in India – The Process and Constitutional Requirements

What is the process of government budgeting in India? What are the constitutional requirements regarding the annual financial statement?

How knowledgeable are you regarding the government budgeting process of India?

In this post, we explain the basics of the Indian Budget and Government Budgeting process for beginners.

What exactly is a budget?

As you know, the budget is a report presented by the government. It is a report of the government finances which includes revenues and outlays.

Thus, the budget can be defined as the most comprehensive report of the government's finances in which revenues from all the sources and outlays for all activities are consolidated.

In simple terms, the budget is an annual financial statement of the revenue and expenditure of a government.

Budget in the Indian Constitution

The term ‘Budget’ is not mentioned in the Indian Constitution; the corresponding term used is ‘Annual Financial Statement’ (article 112).

What are the constitutional requirements which make the Budget necessary?

1. Article 265: provides that ‘no tax shall be levied or collected except by authority of law’. [ie. Taxation needs the approval of Parliament.]
2. Article 266: provides that ‘no expenditure can be incurred except with the authorisation of the Legislature’ [ie. Expenditure needs the approval of Parliament.]
3. Article 112: President shall, in respect of every financial year, cause to be laid before Parliament, Annual Financial Statement.

FRBM Act

The Fiscal Responsibility and Budget Management (FRBM) Act was passed by the Indian Parliament in 2003 for better budget management.

The FRBM act also provided for certain documents to be tabled in the Parliament of India, along with Budget, annually with regards to the country’s fiscal policy.

Budget Documents

Do you know that the Annual Financial Statement is only one of the several budget documents presented by the Finance Minister?

The Budget documents presented to Parliament comprise, besides the Finance Minister’s Budget Speech, the following:

1. Annual Financial Statement (AFS) – *Article 112*
2. Demands for Grants (DG) – *Article 113*
3. Appropriation Bill – *Article 114(3)*
4. Finance Bill – *Article 110 (a)*
5. Memorandum Explaining the Provisions in the Finance Bill.

6. Macro-economic framework for the relevant financial year – *FRBM Act*
7. Fiscal Policy Strategy Statement for the financial year – *FRBM Act*
8. Medium Term Fiscal Policy Statement – *FRBM Act*
9. Medium Term Expenditure Framework Statement – *FRBM Act*
10. Expenditure Budget Volume-1
11. Expenditure Budget Volume-2
12. Receipts Budget
13. Budget at a glance
14. Highlights of Budget
15. Status of Implementation of Announcements made in the Finance Minister's Budget Speech of the previous financial year.

There are also other related documents like Detailed Demands for Grants, Outcome Budget, Annual Reports and Economic Survey presented along with the budget documents in Parliament.

PS: The documents shown at Serial 1, 2, 3 and 4 are mandated by Art. 112, 113, 114(3) and 110(a) of the Constitution of India respectively, while the documents at Serial 6, 7, 8 and 9 are presented as per the provisions of the Fiscal Responsibility and Budget Management Act, 2003. Other documents are in the nature of explanatory statements supporting the mandated documents with narrative or other content in a user-friendly format suited for quick or contextual references. The Hindi version of all these documents is also presented to Parliament.

Government Budgeting: Railway Budget Presentation

Do figures related to Railways find mention in Annual Financial Statement or are they part of only the Railway budget?

Until 2016 (for 92 years), the budget of the Indian Railways was presented separately to Parliament and dealt with separately. Even then the receipts and expenditure of the Railways formed part of the Consolidated Fund of India and the figures relating to them are included in the 'Annual Financial Statement'.

The last Railway Budget was presented on 25 February 2016 by Mr. Suresh Prabhu. In 2017, the Railway Budget will be merged with the Union Budget.

Government Budgeting: Union Budget Presentation

In India, the Budget is presented to Parliament on such a date as is fixed by the President. Between 1999 to 2016, the General Budget was presented at 11 A.M. on the last working day of February. However, since 2017, the Indian Budget is presented on 1 February. As a convention, the Economic Survey is also tabled in the Parliament – one day prior to budget submission, i.e. on January 31.

Note: In an election year, Budget may be presented twice — first to secure Vote on Account for a few months and later in full.

Vote on Account

The discussion on the Budget begins a few days after its presentation.

If the Parliament is not able to vote the entire budget before the commencement of the new financial year (ie. within 1 month or so), the necessity to keep enough finance at the disposal of the Government in order to allow it to run the administration of the country remains. A special provision is, therefore, made for “Vote on Account” by which the Government obtains the Vote of Parliament for a sum sufficient to incur expenditure on various items for a part of the year.

Normally, the Vote on Account is taken for two months only. But during the election year or when it is anticipated that the main Demands and Appropriation Bill will take a longer time than two months, the Vote on Account may be for a period exceeding two months.

So what exactly is Vote on Account?

Vote on Account is a special provision by which the Government obtains the Vote of Parliament for a sum sufficient to incur expenditure on various items for a part of the year, usually two months.

Vote on Account was widely used along with every budget before 2016 when the date of the budget presentation was the last day of February. Now vote on account is used only in special years like the election years (used along with interim budget). Vote on Account deals only with the expenditure part. But the interim budget, as well as the full budget, has both a receipt and an expenditure side.

So presentation and passing of vote on account is the first stage in the budget passing process. Vote on Account is necessary for the working of the government until the period the full budget is passed.

Budget Speech

The Budget Speech of the Finance Minister is usually in two parts. Part A deals with the general economic survey of the country while Part B relates to taxation proposals.

He makes a speech introducing the Budget and it is only in the concluding part of his speech that the proposals for fresh taxation or for variations in the existing taxes are disclosed by him. The 'Annual Financial Statement' is laid on the Table of Rajya Sabha at the conclusion of the speech of the Finance Minister in Lok Sabha.

Budget Documents Made Simple: Key to Budget Documents

In the post 'Government Budgeting basics', we have seen that the Indian Budget is not a single document, but consists of many documents like Annual Financial Statement, Demand for Grants, Appropriation Bill, Finance Bill etc. Also, there are certain budget documents as per the requirements of FRBM act 2003. In this post, we shall go into the details of each of these documents and see what these documents are all about.

Annual Financial Statement

Annual Financial Statement (AFS), the document as provided under Article 112, shows estimated receipts and expenditure of the Government of India for next financial year (say, 2017-18) in relation to estimates for the previous financial year (ie 2016-17) as also expenditure for the year before last financial year (ie. 2015-16). The receipts and disbursements are shown under the three parts, in which Government Accounts are kept viz.,(i) Consolidated Fund, (ii) Contingency Fund and (iii) Public Account. The estimates of receipts and expenditure included in the Annual Financial Statement are for the expenditure net of refunds and recoveries, as will be reflected in the accounts.

Annual Financial Statement has the following heads.

1. Statement I – Consolidated Fund of India [Receipts and Expenditure: Revenue Account; Receipts and Expenditure: Capital Account]

2. Statement IA – Expenditure charged on the Consolidated Fund of India
3. Statement 2 – Contingency Fund of India
4. Statement 3 – Public Accounts of India [Receipts and Expenditure]
5. Receipts & Expenditure of Union Territories without Legislature.

Demand For Grants

Article 113 of the Constitution mandates that the estimates of expenditure from the Consolidated Funds of India included in the Annual Financial Statement and required to be voted by the Lok Sabha are submitted in the form of Demands for Grants. The Demands for Grants are presented to the Lok Sabha along with the Annual Financial Statement. Generally, one Demand for Grant is presented in respect of each Ministry or Department. However, more than one Demand may be presented for a Ministry or Department depending on the nature of expenditure. In regard to Union Territories without Legislature, a separate Demand is presented for each of the Union Territories. In budget 2014-15 there were 106 Demands for Grants.

Each Demand first gives the totals of ‘voted’ and ‘charged’ expenditure as also the ‘revenue’ and ‘capital’ expenditure included in the Demand separately, and also the grand total of the amount of expenditure for which the Demand is presented. This is followed by the estimates of expenditure under different major heads of account. The breakup of the expenditure under each major head between ‘Plan’ and ‘Non-Plan’ is also given. The amounts of recoveries taken in reduction of expenditure in the accounts are also shown. A summary of Demands for Grants is given at the beginning of this document, while details of ‘New Service’ or ‘New Instrument of Service’ such as formation of a new company, undertaking or a new scheme, etc., if any, are indicated at the end of the document.

Appropriation Bill

Under Article 114(3) of the Constitution, no amount can be withdrawn from the Consolidated Fund without the enactment of such a law by Parliament. After the Demands for Grants are voted by the Lok Sabha, Parliament’s approval to the withdrawal from the Consolidated Fund of the amounts so voted and of the amount required to meet the expenditure charged on the Consolidated Fund is sought through the Appropriation Bill.

The whole process beginning with the presentation of the Budget and ending with discussions and voting on the Demands for Grants requires a sufficiently long time. The Lok Sabha is, therefore, empowered by the Constitution to make any grant in advance in respect of the estimated expenditure for a part of the financial year pending completion of procedure for the voting of the Demands. The purpose of the 'Vote on Account' is to keep Government functioning, pending voting of 'final supply'. The Vote on Account is obtained from Parliament through an Appropriation (Vote on Account) Bill.

Finance Bill

At the time of presentation of the Annual Financial Statement before Parliament, a Finance Bill is also presented in fulfillment of the requirement of Article 110 (1)(a) of the Constitution, detailing the imposition, abolition, remission, alteration or regulation of taxes proposed in the Budget. A Finance Bill is a Money Bill as defined in Article 110 of the Constitution. It is accompanied by a Memorandum explaining the provisions included in it.

Memorandum Explaining the Provisions in the Finance Bill

To facilitate understanding of the taxation proposals contained in the Finance Bill, the provisions and their implications are explained in the document titled Memorandum Explaining the Provisions of the Finance Bill.

Documents as per the requirements of FRBM act:

Macroeconomic Framework Statement

The Macroeconomic Framework Statement presented to Parliament under Section 3(5) of the Fiscal Responsibility and Budget Management Act, 2003 and the rules made thereunder contains an assessment of the growth prospects of the economy with specific underlying assumptions. It contains assessments regarding the GDP growth rate, fiscal balance of the Central Government and the external sector balance of the economy.

Fiscal Policy Strategy Statement

The Fiscal Policy Strategy Statement, presented to Parliament under Section 3(4) of the Fiscal Responsibility and Budget Management Act, 2003, outlines the strategic priorities of Government in the fiscal area for the ensuing financial year relating to taxation, expenditure, lending, and investments, administered pricing, borrowings and guarantees. The Statement

explains how the current policies are in conformity with sound fiscal management principles and give the rationale for any major deviation in key fiscal measures.

Medium-term Fiscal Policy Statement

The Medium-term Fiscal Policy Statement presented to Parliament under Section 3(2) of the Fiscal Responsibility and Budget Management Act, 2003, sets out three-year rolling targets for four specific fiscal indicators in relation to GDP at market prices namely (i) Revenue Deficit, (ii) Fiscal Deficit, (iii) Tax to GDP ratio and (iv) Total outstanding Debt at the end of the year. The Statement includes the underlying assumptions, an assessment of sustainability relating to balance between revenue receipts and revenue expenditure and the use of capital receipts including market borrowings for generation of productive assets.

Medium-term Expenditure Framework Statement

The Medium-term Expenditure Framework Statement presented to Parliament under Section 3 of the Fiscal Responsibility and Budget Management Act, 2003 sets forth a three-year rolling target for the expenditure indicators with a specification of underlying assumptions and risks involved. The objective of the MTEF is to provide a closer integration between budget and the FRBM Statements.

PS: This Statement is presented separately in the session next to the session in which Budget is presented, i.e. normally in the Monsoon Session.

Explanatory Documents

Expenditure Budget Volume-1

This document deals with revenue and capital disbursements of various Ministries/Departments and gives the estimates in respect of each under 'Plan' and 'Non-Plan'. It also gives analysis of various types of expenditure and broad reasons for the variations in estimates.

Expenditure Budget Volume-2

The provisions made for a scheme or a programme may spread over a number of Major Heads in the Revenue and Capital sections in a Demand for Grants. In the Expenditure Budget Vol. 2, the estimates made for a scheme/programme are brought together and shown on a net basis at one place, by Major Heads. To understand the objectives underlying the expenditure proposed

for various schemes and programmes in the Demands for Grants, suitable explanatory notes are included in this volume in which, wherever necessary, brief reasons for variations between the Budget estimates and Revised estimates for the current year and requirements for the ensuing Budget year are also given.

Receipts Budget

Estimates of receipts included in the Annual Financial Statement are further analysed in the document “Receipts Budget”. The document provides details of tax and non-tax revenue receipts and capital receipts and explains the estimates. The document also provides the arrears of tax revenues and non-tax revenues, as mandated under the Fiscal Responsibility and Budget Management Rules, 2004. The trend of receipts and expenditure along with deficit indicators, statement pertaining to National Small Savings Fund (NSSF), statement of revenues foregone, statement of liabilities, statement of guarantees given by the government, statements of assets and details of external assistance are also included in Receipts Budget.

Budget at a Glance

This document shows in brief, receipts, and disbursements along with broad details of tax revenues and other receipts. This document also exhibits broad break-up of expenditure – Plan and Non-Plan, allocation of Plan outlays by sectors as well as by Ministries/Departments and details of resources transferred by the Central Government to State and Union Territory Governments. This document also shows the revenue deficit, the gross primary deficit and the gross fiscal deficit of the Central Government. The excess of Government’s revenue expenditure over revenue receipts constitutes revenue deficit of Government. The difference between the total expenditure of Government by way of revenue, capital and loans net of repayments on the one hand and revenue receipts of Government and capital receipts which are not in the nature of borrowing but which finally accrue to Government on the other, constitutes a gross fiscal deficit. Gross primary deficit is measured by gross fiscal deficit reduced by gross interest payments. In the Budget documents ‘gross fiscal deficit’ and ‘gross primary deficit’ have been referred to in abbreviated form ‘fiscal deficit’ and ‘primary deficit’, respectively. This document also shows liabilities of the Government on account of securities (bonds) issued in lieu of oil and fertilizer subsidies.

Highlights of Budget

This document explains the key features of the Budget, inter alia, indicating the prominent

achievements in various sectors of the economy. It also explains, in brief, the budget proposals for allocation of funds to be made in important areas. The summary of tax proposals is also reflected in the document.

Other Documents Along with Budget Statements

Detailed Demands for Grants

The Detailed Demands for Grants are laid on the table of the Lok Sabha sometime after the presentation of the Budget, but before the discussion on Demands for Grants commences. Detailed Demands for Grants further elaborate the provisions included in the Demands for Grants as also actual expenditure during the previous year. A break-up of the estimates relating to each programme/organisation, wherever the amount involved is not less than 10 lakhs, is given under a number of object heads which indicate the categories and nature of expenditure incurred on that programme, like salaries, wages, travel expenses, machinery and equipment, grants-in-aid, etc. At the end of these Detailed Demands are shown the details of recoveries taken in reduction of expenditure in the accounts.

Outcome Budget

With effect from Financial Year 2007-08, the Performance Budget and the Outcome Budget hitherto presented to Parliament separately by Ministries/Departments, are merged and presented as a single document titled “Outcome Budget” by each Ministry/Department in respect of all Demands/ Appropriations controlled by them, except those exempted from this requirement. Outcome Budget broadly indicates physical dimensions of the financial budget of a Ministry/Department, indicating actual physical performance in the preceding year (2015-2016), performance in the first nine months (up to December) of the current year (2016-2017) and the targeted performance during the ensuing year (2014-2015).

Annual Reports

A descriptive account of the activities of each Ministry/Department during the year 2016-2017 is given in the document Annual Report which is brought out separately by each Ministry/Department and circulated to Members of Parliament at the time of discussion on the Demands for Grants.

Economic Survey

The Economic Survey brings out the economic trends in the country which facilitates a better appreciation of the mobilization of resources and their allocation in the Budget. The Survey analyzes the trends in agricultural and industrial production, infrastructure, employment, money supply, prices, imports, exports, foreign exchange reserves and other relevant economic factors which have a bearing on the Budget, and is presented to the Parliament ahead of the Budget for the ensuing year.

Conclusion:

The Budget of the Central Government is not merely a statement of receipts and expenditure. Since with the launching of Five Year Plans, it has also become a significant statement of government policy. The Budget reflects and shapes, and is, in turn, shaped by the country's economy. For a better appreciation of the impact of government receipts and expenditure on the other sectors of the economy, it is necessary to group them in terms of economic magnitudes, for example, how much is set aside for capital formation, how much is spent directly by the Government and how much is transferred by Government to other sectors of the economy by way of grants, loans, etc. This analysis is contained in the Economic and Functional Classification of the Central Government Budget which is brought out by the Ministry of Finance separately.

Difference between Full Budget and Vote on Account

While studying Budget related topics, many are confused about the differences between full budget, interim budget, and vote on account. Don't worry! We hope this post will clear all your queries!

To understand the connection better, I recommend you to understand the following rule first.

Rule: Executive (Government) needs the approval of Legislature (Parliament) for spending!

Yes, the government cannot spend as it wishes!

Even though the government collects money from the public by means of various taxes and fees, for the expenditure of the same, it needs approval from another authority – ie. Legislature.

In the case of the Central government, the Legislature corresponds to the lower house of the Parliament ie. Lok Sabha.

Where is this rule (mandate) written? Answer: Constitution of India.

Article 266 of the Constitution of India mandates that Parliamentary approval is required to draw money from the Consolidated Fund of India. Besides, Article 114 (3) of the Constitution stipulates that no amount can be withdrawn from the Consolidated Fund without the enactment of a law (appropriation bill).

The Parliamentary Approval takes its time!

The full budget is usually passed only after long discussions. Even though the government (executive) seeks approval of expenditure for the next financial year (April 1 to March 31) in the current financial year itself, the approval from the legislature takes its time.

Very often, discussion and voting of demands for grants and passing of Appropriation Bill go beyond the current financial year. This was precisely the case before 2016 when the budget was presented on the last working day of February, and it was difficult to get passed within the same financial year.

But the government needs money for its day to day functions...

Since Parliament is not able to vote on the entire budget before the commencement of the new financial year, the necessity to keep enough finance at the disposal of the Government.

A special provision is, therefore, made for “Vote on Account” by which the Government obtains the Vote of Parliament for a sum sufficient to incur expenditure on various items for a part of the year.

Vote on Account

Vote on Account is a grant in advance to enable the government to carry on until the voting of demands for grants and the passing of the Appropriation Bill and Finance Bill.

This enables the government to fund its expenses for a short period of time or until a full-budget is passed. As a convention, a vote-on-account is treated as a formal matter and passed by Lok Sabha without discussion.

Vote on Account was frequently used until 2016 when the Budget was presented on the last working day of February. However, since 2017, the budget presentation date was advanced to February 1. This helped the executive to use almost 2 months time to get the full-budget passed in the same financial year. So, since 2017, Vote on Account is not usually used as part of the government budgeting process, unless in special cases like an election year.

Normally, the Vote on Account is taken for two months only. The sum of the grant would be equivalent to one-sixth of the estimated expenditure for the entire year under various demands for grants.

Can Vote on Account be granted for more than 2 months?

Yes. During election year or when it is anticipated that the main Demands and Appropriation Bill will take longer than two months, the Vote on Account may be granted for a period exceeding two months.

For example, in 2019, Vote on Account is taken for 4 months.

Difference between Full Budget and Vote on Account

- Full Budget deals with both expenditure and revenue side but Vote-on-account deals only with the expenditure side of the government's budget.
- The vote-on-account is normally valid for two months but a full budget is valid for 12 months (a financial year).
- As a convention, a vote-on-account is treated as a formal matter and passed by Lok Sabha without discussion. But passing a budget happens only after discussions and voting on demand for grants.
- A vote-on-account cannot alter direct taxes since they need to be passed through a finance bill. Under the regular Budget, fresh taxes may be imposed and old ones may go.
- As a convention, a vote-on-account is treated as a formal matter and passed by the Lok Sabha without discussion. But the full budget is passed only after discussions and voting on demand for grants.

What is an interim budget then?

An interim budget in all practical sense is a full budget but made by the government during the last year of its term – ie. just before the election. An interim Budget is a complete set of accounts, including both expenditure and receipts. But it may not contain big policy proposals.

Is it mandatory for the government to present a vote on account instead of a full budget in an election year?

It is not mandatory for the government to present a vote on account in an election year.

Though the convention is to present an interim budget and get the fund required for spending via the vote on account route, the government (if it wishes so) can even go for a Full Budget and get the appropriation bills passed to get the finances.

However, during an election year, the ruling government generally opts for a vote-on-account or interim budget instead of a full budget. While technically, it is not mandatory for the government to present a vote-on-account, it would be inappropriate to impose policies that may or may not be acceptable to the incoming government taking over in the same year.

Cut Motions: Policy Cut, Economy Cut, and Token Cut

What is meant by policy cut, economy cut, or token cut motions?

You might have noticed about the Demand for Grants while going through the Indian Budget.

These are demands usually made in respect of the grant proposed for each Ministry.

But Parliament being the authority to check the expenditure of the government may not approve all demands.

Cut motions are motions in the parliament moved to reduce the amount of demand.

Cut motions

A motion may be moved to reduce the amount of a demand in any of the following ways:-

1. Disapproval of Policy Cut Motions

- A Disapproval of Policy Cut motion is moved so that the amount of the demand be reduced to Re.1.

- It represents the disapproval of the policy underlying the demand.
- A member giving notice of such a motion shall indicate in precise terms the particulars of the policy which he proposes to discuss.
- The discussion shall be confined to the specific point or points mentioned in the notice and it shall be open to members to advocate an alternative policy.

2. Economy Cut Motions

- An Economy Cut motion is moved so that the amount of the demand is reduced by a specified amount.
- It represents the economy that can be affected.
- Such a specified amount may be either a lump-sum reduction in the demand or omission or reduction of an item in the demand.
- The notice shall indicate briefly and precisely the particular matter on which discussion is sought to be raised and speeches shall be confined to the discussion as to how the economy can be affected.

3. Token Cut Motions

- A Token Cut motion is moved so that the amount of the demand is reduced by Rs.100.
- This is to ventilate a specific grievance that is within the sphere of the responsibility of the Government of India.
- The discussion thereon shall be confined to the particular grievance specified in the motion.

Admissibility of cut motions

In order that notice of motion for reduction of the amount of demand may be admissible, it shall satisfy the following conditions, namely:-

1. it shall relate to one demand only;
2. it shall be clearly expressed and shall not contain arguments, inferences, ironical expressions, imputations, epithets or defamatory statements;

3. it shall be confined to one specific matter which shall be stated in precise terms;
4. it shall not reflect on the character or conduct of any person whose conduct can only be challenged on a substantive motion;
5. it shall not make suggestions for the amendment or repeal of existing laws;
6. it shall not refer to a matter which is not primarily the concern of the Government of India;
7. it shall not relate to expenditure charged on the Consolidated Fund of India;
8. it shall not relate to a matter which is under adjudication by a court of law having jurisdiction in any part of India;
9. it shall not raise a question of privilege;
10. it shall not revive discussion on a matter which has been discussed in the same session and on which a decision has been taken;
11. it shall not anticipate a matter which has been previously appointed for consideration in the same session;
12. it shall not ordinarily seek to raise a discussion on a matter pending before any statutory tribunal or statutory authority performing any judicial or quasi-judicial functions or any commission or court of enquiry appointed to enquire into, or investigate any matter: Provided that the Speaker may in his discretion allow such matter being raised in the House as is concerned with the procedure or stage of enquiry, if the Speaker is satisfied that it is not likely to prejudice the consideration of such matter by the statutory tribunal, statutory authority, commission or court of enquiry;
13. it shall not relate to a trivial matter.

Speaker to decide admissibility

The Speaker shall decide whether a cut motion is or is not admissible under these rules and may disallow any cut motion when in his opinion it is an abuse of the right of moving cut motions or is calculated to obstruct or prejudicially affect the procedure of the House or is in contravention of these rules.

Notice of cut motions

If notice of a motion to reduce any demand for the grant has not been given one day previous to the day on which the demand is under consideration, any member may object to the moving of the motion, and such objection shall prevail unless the Speaker allows the motion to be made.

EXECUTIVE

President of India – Discretionary Powers You Never Knew Existed!

The Indian President is not a ceremonial head, unlike many other countries.

All important decisions regarding the country are taken in the name of the Indian President, though most of these will be based on the binding advice given by the Council of Ministers(CoM), as per Article 74 of Indian Constitution.

But there are certain exceptions, where he can use his discretionary powers. Let's learn more about that.

Discretionary powers of the President: Not based on the advice of CoM

The discretionary powers of the Indian president are not explicitly mentioned in the Indian constitution. But cases, where the Indian President does not act on the advice of CoM, can be understood if one carefully reads the provisions related to the Indian President.

The cases of discretionary powers are as below:

#1: Suspensive Veto:

The President has discretionary power when he exercises suspensive veto ie. when he returns a bill (not money bill) for reconsideration of the parliament.

However if the bill is passed again by the Parliament with or without amendments and presented again to the President, it is obligatory for him to give his assent to the bill.

#2: Pocket Veto:

This is not a provision mentioned in the Indian constitution, but this is a possible situation when the President of India can use his discretionary power. In this case, the President neither ratifies or rejects nor returns the bill, but simply keeps the bill pending for an indefinite period.

As the time limit within which the President has to take the decision with respect to a bill presented to him for assent, has not been mentioned in the constitution, in effect the inaction of the President stops the bill from becoming an act.

#3: President can seek information from Prime Minister:

Under article 78 the President enjoys the right to seek information from the PM regarding the administration of the affairs of the union.

Under the established convention, the President has the right to warn or encourage the Council of Minister (CoM) in the exercise of its power.

#4: Case of no sitting of both houses:

Under Article 85, the President can summon each House of Parliament to meet at such time and place as he thinks fit, to ensure that six months shall not intervene between its last sitting in one session and the date appointed for its sitting in the next session.

#5: Case of no majority:

When no political party or coalition of parties enjoy the majority in Lok Sabha, then the President has discretion in inviting the leader of that party or coalition of parties who in his opinion is able to form a stable government.

#6: Case of no-confidence with CoM- dissolving Lok Sabha:

It is for the president to decide if he should dissolve Lok Sabha or not when CoM loses the majority in Lok Sabha.

Note: The President can dissolve Lok Sabha only on the advice of CoM but the advice is binding only if the government is a majority government.

#7: Case of no-confidence with CoM- dissolving CoM:

It is for the president to decide if he should dissolve CoM or not when CoM loses the majority in Lok Sabha.

#8: Case of a caretaker government

A caretaker government does not enjoy the confidence of Lok Sabha and hence it is not expected to take major decisions but only to make the day-to-day administrative decisions. It is for the President to decide the day-to-day decisions.

The advice given by CoM binding on Indian President: Article 74

Article 74 of the Indian Constitution says that

(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:

Provided that the President may require the Council of Ministers to reconsider such advice, either generally or otherwise, and the President shall act in accordance with the advice tendered after such reconsideration.

(2) The question whether any, and if so what, advice was tendered by Ministers to the President shall not be inquired into in any court.”

Powers exercised on the advice of CoM (non-discretionary powers)

The President of India is vested with Legislative, Executive and Judicial powers. But as the advice given by CoM is binding on the Indian President, in reality, most of these powers rest with the COM; but decisions are taken in the name of the President of India. See some examples.

- President's rule – He can rule the whole nation or individual states at times of emergency. The President can declare State, National and Financial Emergencies. Punjab, Jharkhand, Jammu and Kashmir and many other states have been under President's Rule.
- Commander-in-Chief of Indian Armed forces – The President is the Commander-in-Chief of the Indian Armed Forces.
- The President appoints our State governors, Supreme Court and High Court Judges, and the Chief Justice.
- The President can summon and dissolve parliament sessions.

- A ‘bill’ passed in the parliament can become an ‘act’ only after the President’s approval.
- The President of India has the power to reduce the degree of punishment or pardon criminals – even death sentences can be absolved on appeal.
- The President is the head of the Indian State while the Prime Minister is the head of the Indian Government.
- Ambassadors and High Commissioners representing our country are appointed by the President.
- The President appoints the Chief Election Commissioner and other Election Commissioners.
- The President delivers the opening address for the first session of the parliament, as well as the first session of a newly elected government, defining the policies of the government.
- IAS or IPS officers (All India Services) by the President of India, based on the advice of UPSC.

JUDICIARY

Basic Structure Doctrine

The basic structure doctrine is one of the fundamental judicial principles connected with the Indian Constitution.

The doctrine of the basic structure holds that there is a basic structure to the Indian Constitution, and the Parliament of India cannot amend the basic features.

It was in the Kesavananda Bharati vs State of Kerala case, the Constitutional Bench of the Supreme Court ruled by a 7-6 verdict that Parliament could amend any part of the Constitution so long as it did not alter or amend the basic structure or essential features of the Constitution.

What is the Basic Structure Doctrine?

Indian Constitution is a dynamic document that can be amended according to the needs of society whenever required. The Constitution under Article 368 grants power to the Parliament to

amend whenever there is a necessity. The Article also lays down the procedure for amendment in detail.

The doctrine of basic structure is nothing but a judicial innovation to ensure that the power of amendment is not misused by Parliament. The idea is that the basic features of the Constitution of India should not be altered to an extent that the identity of the Constitution is lost in the process.

Indian Constitution upholds certain principles which are the governing rules for the Parliament, any amendment cannot change these principles and this is what the doctrine of basic structure upholds. The doctrine as we have today was not always present but over the years it has been propounded and upheld by the judicial officers of this country.

In this article, we would dwell in detail on the evolution of the doctrine of basic structure and what are the features of the Constitution of India that have been regarded as part of the basic structure by the hon'ble courts.

Timeline for Evolution of Basic Structure

Pre - Golak Nath Era

The Constitution of India was amended as early as 1951, which introduced the much-debated Article(s) 31A and 31B to it. Article 31B created the 9th Schedule which stated that any law provided under it could not be challenged for the violation of Fundamental Rights as per Article 13(2) of the Constitution. Article 13(2) states that the Parliament shall not draft any law which abridges the rights conferred under Part III and to that extent it shall be void.

A petition was filed in the Supreme Court of India challenging Article(s) 31A and 31B on the ground that they abridge or take away rights guaranteed under Part III of the Constitution which is against the spirit of Article 13(2) and hence should be declared void. In this case, *Shankari Prasad Singh Deo v. Union of India*, the Hon'ble Supreme Court held that the power to amend the Constitution including the Fundamental Rights is conferred under Article 368, and the word 'Law' as mentioned under Article 13(2) does not include an amendment of the Constitution. There is a distinction between Parliament's law-making power, that is, the legislative power and Parliament's power to amend or constituent powers.

After this, several amendments were brought to the Constitution and once again the scope of amendments was challenged in the *Sajjan Singh v. State of Rajasthan*. The five-judge bench in

Sajjan Singh dealt with the validity of the 17th Constitutional Amendment which had added around 44 statutes to the 9th Schedule. Though all of the judges agreed with the decision of Shankari Prasad but for the first time in the concurring opinion by Hidayatullah and Mudholkar JJ doubts were raised on the unfettered power of Parliament to amend the Constitution and curtail the fundamental rights of the citizens.

Golak Nath v. the State of Punjab

In this case, three writ petitions were clubbed together. The first one was by children of Golak Nath, against the inclusion of the Punjab Security of Land Tenures Act, 1953 in the Ninth Schedule. The other two petitions had challenged the inclusion of the Mysore Land Reforms Act in the Ninth Schedule. It is an 11 judge bench decision, wherein the Hon'ble Supreme Court by a majority of 6:5 held that the fundamental rights were outside the purview of the amendment of the Constitution, based on the following reasoning:

- The power of Parliament to amend the Constitution does not subsist in Article 368 but it is derived from Article 245, read with Entry 97 of List I of the Constitution. It was very clearly stated that Article 368 only provided for the Procedure of Amendment and nothing more.
- The Court also clarified that the word 'law' under Article 13(2) includes within its meaning an amendment to the Constitution. Therefore any amendment against the Fundamental Rights was void.
- The argument that the power to amend the Constitution is a sovereign power, which is over and above the legislative power and hence outside the scope of judicial review was rejected.

However, the 1st, 4th, and 17th Amendments were not declared invalid by the Court as the ruling was given a prospective effect. This meant that no further amendments could be brought into the Constitution violating the fundamental rights. But the cases of Shankari Prasad and Sajjan Singh were declared bad in law by the Court to the extent that Article 13(2) does not include a Constitutional amendment under Article 368.

Constitution 24th Amendment

The Golak Nath case left the Parliament devoid of its powers to amend the Constitution freely, therefore to restore the earlier position; the 24th Constitutional Amendment was brought forth. The Amendment Act not only restored the earlier position but extended the powers of Parliament. The following changes were made through the amendment:

- A new clause (4) was added to Article 13 which stated that '*nothing in this Article shall apply to any amendment of this Constitution made under Article 368*'.
- The marginal heading of Article 368 was changed to 'Power of Parliament to amend the Constitution and Procedure, therefore' from 'Procedure for amendment of the Constitution'.
- Article 368 was provided with a new sub-clause (1) which read '*notwithstanding anything in this Constitution, Parliament may, in the exercise of its Constituent Power amend by way of addition, variation, or repeal any provision of this Constitution in accordance with the procedure laid down in this Article*'.
- President was put under an obligation to give assent to any Bill amending the Constitution by changing words from '*it shall be presented to the President who shall give his assent to the Bill and thereupon*' to '*it shall be presented to the President for his assent and upon such assent being given to the Bill*'.
- A reassuring clause (3) was also added to Article 368, which again clarified that '*nothing in Article 13 shall apply to any amendment made under this Article*'.

Kesavananda Bharati v. the State of Kerala

This case was initially filed to challenge the validity of the Kerala Land Reforms Act, 1963. But the 29th Amendment of the Constitution placed it under the Ninth Schedule. The petitioner was permitted to not only challenge the 29th Amendment but also the validity of the 24th and 25th Amendments.

The historic judgment was delivered by a 13 judge bench and with the majority of 7:6; they overruled the Golak Nath case. It was held that the power of Parliament to amend the Constitution is far and wide and extends to all the Articles but it is not unlimited to an extent that it destroys certain basic features or framework of the Constitution.

The Hon'ble Supreme Court, however, held that the 24th Amendment was valid as it only states what was present before implicitly. It does not enlarge the powers of Parliament; Article 368 always included the power and procedure to amend the Constitution.

The judges did not provide what constitutes the basic structure but provided an illustrative list of what may constitute the basic structure. As per Sikri, C.J., the basic structure constitutes the following elements:

- The supremacy of the Constitution
- Republican and Democratic forms of Government
- Secular character of the Constitution
- Separation of Powers between the legislature, the Executive, and the Judiciary
- Federal Character of the Constitution

Shelat and Grover, JJ., added the following to the above list:

- The mandate to build a welfare state contained in the Directive Principles of State Policy
- Maintenance of the unity and integrity of India
- The sovereignty of the country

Hegde and Mukherjee, JJ., had their list of the elements of the basic structure, which included:

- The sovereignty of India
- The democratic character of the polity
- The unity of the country
- Essential features of individual freedom
- The mandate to build a welfare state

Whereas Jaganmohan Redd, J., believed that it was the Preamble that laid down the basic features of the Constitution, which are:

- A sovereign democratic republic

- The provision of social, economic, and political justice
- Liberty of thought, expression, belief, faith, and worship
- Equality of status and opportunity

After this judgment, the general opinion was that the judiciary is trying to create an overhaul over the Parliament, but soon an opportunity was laid down before the Court to examine the doctrine.

Evolution of Basic Structure Doctrine

Indira Nehru Gandhi v. Raj Narain was the case in which the faith in the doctrine was affirmed and established. In this case, the appellant had filed an appeal against the decision of Allahabad High Court invalidating her election as the Prime Minister. While the appeal was still pending at the Supreme Court, the 39th Amendment was enacted and enforced which stated that no court has jurisdiction over the election disputes of the Prime Minister.

The Hon'ble Supreme Court, relying on the decision of *Kesavananda Bharati*, stated that democracy was an essential feature of the Constitution and forms part of the basic structure. The bench added certain other features to the list of the basic structure, which was: Rule of Law and the power of Judicial Review.

The basic structure then came up in the case of *Minerva Mills Ltd. v. Union of India*, wherein the Supreme Court provided clarity to the doctrine and laid down that the power of amendment under Article 368 is limited and exercise of such power cannot be absolute. A limited amending power was very well part of the basic structure doctrine of the Constitution. Further, the harmony and balance between fundamental rights and directive principles are also part of the basic structure, and anything that destroys the balance is an ipso facto violation of the doctrine.

The case of *L. Chandra Kumar v. Union of India* again stated that the power of judicial review under Article 32 of the Supreme Court and Article 226 of the High Court is part of the basic structure doctrine and these powers cannot be diluted by transferring them to administrative tribunals.

Conclusion

Today there is no dispute regarding the existence of the doctrine, the only problem that arises time and again is the contents of the same.

Certain contents have been reaffirmed again and again by the Courts whereas some of them are still in the process of deliberations.

The basic structure doctrine grants the fine balance between flexibility and rigidity that should be present in the amending powers of any Constitution.

Indian Judicial Doctrines – Principles of Constitutional Law Explained

A doctrine is a belief, principle or position – usually upheld by authorities like courts. As far as the Indian Judiciary is concerned, there are many doctrines. Many of you may be familiar with the Doctrine of Basic Structure. In this article, we will be dealing with all important Indian Judicial Doctrines.

Doctrine of Basic Structure

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

But what should be considered as the basic features of the Indian Constitution is not explicitly defined by the Judiciary. It is widely believed that democracy, federalism, independence of the judiciary, secularism etc. are part of the basic features.

The claim of any particular feature of the Constitution to be a “basic” feature is determined by the Court on a case-by-case basis.

This doctrine was first expressed in *Kesavananda Bharati v. The State of Kerala* (1973). Thanks to *Kesavananda Bharati*, *Palkhivala* and the seven judges who were in the majority, India continues to be the world’s largest democracy.

Doctrine of Harmonious Construction

- This doctrine was brought about to bring harmony between the different lists mentioned in the Schedule 7 of the Constitution of India. Different subjects are mentioned in different lists in this schedule.

- However, there can be a situation where an entry of one list overlaps with that of another list. This is the time when this doctrine comes into the picture.
- It was said that the words of the entries should be given wide amplitude and the courts shall bring harmony between the different entries and lists.
- The Supreme Court applied this Doctrine in the case of *Tika Ramji vs the State of UP*.

Doctrine of Eclipse

- The doctrine states that if any law becomes contradictory to the fundamental rights, then it does not permanently die but becomes inactive.
- As soon as that fundamental right is omitted from the Constitution, the inactive law becomes revived.
- When a court strikes a part of the law, it becomes unenforceable. Hence, an ‘eclipse’ is said to be cast on it. The law just becomes invalid but continues to exist.
- The eclipse is removed when another (probably a higher level court) makes the law valid again or an amendment is brought to it by way of legislation.
- The Supreme Court first applied this doctrine in the case of *Bhikaji vs State of Madhya Pradesh* where it applied to pre-constitutional law. The extension to the post-constitutional law was stated in the case of *Dulare Lodh vs ADJ Kanpur*.

Doctrine of Pith and Substance

- This doctrine comes into picture when there is a conflict between the different subjects in different lists. There is an interpretation of List 1 and List 2 of the Constitution of India.
- There can be a situation when a subject of one list touches the subject of another List. Hence this doctrine is applied then.
- Pith and Substance means the true nature of law.
- The real subject matter is challenged and not its incidental effect on another field.

- The doctrine has been applied in India also to provide a degree of flexibility in the otherwise rigid scheme of distribution of powers.
- The reason for the adoption of this doctrine is that if every legislation were to be declared invalid on the grounds that it encroached powers, the powers of the legislature would be drastically circumscribed.
- It was applied by the Supreme Court in the case *State of Bombay Vs F.N Balasar*.

Doctrine of Incidental or Ancillary Powers

- This principle is an addition to the doctrine of Pith and Substance.
- What it means is that the power to legislate on a subject also includes the power to legislate on ancillary matters that are reasonably connected to that subject.
- For example, the power to impose tax would include the power to search and seizure to prevent the evasion of that tax. However, power relating to banking cannot be extended to include power relating to non-banking entities.
- However, if a subject is explicitly mentioned in a State or Union list, it cannot be said to be an ancillary matter. For example, the power to tax is mentioned in specific entries in the lists and so the power to tax cannot be claimed as ancillary to the power relating to any other entry of the lists.
- As held in the case of *State of Rajasthan vs G Chawla AIR 1959*, the power to legislate on a topic includes the power to legislate on an ancillary matter which can be said to be reasonably included in the topic.
- However, this does not mean that the scope of the power can be extended to any unreasonable extent. The Supreme Court has consistently cautioned against such extended construction. For example, in *R M D Chamarbaugwala vs State of Mysore, AIR 1962*, SC held that betting and gambling is a state subject as mentioned in Entry 34 of State list but it does not include power to impose taxes on betting and gambling because it exists as a separate item as Entry 62 in the same list.

Doctrine of Colourable Legislation

- This is applied when the legislature enacting the law has transgressed its power as is mentioned in the Constitution.
- The expression “colourable legislation” simply means what cannot be done directly, cannot be done indirectly too.
- It is the substance that is material and not the outward appearance.
- Hence there are certain situations when it seems that it is within the power of the legislature enacting the law but actually it is transgressing. This is when this doctrine comes into the picture.
- It was applied by the Supreme Court of India in the case *State of Bihar vs Kameshwar Singh* and it was held that the Bihar Land Reforms Act was invalid.

Doctrine of Severability

- According to this doctrine, if there is any offending part in a statute, then, only the offending part is declared void and not the entire statute.
- Article 13 states that the portion that is invalid should be struck off and not the entire one. The valid part can be kept.
- However, it should be kept in mind that even after separation; the remaining part should not become ambiguous.
- If the remaining part becomes ambiguous, then the whole statute would be declared void and of no use.
- The Supreme Court in the case of *RMDC vs. UOI* states that doctrine of severability is a matter of substance and not of form.

Doctrine of Territorial Nexus

- Article 245 states that a state legislature can make laws on the territory of the state and not on extraterritorial laws provided there is a nexus or connection between the state and the object of the legislation.

- Article 245(1) states that the Parliament of India can make laws for the whole or any territory of India.
- Similarly, a state legislature can do the same.
- Such laws cannot be declared invalid on the ground that they are extraterritorial according to Article 245(2).
- To determine whether a particular legislation is within the territorial nexus or not, this doctrine is applied.
- The Supreme Court applied this doctrine in the case of *Tata Iron Steel vs. the State of Bihar*.

Doctrine of Laches

- Laches means delay. The doctrine of laches is based on the maxim that “equity aids the vigilant and not those who slumber on their rights.” (Black’s Law Dictionary).
- The outcome is that a legal right or claim will not be enforced or allowed if a long delay in asserting the right or claim has prejudiced the adverse party.
- Elements of laches include knowledge of a claim, unreasonable delay, neglect, which taken together hurt the opponent.
- It is well known that one who wants remedy must come before the court within a reasonable time.
- Lapse of time violates equity and it is against the concept of justice.
- Hence the issue came up whether delay can be a ground to deny fundamental rights under Article 32.
- It was said that denial of fundamental rights only on the ground of delay is not justified as fundamental rights are basic and very essential for the development of the individual.
- The Supreme Court under the case of *Ravindra Jain vs UOI* stated that remedy under article 32 can be denied on grounds of unreasonable delay. However, there

has been no case to overrule the above-mentioned case law by the Supreme Court order.

Procedure Established by Law vs Due Process of Law

Procedure Established by Law and Due Process of Law.

The former is Indian constitutional doctrine and the latter is American, but now the boundaries are very narrow.

Let's start our discussion with Article 21 of the Indian Constitution. What does it say?

Article 21 in The Constitution Of India

Protection of life and personal liberty: No person shall be deprived of his life or personal liberty except according to the procedure established by law.

Procedure Established by Law vs Due Process of Law

As we have seen, the term “procedure established by law” is used directly in the Indian constitution. Due Process of Law has much wider significance, but it is not explicitly mentioned in the Indian Constitution. The due process doctrine is followed in the United States of America, and Indian constitutional framers purposefully left that out. But in most of the recent judgments of the supreme court, the due process aspect is coming into the picture again. Let's see the difference in detail.

Case 1: Procedure Established by Law

It means that a law that is duly enacted by the legislature or the concerned body is valid if it has followed the correct procedure. Following this doctrine means that a person can be deprived of his life or personal liberty according to the procedure established by law.

So, if Parliament passes a law, then the life or personal liberty of a person can be taken off according to the provisions and procedures of that law.

This doctrine has a major flaw. What is it?

It does not seek whether the laws made by Parliament are fair, just and not arbitrary.

“Procedure established by law” means a law duly enacted is valid even if it's contrary to principles of justice and equity. The strict following of the procedure established by law may raise

the risk of compromise to life and personal liberty of individuals due to unjust laws made by the law-making authorities. To avoid this situation, SC stressed the importance of the due process of law.

Case 2: Due Process of Law

Due process of law doctrine not only checks if there is a law to deprive the life and personal liberty of a person but also see if the law made is fair, just and not arbitrary.

If SC finds that any law is not fair, it will declare it as null and void. This doctrine provides for more fair treatment of individual rights.

Under due process, it is the legal requirement that the state must respect all of the legal rights that are owed to a person and laws that states enact must conform to the laws of the land like – fairness, fundamental rights, liberty etc. It also gives the judiciary access to fundamental fairness, justice, and liberty of any legislation.

The difference in layman's terms is as below: Due Process of Law = Procedure Established by Law + The procedure should be fair and just and not arbitrary.

History of Due Process of law

The due process developed from clause 39 of the Magna Carta in England. When English and American law gradually diverged, due process was not upheld in England but did become incorporated in the Constitution of the United States.

Change of situation in India: Maneka Gandhi vs Union of India case (1978)

In India, a liberal interpretation was made by the judiciary after 1978 and it has tried to make the term 'Procedure established by law' synonymous with 'Due process' when it comes to protecting individual rights.

In Maneka Gandhi vs Union of India case (1978) SC held that – 'procedure established by law' within the meaning of Article 21 must be 'right and just and fair' and 'not arbitrary, fanciful or oppressive' otherwise, it would be no procedure at all and the requirement of Article 21 would not be satisfied. Thus, the 'procedure established by law' has acquired the same significance in India as the 'due process of law' clause in America.

Special Leave Petition vs Review Petition vs Curative Petition vs Mercy Petition

The Supreme Court of India has recently passed many important judgments that transformed India.

Connected with judgments, four terms are often seen in the news – (1) Special Leave Petition (2) Review Petition (3) Curative Petition and (4) Mercy Petition. Do you know the difference between these terms? Let's first start with the Special Leave Petition (SLP).

What is a Special Leave Petition (SLP)?

Generally, an appeal to the Supreme Court is made after an unsatisfactory judgment by the High Court, but under certain special circumstances, an appeal may lie directly to the Supreme Court from any Court in India under Article 136 of the Constitution.

According to Article 136, an appeal can be made to the Supreme Court directly from any order, decision, decree, judgment, etc given by any court or tribunal in India.

This power of the Supreme Court under Article 136 is discretionary and Hon'ble Court may or may not allow special leave to appeal to any person.

You may note that SLP is a petition seeking special permission (leave) from the Supreme Court to appeal against a judgment passed in any of the lower courts or tribunals in India. SLP is not an appeal but a petition filed for an appeal.

The Supreme Court may accept or reject the same.

Constitutional Provisions behind Special Leave Petition

Special leave to appeal is filed before the Supreme Court under Article 136 of the Constitution.

Can the High Court review its order if the SLP is rejected by the Supreme Court?

The dismissal of an SLP against an order or judgment of a lower forum is not an affirmation of the same.

High Courts can still review their own judgment even if the SLP is rejected by the Supreme Court.

The Supreme Court has also clarified that it will not make any difference whether the review petition was filed before the filing of a special leave petition or was filed after the dismissal of a special leave petition.

What is a Review Petition?

The review petition is a petition in which it is prayed before the Court of law to review its order or judgement which it has already pronounced.

The Court may accept a review petition when a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility.

When a review takes place, the Court will not take fresh stock of the case but just correct grave errors that have resulted in the miscarriage of justice. Also, judicial review can only correct a “patent error” and not “minor mistakes of inconsequential import”.

The provision of review is an exception to the principle of stare decisis. Principle of stare decisis binds courts to follow legal precedents set by previous decisions.

Constitutional Provisions behind Review Petition

Under Article 137 of the Constitution of India and the rules made under Article 145, the Supreme Court of India has the power to review its judgment pronounced by it.

As per Supreme Court rules, a review petition is to be filed within 30 days of the pronouncement of judgment or order and that petition should be circulated without oral arguments to the same bench that delivered the judgment.

Who can file a review petition?

It is not necessary that only parties to a case can seek a review of the judgment on it. As per the Civil Procedure Code and the Supreme Court Rules, any person aggrieved by judgment can seek a review.

No oral arguments by lawyers except in death penalty cases

Review petitions would ordinarily be entertained without oral arguments by lawyers. It is heard “through circulation” by the judges in their chambers.

In exceptional cases, the court allows an oral hearing. In a 2014 case, the Supreme Court held that review petitions in all death penalty cases will be heard in open court by a Bench of three judges.

Who hears the review petitions?

Review petitions are heard, as far as practicable, by the same combination of judges who delivered the order or judgment that is sought to be reviewed. If a judge has retired or is unavailable, a replacement is made keeping in mind the seniority of judges.

Should the Court allow every review petition?

The court does not entertain every review petition filed. It exercises its discretion to allow a review petition.

Usually, the court allows a review petition only when it shows the grounds for seeking the review.

Grounds for seeking a review of a judgment

Supreme Court laid down three grounds for seeking a review of a verdict –
the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the knowledge of the petitioner or could not be produced by him;
mistake or error apparent on the face of the record;
any sufficient reason that is analogous to the other two grounds.

Note: In the *Union of India v. Sandur Manganese & Iron Ores Ltd* case (2013), the court laid down nine principles on when a review is maintainable. The court held that a review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected but lies only for patent error.

Examples of review petitions recently in the news

The Supreme Court agreed to review its Sabarimala verdict but refused to do so in the Rafale case.

What if a review petition fails?

The Supreme Court is the court of last resort. Its verdict should never result in a miscarriage of justice. To prevent the abuse of its process, the court itself evolved the concept of a curative petition, which can be heard after a review is dismissed.

What is a Curative Petition?

A curative petition is a judicial innovation and a new concept in the Indian legal system.

It is the last and final resort to the judicial remedy of any grievances which is not normally given an open-court hearing.

The origin of curative petitions

The concept originated from the 2002 case of *Rupa Ashok Hurra Vs. Ashok Hurra and Anr.* over the question whether an aggrieved person is entitled to any relief against the final judgment/order of the Supreme Court after the dismissal of a review petition.

The court used the Latin maxim “*actus curiae neminem gravabit*”, which means that an act of the court shall prejudice no one. Thus, it applies when the court is bound to undo a wrong done to a party by the act of court itself.

The Supreme Court held that it may reconsider its judgements in order to prevent abuse of its process and to cure gross miscarriage of justice.

Constitutional Provisions behind Curative Petition

Curative Petition is also supported by Article 137 of the Indian Constitution.

A curative petition is needed to provide a final recourse of correcting any errors in judgement where technical difficulties or other apprehensions over reopening a case prevents from reviewing judgements.

Who hears the curative petitions?

Curative petitions are heard by the top three judges including the Chief Justice of India plus the judges who dismissed the review petition.

Conditions for Curative Petition

Supreme Court has laid down some specific conditions to entertain curative petitions:

The petitioner has to establish that the principles of natural justice were violated and fear of the bias of the judge and judgement that adversely affected him.

The petition shall state specifically that the grounds mentioned had been taken in the review petition and that it was dismissed by circulation.

A curative petition must be first circulated to a Bench of the three senior-most judges, and the judges who passed the concerned judgment, if available.

If a majority of the judges conclude that the matter needs hearing should it be listed before the same Bench.

The Bench at any stage of consideration of the curative petition can ask a senior counsel to assist it as *amicus curiae* (Friend of the court).

A curative petition is usually decided by judges in the chamber unless a specific request for an open-court hearing is allowed.

The court could impose “exemplary costs” to the petitioner if his plea lacks merit.

What is a Mercy Petition?

Mercy Petition is the last resort of a person when all the remedies available to him/her under the prevailing laws and the Constitution are exhausted.

A mercy petition may be filed before the President of India under Article 72 or the Governor of the state under Article 161.

Even though the mercy petition is filed before the President or the Governor of the state, practically, the decision on the petition is taken by the Council of Ministers (CoM).

The petition will be treated on mercy and not on the legality of the case.

However, any arbitrary decision on mercy pleas, including rejection, by the President of India or Governor can be questioned in the Court.

Mercy petition in death sentence cases

A mercy petition is the last resort available to a convict having a death sentence after all legal and judicial remedies like review and curative petitions are exhausted.

For seeking mercy petition, the death sentence by a trial court must be confirmed by the High Court. Then the convict has an option to appeal to the Supreme Court.

If the Supreme Court either refuses to hear the appeal or upholds the death sentence, then the convict or his relative can submit a mercy petition to the President of India (Articles 72) or the Governor of the State (161).

Grounds upon pardon can be sought

In a mercy petition, the person concerned is required to state the grounds upon which pardon is sought.

These grounds may not be worth considering from a legal point of view.

But the grounds such as being the only bread earner of the family, the physical condition of the convict, age or the court committing a mistake or error inadvertently have value while considered by the President.

The Supreme Court in the *Kehar Singh v Union of India* 1988 case held that the grant of pardon by the President is an act of grace and cannot be claimed as a matter of right.

Constitutional Provisions

Article 72 of the Constitution provides that the President shall have the power to grant pardon, reprieve, respite or remission of punishment or to suspend, remit or commute the sentence of any person convicted of any offence

in all cases where the punishment or sentence is by a Court Martial;

in all cases where the punishment or sentence is for an offense against any law relating to a matter to which the executive power of the Union extends;

in all cases where the sentence is a sentence of death.

Similarly, under Article 161 the Governor has 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 offense against any law relating to a matter to which the executive power of the State extends

Procedure for handling Mercy Petitions

There is no written procedure for dealing with mercy petitions.

A convict under the sentence of death is allowed to make the petition within a period of seven days after the date on which the Superintendent of jail informs him about the dismissal of the appeal by the Supreme Court.

The petitions are received by the President's secretariat on behalf of the President, which is then forwarded to the Ministry of Home Affairs for seeking the advice of the Cabinet.

The Home Ministry in consultation with the concerned State Government discusses the merits of the petition and tenders its advice to the President, on behalf of the Council of Ministers.

The President can return the recommendation only once for reconsideration. If no change is made, the President has to sign his assent.

The Constitution doesn't specify any time-limit within which a mercy petition has to be decided.

Need for a Standard Procedure while handling Mercy Petition

There is no guideline or written procedure that the government or the President is bound by while processing mercy petitions.

There is no opportunity for a personal hearing before the authorities and as a result, all relevant information may not be made available.

Under the present scheme, there exists a possibility of two persons being treated differently despite having the same grounds, i.e. one person getting relief and another being denied for cases of similar nature.

No prescribed procedure indicates the possibility of arbitrary exercise of power and consequent discrimination. This is in contravention to Articles 21 and 14 of the Constitution.

In the absence of any standard procedure, there is no specific time-limit to decide mercy petitions.

There are instances of mercy petitions lying undecided with the President for over a decade.

In some cases, the convicts were able to take advantage of the delay and get their death sentences remitted on this ground.

International Standards

International Convention on Civil and Political Rights (ICCPR), of which India is a party to, has provisions against torturous, cruel, inhuman and degrading treatment or punishment.

Inordinate and unreasonable delay in execution of death sentence amounts to torture as expounded by the Supreme Court in the *Shatrughan Chauhan vs Union of India* case.

The ICCPR also establishes the right to life as an inherent, inalienable right that cannot be taken away arbitrarily.

Universal Declaration of Human Rights preserves equality of all persons before the law and equal protection of the law.

Any discriminatory treatment due to lack of procedure or otherwise stands in violation of these international standards.

Mercy Plea vs Capital Punishment

Every civilized country recognizes the need for providing a pardoning power as an act of grace while many countries have started the debate on the utility of the death penalty itself. The Indian Constitution also recognizes the need for providing a final avenue of justice in the form of mercy petition.

While each case is unique, there is a need for a prescribed procedure on handling mercy petitions to remove arbitrariness and to specify definitive grounds for considering relief. Specifying a time limit for disposing of mercy petitions is also needed to allay the apprehensions of both convicts and victims.

Examples of Mercy Petitions recently in the news

Recently the President rejected the mercy petition of one of the convicts of the Nirbhaya case. This comes after a Delhi court stayed the death sentence of four convicts for the third time observing that they cannot be executed while a mercy petition is pending before the President.

As per law, if a convict is awarded a death sentence, he has three options — review petition and curative petition before the Supreme Court and finally mercy petition before the President. In this case, a review of the rejection of the mercy petition was also filed before the Supreme Court.

Review Petition vs Curative Petition vs Mercy Petition: Conclusion

Various legal remedies available in order of filing: review petition → curative petition → mercy petition.

As per law, if a convict is awarded a death sentence, he has three options – review petition and curative petition before the Supreme Court and finally mercy petition before the President.

While the decisions of the lower courts can be reviewed under various articles of the Constitution, a provision for the apex court to review an order passed by them is much needed as a final measure of correcting judicial errors. However, various legal remedies available, including a review of the rejection of mercy petition, are now being used to effectively delay the implementation of the verdict.

In this context, it is essential to arrive at a balance between speedy justice and following just and reasonable procedures. Certain aspects like specifying the time within which review and curative petitions are to be filed, prescribing procedures that avoid duplication of processes in case of multiple convicts facing death penalty must be addressed. Both rights – the rights of the accused and the rights of a victim to seek justice are sacrosanct.

Capital Punishment, Mercy Pleas and the Supreme Court

There are countries which abolished Capital Punishment. There are countries which did not. India is one among the countries where the death penalty exists, but now only for the “rarest of rare cases”.

Let’s see in this article, the major issues and news related to capital punishment and judiciary. Don’t forget to come back to visit this post again as we normally update our articles when SC passes any new observations or guidelines.

Capital Punishment in India Overview

India retains capital punishment for a number of serious offences. But the imposition of capital punishment is not always followed by execution (even when it is upheld on appeal), because of the possibility of commutation to life imprisonment. The number of people executed in India since independence in 1947 is a matter of dispute; official government statistics claim that only about 60 people have been executed since independence.

However, the People's Union for Civil Liberties cited information from Appendix 34 of the 1967 Law Commission of India report showing that 1,422 executions took place in 16 Indian states from 1953 to 1963, and has suggested that the total number of executions since independence may be as high as 3,000 to 4,300.

In December 2007, India voted against a United Nations General Assembly resolution calling for a moratorium on the death penalty. In November 2012, India again upheld its stance on capital punishment by voting against the UN General Assembly draft resolution seeking to ban the death penalty.

Rarest of the rare case doctrine

There are various sections under IPC (302, 376A etc) and other statutes which award capital punishment for the convict. But the Supreme Court of India ruled in 1983 that the death penalty should be imposed only in “the rarest of rare cases.”

While stating that honour killings fall within the “rarest of the rare” category, Supreme Court has recommended the death penalty be extended to those found guilty of committing “honour killings”, which deserve to be a capital crime.

The Supreme Court also recommended death sentences to be imposed on police officials who commit police brutality in the form of encounter killings.

IPC 376A – Rape/Sexual Assault

An amendment in the year 2013 provided for the death penalty in case he inflicts an injury upon woman during rape which causes her death or to be in a persistent vegetative state. The death penalty can also be handed down to repeat rape offenders under the Criminal Law (Amendment) Act, 2013.

Laws other than IPC for Capital Punishment

In addition to the Indian Penal Code, a series of legislation enacted by the Parliament of India have provisions for the death penalty.

1. Commission of Sati (Prevention) Act, 1987: Part. II, Section 4(1).
2. Scheduled Tribes (Prevention of Atrocities) Act, 1989: Section 3(2)(i).
3. Narcotic Drugs and Psychotropic Substances (NDPS) Act.

Clemency and Mercy Petition in the Indian Constitution

After the award of the death sentence by a sessions (trial) court, the sentence must be confirmed by a High Court to make it final. Once confirmed, the condemned convict has the option of appealing to the Supreme Court.

Where the condemned prisoner is unable to appeal to the Supreme Court; or where the court either refuses to hear the appeal or upholds the death sentence, the prisoner also has the option of submitting a 'mercy petition' to the President of India and the Governor of the State.

Who grants pardon? The President?

Article 72(1) of the Constitution of India states:

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 offense where the sentence is a sentence of death.

Despite the language of the constitutional provisions, clemency is exercised not by the President but by the government.

For all practical purposes, the decision on a mercy petition is arrived at within the MHA as the subject has been allocated to the Department of Home, MHA via the second schedule of the Government of India (Allocation of Business) Rules 1961. Once a convict submits a mercy petition to the President, the Rashtrapati Bhavan forwards the petition to the Ministry of Home Affairs, for seeking the Cabinet's advice on the matter.

The MHA then forwards the same to the concerned State Government for eliciting its views.

It is only then the MHA formulates its advice and tenders it to the President, on behalf of the Council of Ministers).

A memorandum on the case is prepared by a junior official in the Ministry and on the basis of the same, a Joint Secretary or an Additional Secretary 'recommends' a decision to commute the death sentence or reject the mercy petition. This 'recommendation' is considered by the Minister of Home Affairs who makes the final 'recommendation', on behalf of the Cabinet of Ministers, to the President.

Article 74(1) provides the President with only one opportunity to return the 'recommendation' for the decision to be reviewed. If no change is made, the President has to sign his assent.

PS: The Constitution doesn't have any maximum time-limit within which a mercy petition has to be decided. There have been instances of mercy petitions lying with the President for over a decade without any decision being taken. The MHA can't ask the President to speed up the process. Similarly, a mercy petition may get delayed at MHA or state level too.

Is everything over, once the President rejects the mercy petition and signs his assent?

No.

Things are not over here.

There is still hope for the convict.

President's pardon/rejection/delay is also subjected to judicial review. Delay in deciding mercy plea is a relevant ground for commuting the death sentence to life imprisonment. This is what happened in the recent Shatrughan Chauhan vs Union of India case.

The Supreme Court has also directed all prison authorities to give a gap of 14 days between intimation of the rejection of mercy petition to the condemned prisoner and his actual execution. In this time period, the convict can seek judicial redress of grievances against the rejection of mercy plea. Also note that if the President grants an unfair pardon, SC can overrule it.

So the long route of capital punishment can be summarized as follows :

1. The Trial court awarded the death sentence.
2. High court confirms it.
3. The Supreme court confirms it on appeal.
4. Mercy petition filed to President of India.
5. The President of India forwards it to the Ministry of Home Affairs.
6. The Ministry of Home Affairs routes it to the state concerned.
7. State lets MHA know its advice.
8. MHA forwards its recommendation to the President of India.

9. The President of India rejects that advice and asks MHA to reconsider it.
10. MHA submits its recommendation again.
11. The President of India signs it. Mercy is denied.
12. The convict can ask for Judicial review.
13. The Judicial review verdict is final.

Highlights of recent SC judgment on Mercy Plea (Shatrughan Chauhan vs Union of India)

The following are the 12 guidelines issued by the Supreme Court bench comprising Chief Justice P. Sathasivam, Justice Ranjan Gogoi and Justice Shiva Kirti Singh on various procedures before executing a death convict.

- Solitary Confinement: (only in last 14 days)
- Legal Aid:
- Procedure in placing the mercy petition before the President:
- Communication of Rejection of Mercy Petition by the Governor:
- Communication of Rejection of the Mercy Petition by the President:
- Death convicts are entitled as a right to receive a copy of the rejection of the mercy petition by the President and the Governor.
- Minimum 14 days notice for execution:
- Mental Health Evaluation:
- Physical and Mental Health Reports:
- Furnishing documents to the convict:
- Final Meeting between the Prisoner and his Family:
- Post Mortem Reports:

Judicial Review vs Judicial Activism vs Judicial Overreach

Judicial Review

Though the legislature has the power to make laws, this power is not absolute. Judicial Review is the process by which the Judiciary reviews the validity of laws passed by the legislature.

- From where does the power of Judicial Review come from: From the Constitution of India itself (Article 13).
- The power of judicial review is evoked to protect and enforce the fundamental rights guaranteed in Part III of the Constitution.
- Article 13 of the Constitution prohibits the Parliament and the state legislatures from making laws that “may take away or abridge the fundamental rights” guaranteed to the citizens of the country.
- The provisions of Article 13 ensure the protection of the fundamental rights and consider any law “inconsistent with or in derogation of the fundamental rights” as void.
- Under Article 13, the term ‘law’ includes any “Ordinance, order, bye-law, rule, regulation, notification, custom or usage” having the force of law in India.
- Examples of Judicial Review: The striking down of the Section 66A of the IT Act as it was against the Fundamental Rights guaranteed by the constitution.

Judicial Activism

Judicial activism denotes a more active role taken by Judiciary to dispense social justice. When we speak of Judicial Activism, we point fingers to the invented mechanisms which have no constitutional backing (Eg: Suo moto (on its own) cases, Public Interest Litigations (PIL), new doctrines etc).

- From where does the power of Judicial Activism come from: Judicial Activism has no constitutional articles to support its origin. The Indian Judiciary invented it. There is a similar concept in the United States of America.

- Suo Moto cases and the innovation of the Public Interest Litigation (PIL), with the discontinuation of the principle of Locus Standi, have allowed the Judiciary to intervene in many public issues, even when there is no complaint from the concerned party.
- Although the earlier instances of Judicial Activism were connected with enforcing Fundamental Rights, nowadays, Judiciary has started interfering in the governance issues as well.
- Examples of Judicial Activism: Invention of the 'basic structure doctrine' in the 'Keshavanad Bharati case' (1973) by which Supreme Court further extended the scope of Judicial Review, incorporation of due process of law instead of procedure established by law, collegium system, institutionalization of PIL, banning smoking in public places based on PIL, the order by Supreme Court in 2001 to provide mid-day meals to schoolchildren, the order passed by the National Green Tribunal (NGT) banning diesel trucks older than 10 years in Delhi etc.

Judicial Overreach

The line between Judicial activism and Judicial Overreach is very narrow. In simple terms, when Judicial activism crosses its limits and becomes Judicial adventurism it is known as Judicial Overreach. When the judiciary oversteps the powers given to it, it may interfere with the proper functioning of the legislative or executive organs of government.

- From where does the power of Judicial Overreach come from: Nowhere. This is undesirable in any democracy.
- Judicial Overreach destroys the spirit of separation of powers.
- Examples of Judicial Overreach: What makes any action activism or overreach is based upon the perspective of individuals. But in general, striking down of NJAC bill and the 99th constitutional amendment, the order passed by the Allahabad High Court making it compulsory for all Bureaucrats to send their children to government school, misuse the power to punish for contempt of court etc. are considered as Judicial Overreach.

Corruption in Public Life

What is Corruption?

- Corruption is dishonest behavior by those in positions of power.
- Those who abuse their power may be individuals or they may belong to organizations, such as businesses or governments.
- Corruption can entail a variety of actions, including giving or accepting bribes or inappropriate gifts, double-dealing, and defrauding investors.
- India was ranked 85 among 180 countries in the corruption perception index 2021.

Different Forms of Corruption

Corruption is spread over in society in several forms. The major ones are: –

Bribe – money offered in cash or kind or gift as an inducement to procure illegal or dishonest action in favor of the giver

Nepotism – undue favor from the holder of patronage to relatives

Misappropriation – using others' money for one's own case

Patronage – wrong support/encouragement given by the patron and thus misusing the position

Reason for corruption in India:

Political:

- Use of black money in elections: In the last 10 years the declared expenditure has increased by more than 400% for the LS elections with 69% of their income coming from unknown sources.
- Criminalization of politics: More than 30% of the legislators in the country have pending criminal cases against them.
- Crony capitalism: The economic reforms of 1991 has led to the growth of an unholy nexus between Politicians and businessmen.

Economic:

- High inequalities: In India 1% of the rich hold about 60% of the total wealth. People at lower income levels are forced to pay bribes to officials even to get their basic needs fulfilled.
- High share of informal sector: In India more than 80% of the workforce is in the informal sector. Such enterprises usually bribe the officials to keep out of the ambit of laws where compliance is costly and complex.
- Low wages: The remuneration in the public sector remains below par with the private sector along with poor career growth opportunities and harsher working conditions.

Administrative:

- Politicization of bureaucracy: Example of honest officers being witch-hunted like Ashok Khemka and Amitabh Thakur are the indicators of the bigger malaise.
- Colonial bureaucracy: The bureaucracy essentially remains colonial in nature characterized by 19th century laws e.g. Police Act 1861, complex rules, wide discretion, secrecy, moral responsibility devoid of legal accountability and the ivory tower attitude.
- Judicial failure: The judiciary has failed to bring to book corrupt officials including politicians.
- Failed reforms: Lack of political will and resistance from within the bureaucracy has led to failure of major reforms like citizen charter, RTI and e-governance.

Social and Ethical:

- Changes in lifestyle: Increasing shift towards individualization and materialism has led to increased penchant for a luxurious lifestyle.
- Social discrimination: The poor and marginalized due to their lack of awareness and high dependence on the state become the easy target of exploitation by corrupt officials.
- Failure of education system: The value education has failed miserably in India to inculcate the value of empathy, compassion, integrity, equity etc. in the young generation.

What are the Reasons for the Prevalence of Corruption in Civil Service?

- **Politicization of the Civil Service:** When civil service positions are used as rewards for political support or swapped for bribes, the opportunities for high levels of corruption increase significantly.
- **Lower Wages Compared to Private Sector:** Lowering wages for civil servants compared to those in the private sector.
- **Certain employees may resort to taking bribes in order to compensate for the difference in wages.**
- **Administrative Delays:** Delays in the clearance of files are the root cause of corruption.
- **Colonial Legacy of Unchallenged Authority:** In a society which worships power, it is easy for public officials to deviate from ethical conduct.
- **Weak Enforcement of Law:** Various laws have been made to curb the evil of corruption but their weak enforcement has acted as a hindrance in curbing corruption.

Impact of Corruption

On People and Public Life:

- **Lack of Quality in Services:** In a system with corruption, there is no quality of service.
- **To demand quality, one might need to pay for it.** This is seen in many areas like municipality, electricity, distribution of relief funds, etc.
- **Lack of Proper Justice:** Corruption in the judiciary system leads to improper justice. And the victims of offense might suffer.
- **A crime may be proved as a benefit of the doubt due to a lack of evidence or even the evidence erased.**
- **Due to corruption in the police system, the investigation process has been going on for decades.**
- **Poor Health and Hygiene:** In countries with more corruption, one can notice more health problems among people. There will be no fresh drinking water, proper roads, quality food grains supply, milk adulteration, etc.

- These low-quality services are all done to save money by the contractors and the officials who are involved.
- Failure of Genuine Research: Research by individuals needs government funding and some of the funding agencies have corrupt officers.
- These people sanction the funds for research to those investigators who are ready to bribe them.

On Society:

- Disregard for Officials: People start disregarding the official involved in corruption by talking negatively about him.
- Disregard officials will also build distrust and even lower-grade officers will be disrespectful to higher-grade officers. So even he may not obey his orders.
- Lack of Respect for Rulers: Rulers of the nation like the president or prime ministers lose respect among the public. Respect is the main criteria in social life.
- People go for voting during the election with the desire to improve their living standards by the election winner and respect for the leader.
- If the politicians are involved in corruption, people knowing this will lose respect for them and will not like to cast their vote for such politicians.
- Lack of Faith and Trust in Governments: People vote for a ruler based on their faith in him/her, but if leaders are found to be involved in corruption, people lose faith in them and may not vote next time.
- Aversion for Joining the Posts Linked to Corruption:
- Sincere, honest, and hardworking people develop an aversion for the particular posts deemed corrupt.
- Though they like those jobs, they tend not to opt for them as they believe that they also would have to be involved in corruption if they get into the post.

On Economy:

- A Decrease in Foreign Investment: Corruption in government bodies has led to many foreign investments going back from developing countries.
- Delay in Growth: An official who needs to pass clearances for projects or industries delays the process in order to make money and other unlawful benefits. A work which can be done in a few days may be done in a month.
- This leads to delays in investments, the starting of industries, and also growth.
- Lack of Development: Many new industries willing to get started in a particular region change their plans if the region is unsuitable.
- If there are no proper roads, water, and electricity, the companies do not wish to start up there, which hinders the economic progress of that region.

What are the Related Indian Initiatives?

Legal Steps:

- The Indian Penal Code, 1860
- The Foreign Contribution (Regulation) Act, 2010
- The Companies Act, 2013
- Central Vigilance Commission
- Ombudsman Scheme
- Prevention of corruption Act 1988: Seeks to create a balance between the need to bring the corrupt to the books and protect honest officers. Its main thrust is to prohibit public servants from accepting or soliciting illegal gratification in the discharge of their official functions.
- Prevention of Money Laundering Act 2002: It seeks to prevent money laundering including laundering of property through corruption and provides for confiscation of such a property.
- Right to Information Act 2005: Makes disclosure of information a legal right of the public to promote transparency e.g. Vyapam scam of MP

- Lokpal and Lokayukta Act 2013: Appoints an independent authority Lokpal at center and Lokayukta at states to probe into the complaints of wrongdoing by the public servants.
- Whistleblower protection Act 2014: More than 60 RTI activists have been murdered and many more assaulted due to lack of protection.

Administrative reforms:

E-governance initiatives: e-gov apart from advancing the good governance objectives of accountability and transparency also seeks to reduce the manual interface between state and citizen thus preventing the incidences of bribery

Citizen Charters and Public Service delivery and Grievance Redress Acts in states: Many states like Karnataka (SAKLA initiative) and Rajasthan have enacted such acts to make bureaucracy legally accountable for delivering quality service within stipulated time periods. Bihar is the only state to have a Grievance Redress Act covering all departments

Economic Reforms:

Liberalization and Privatization: License-Permit-Quota proved to be a highly potent tool in the hands of bureaucracy to misuse the power of their offices to amass illegal wealth. The LPG era proved to be a chink in the armor of bureaucratic discretion.

Steps to Reduce Corruption in Civil Service

- Civil Service Board: By establishing the Civil Service Board, the government can curb excessive political control.
- Simplifying Disciplinary Process: By simplifying the disciplinary process and strengthening preventive vigilance within the departments, it can be ensured that corrupt civil servants do not occupy sensitive positions
- Emphasize Value-based Training: It is important to emphasize value-based training to all civil servants to ensure probity in public life.
- Professional ethics should be an integral component in all the training courses and called for a comprehensive Code of Ethics for civil servants, based on the recommendations of the 2nd Administrative Reforms Commission (ARC).
- Enumerate Ethical and Public-Spirited Civil Servant:

- Enumerating the qualities of an ethical and public-spirited civil servant, an ideal officer should ensure zero pendency of issues in his purview and must display the highest qualities of probity and integrity in office, be proactive in taking the measures of the government to the people, and above all be sympathetic to the cause of marginalised sections.
- Reflecting on the importance of ‘good institutions’ for ‘good governance’, there is a need to re-engineer our institutions and streamline the processes to cut down delays and ensure timely delivery of the services.
- Change in line with the Modern Aspirations: Governance models should change in line with the modern aspirations of our people, and that it is necessary to keep the bureaucratic system ‘light, transparent and agile’.
- Government has launched ‘Mission Karmayogi’ with an aim to build a citizen-centric and future-ready civil service for the nation.

“Zero Tolerance Against Corruption”

Systemic improvements and reforms to provide transparent citizen-friendly services and reduce corruption. These, inter alia, include:

- Disbursement of welfare benefits directly to the citizens under various schemes of the Government in a transparent manner through the Direct Benefit Transfer initiative.
- Implementation of E-tendering in public procurements.
- Introduction of e-Governance and simplification of procedure and systems.
- Introduction of Government procurement through the Government e- Marketplace (GeM).
- Discontinuation of interviews in recruitment of Group ‘B’ (Non-Gazetted) and Group ‘C’ posts in Government of India.
- Invocation of FR-56 (j) and AIS (DCRB) Rules, 1958 for retiring officials from service in public interest whose performance has been reviewed and found unsatisfactory.
- The All India Services (Disciplinary and Appeal) Rules and Central Civil Services (Classification, Control and Appeal) Rules have been amended to provide for specific timelines in the procedure related to disciplinary proceedings.

- The Prevention of Corruption Act, 1988 has been amended on 26.07.2018. It clearly criminalizes the act of giving bribe and will help check big ticket corruption by creating a vicarious liability in respect of senior management of commercial organizations.
- Central Vigilance Commission (CVC), through various orders and circulars recommended adoption of Integrity Pact to all the organizations in major procurement activities and to ensure effective and expeditious investigation wherever any irregularity / misconduct is noticed.
- The institution of Lokpal has been operationalised by appointment of Chairperson and Members. Lokpal is statutorily mandated to directly receive and process complaints as regards alleged offences against public servants under the Prevention of Corruption Act, 1988.

Need for the Reform in Civil Service

- Civil Servants play a vital role in formulating policy and executing delivery at the cutting edge.
- However, the current civil services capacity building landscape was marred with the following challenges:
- Existing training policy interventions were sporadic and largely confined to individual and intermittent innovations
- Stereotyped working in silos or compartments, rather than an overall unifying vision and understanding of national priorities
- Lack of a lifelong and continuous learning environment for all civil servants
- Barriers to exchange of knowledge preventing collaborative working
- Moving from a Rules-Based to a Roles-Based HR Management System
- Raison d'être of the Mission is assignment of right person for the right role at the right time.

Evolution of the Civil Services Reform Since 2014

To strengthen the interface of Government with the citizens, various citizen-centric initiatives have been undertaken since 2014:

- Moving ahead on 'Trust the Citizen' philosophy, self-attestation of documents was allowed.
- To remove discretion and promote merit, interviews for Group B (Non-Gazetted) and Group C posts were discontinued.
- To make senior appointments broad-based and objective, multi-source 360-degree feedback was introduced.
- Lateral entry was introduced at senior levels to create the widest talent pool and induct sectoral experts.
- To create synergies between policy design and implementation, Assistant Secretary Programme was introduced in 2015, directly connecting central government departments to administrative sub-division in the field.
- To enhance governance through civil services capacity building, path-breaking exercise Aarambh conducted at Statue of Unity, Kevadia on RashtriyaEkta Diwas in 2019, and it was followed up with a unique virtual Aarambh in October 2020.
- National Recruitment Agency (NRA) set up in August 2020 to introduce a common entrance test, obviating the need for multiple entrance tests for the citizen, saving her time and cost.

Mission Karmayogi

Mission Karmayogi is the National Programme for Civil Services Capacity Building (NPCSCB). It is a reform in Indian Bureaucracy. Union Cabinet launched it on 2nd September 2020. The mission intends to lay down the foundations for the Indian civil servants' capacity building and aims to enhance governance.

Six Pillars of Mission Karmayogi

1. Policy Framework- New Training Policies with focus on continuous learning and driving competencies.

2. Competency Framework-Shift from Rule to Role with the indigenous competency framework.
3. Institutional Framework- Oversight by PMHR Council
4. iGOT Karmyogi- Large scale comprehensive learning platform
5. E-HRMS- Strategic HR Management
6. Monitoring and Evaluation Framework- Continuous performance analysis, data driven goal-setting and real time monitoring

Salient Features

- Aligning work allocation of civil servants by matching their competencies to the requirements of the posts, such that transition from ‘Rule based’ to ‘Role based’ HR Management is smoothly attained
- To emphasize on ‘on-site’ learning to complement the ‘off-site’ learning
- To create an ecosystem of shared training infrastructure including that of learning materials, institutions and personnel
- To calibrate all Civil Service positions to a Framework of Roles, Activities and Competencies (FRAC) approach and to create and deliver learning content relevant to the identified FRAC in every Government entity
- To make available to all civil servants, an opportunity to continuously build and strengthen their Behavioural, Functional and Domain Competencies in their self-driven and mandated learning paths
- To enable all Central Ministries and Departments and their Organization to directly invest their resources towards co-creation and sharing the collaborative and common ecosystem of learning through an annual financial subscription for every employee
- To encourage and partner with the best-in-class learning content creators including public training institutions, universities, start-ups and individual experts.

Institutional Framework of Mission Karmayogi

- Prime Minister's Human Resources Council (PMHRC)- Apex Body to provide strategic direction to capacity building reforms.
- Cabinet Secretariat Coordination Unit- to monitor progress and execution and oversee plans.
- Capacity Building Commission- to harmonize training standards, create shared faculty & resources and supervise Central Training Institutions.
- Karmayogi Bharat Special Purpose Vehicle (SPV)- To own and operate the online platform-iGOTKarmayogi and facilitate world class learning.

iGOT-Karmayogi

- It is an Integrated Government Online Training digital platform under the Ministry of Human Resources and Development (MHRD). which will deliver capacity building programmes by drawing content from global best practices rooted in Indian national ethos.
- It will enable a comprehensive reform of the capacity building apparatus at the individual, institutional and process levels.
- Civil servants will have to take online courses and they will be evaluated based on their courses, their performances in each course they have taken spreading across their span of services.
- All digital e-learning courses of world-class content will be uploaded on this platform for civil servants.
- Along with the online courses, services like confirmation after probation period, deployment, work assignment and notification of vacancies etc would also be integrated on the platform.

Lokpal

Introduction: -

- Lokpal is established under Lokpal & Lokayuktas act 2013 to inquire and investigate into allegations of corruption against public functionaries, who fall within the scope and ambit of the above act.
- The Lokpal of India is committed to address concerns and aspirations of the citizens of India for clean governance.
- India is a signatory to the United Nations Convention against Corruption.
- The commitment of the Government to provide clean and responsive governance is reflected in passing of the legislation and creation of the body of Lokpal, to contain and punish acts of corruption.

Jurisdiction And Functions of Lokpal: -

- The Lokpal has jurisdiction to inquire into allegations of corruption against anyone who is or has been Prime Minister, or a Minister in the Union government, or a Member of Parliament, as well as officials of the Union Government under Groups A, B, C and D.
- Also covered are chairpersons, members, officers and directors of any board, corporation, society, trust or autonomous body either established by an Act of Parliament or wholly or partly funded by the Union or State government.
- It also covers any society or trust or body that receives foreign contribution above ₹10 lakh.
- Lokpal take action Suo moto or respond to a private person's complaint.
- The Lokpal will have the power of superintendence and direction over any investigation agency including CBI for cases referred to them by the ombudsman.
- An investigation must be completed within six months. However, the Lokpal or Lokayukta may allow extensions of six months at a time provided the reasons for the need of such extensions are given in writing.
- Special courts will be instituted to conduct trials on cases referred by Lokpal.

Structure of Lokpal: -

- Lokpal consists of chairperson, 8 members out of whom 50% are judicial members.
- The Chairperson and the Members are appointed by the President of India by warrant under his hand and seal.
- They hold office for a term of five years from the date on which they enter upon the office or until they attain the age of 70 years, whichever is earlier.
- The salary, allowances and other conditions of services of the Chairperson and members are the same as that of Chief Justice of India and judges of supreme court respectively.
- Lokpal's Administrative branch will be headed by an officer of the rank of Secretary to Govt of India.
- Lokpal's Judicial Branch will be headed by a Judicial officer of appropriate level and will assist the Lokpal discharge their judicial functions.

Lok Ayukta Act

What is LokAyukta?

- A body to investigate allegations of corruption against public servants.

How many members of Lok Ayukta?

- There should be a chairman and 4 members. 2 out of four should be from the judiciary.

How are members selected?

- The Chief Minister, the Assembly Speaker and the Leader of the Opposition will be elected jointly. Those so selected will be officially appointed by the Governor.

Who can become a Lokayukta Chairman/Member?

- Serving High Court Judge (or)
- Retired High Court Judge (or)
- Person with 25 years of experience in Anti-corruption/Public Administration

Are there any other definitions?

- Should not be a convicted felon
- Should not be a Member of Parliament / Legislature
- Should not be dismissed from government service
- Should not be holding any other office of profit
- Should not be below 45 years of age or above 70 years of age

What is the tenure of the members?

- 5 years.

Who else will be in the LokAyukta system?

- LokAyukta Secretary and Director of Inquiry : Selected by the Lok Ayukta Chairman from the list of officers provided by the Government.
- Apart from these, the state government should provide necessary functions for the smooth functioning of this system

Who can be investigated by Lokayukta?

- Present and Former Chief Minister
- Present and Former Ministers
- Present and Former Members of Legislative Assembly
- State Government Servants
- Government Managed or Government Funded Organizations / Boards / Associations / Autonomous Bodies
- Apart from these, any person who incites or aids public servants to commit corruption can be investigated.

What other powers are there?

- No prior permission is required from anyone before starting any investigation
- Any officer of the State Government can be used as per the requirement of the investigation

- Anyone can be summoned and questioned in person Government can be asked to hand over any document

What should not be investigated?

- Actions taken in relation to Defense of India
- Appointment, transfer, dismissal, retirement of public servants, rewards and prizes
- Persons and local bodies under the jurisdiction of the Local Financial Auditor
- Matters ordered for public inquiry with the permission of the Lok Ayukta
- Inquiries initiated before the constitution of the Lok Ayukta
- Commercial contracts entered into by the government cannot be investigated for any reason other than harassment or undue delay.

Can complaints be filed suo motu?

- Not specified in law.

How will complaints be investigated?

- A separate investigation unit should be set up for the Lok Ayukta to investigate complaints. The state government will assist in the investigation until it becomes operational. The investigation unit will investigate complaints against ministers and legislators. Complaints against officials will be investigated by the Anti-Bribery Department.

Can the accused be dismissed during the investigation?

- If the LokAyukta considers that such a need arises, he may refer the Government servant to his superior. The Government reserves the right to reject the recommendation by giving written arguments. This clause shall not apply to the Chief Minister, Ministers and Members of Legislative Assembly.

What happens after the investigation?

- The Investigation Unit / Anti-Bribery Department will submit its detailed report to the Lok Ayukta. Lokayukta members will examine the report and decide whether the complaint is valid or not. The complainant will also be given an opportunity to present his arguments. If the allegation is proved, the Lokayukta will recommend to the body having jurisdiction over the person concerned what action should be taken.

Which body has the authority to take action?

- Government of Tamil Nadu for Government Servant, Speaker for Assembly Member, Chief Minister for Ministers, Governor for Chief Minister.

What if the complaint is proven false?

- A maximum of 1 year imprisonment and a fine of Rs 1 lakh for making false / frivolous complaints
- False complainant should also pay compensation to the aggrieved public servant. This does not apply to complaints made in good faith

What if the complaint is against the Lokayukta itself?

- It will not be investigated by LokAyukta. Separate rules are provided for removal of LokAyukta members.

What are its rules?

- Long procedure like dismissal of judges : Complaints should be given with the signatures of 45 legislators. The High Court will hear the complaint on the order of the Governor. If proven, the Governor will issue a dismissal order.

Right to Information

The Right to Information (RTI) is an act of the Parliament of India which sets out the rules and procedures regarding citizens' right to information. It replaced the former Freedom of Information Act, 2002. Under the provisions of RTI Act, any citizen of India may request information from a "public authority" (a body of Government or "instrumentality of State") which is required to reply expeditiously or within thirty days. In case of matters involving a petitioner's life and liberty, the information has to be provided within 48 hours. The Act also requires every

public authority to computerize their records for wide dissemination and to proactively publish certain categories of information so that the citizens need minimum recourse to request for information formally.

The RTI Bill was passed by Parliament of India on 15 June 2005 and came into force with effect from 12 October 2005. Every day on an average, over 4800 RTI applications are filed. In the first ten years of the commencement of the act, over 17,500,000 applications had been filed.

Although Right to Information is not included as a Fundamental Right in the Constitution of India, it protects the fundamental rights to Freedom of Expression and Speech under Article 19(1)(a) and Right to Life and Personal Liberty under Article 21 guaranteed by the Constitution. The authorities under RTI Act 2005 are called public authorities. The Public Information Officer (PIO) or the First Appellate Authority in the public authorities perform quasi judicial functions of deciding on the application and appeal respectively. This act was enacted in order to consolidate the fundamental right in the Indian constitution 'freedom of speech'. Since RTI is implicit in the Right to Freedom of Speech and Expression under Article 19 of the Indian Constitution, it is an implied fundamental right.

Information disclosure in India had traditionally been restricted by the Official Secrets Act 1923 and various other special laws, which the new RTI Act overrides¹ Right to Information codifies a fundamental right of the citizens of India. RTI has proven to be very useful, but is counteracted by the WhistleBlowers Protection Act, 2011.

The Right to Information (Amendment) Bill, 2019, seeks to amend Sections 13, 16, and 27 of the RTI Act. Section 13 of the original Act: It sets the term of the central Chief Information Commissioner and Information Commissioners at five years (or until the age of 65, whichever is earlier). Finally in Ashwanee K. Singh's case on 20 September 2020, stated that right to information is a fundamental right.

Scope

The Act extends to the whole of India. It covers all the constitutional authorities, including executive, legislature and judiciary; any institution or body established or constituted by an act of Parliament or a state legislature. It is also defined in the Act that bodies or authorities established or constituted by order or notification of appropriate government including bodies "owned, controlled or substantially financed" by government, or non-Government organizations "substantially financed, directly or indirectly by funds".

Private bodies

Private bodies are not within the acts. In a decision of *Sarbjit Roy vs Delhi Electricity Regulatory Commission*, the Central Information Commission also reaffirmed that privatised public utility companies fall within the purview of RTI. As of 2014, private institutions and NGOs receiving over 95% of their infrastructure funds from the government come under the Act.

Political parties

The Central Information Commission (CIC) held that the political parties are public authorities and are answerable to citizens under the RTI Act. The CIC said that eight national parties - Congress, BJP, NCP, CPI(M), CPI, BSP, NPP and AITC - have been substantially funded indirectly by the Central Government and have the character of public authorities under the RTI Act as they perform public functions. But in August 2013 the government introduced a Right To Information (Amendment) Bill which would remove political parties from the scope of the law. Currently no parties are under the RTI Act and a case has been filed for bringing all political parties under it.

Amendment

The Right to Information Act 2019 passed on July 25, 2019 modified the terms and conditions of service of the CIC and Information Commissioners at the centre and in states. It had been criticized as watering down the independence of the information commissions, namely by empowering the government to fix the term of service and salaries of information commissioners.

Supreme Court judgement

The Supreme Court of India on 13 November 2019, upheld the decision of the Delhi High Court bringing the office of Chief Justice of India under the purview of the Right to Information (RTI) Act.

Governance and process

The Right to information in India is governed by two major bodies:

Central Information Commission (CIC) – Chief Information commissioner who heads all the central departments and ministries- with their own public Information officers (PIO)s. CICs are directly under the President of India.

State Information Commissions – State Public Information Officers or SPOs head over all the state department and ministries. The SPIO office is directly under the corresponding State Governor.

State Information Commissions are independent bodies and the Central Information Commission has no jurisdiction over the State Information Commission.

Fees

A citizen who desires to seek some information from a public authority is required to send, along with the application (a Postal order or DD (Demand draft) or a bankers cheque) or a court stamp payable to the Accounts Officer of the public authority as fee prescribed for seeking information. If the person is from a disadvantaged community, he/she need not pay. The applicant may also be required to pay a further fee towards the cost of providing the information, details of which shall be intimated to the applicant by the PIO (Public Information Officer) as prescribed by the RTI ACT.

Digital right to information systems

A digital portal has been set up, *RTI Portal*, a gateway to the citizens for quick search of information on the details of first Appellate Authorities, PIOs etc. amongst others, besides access to RTI related information disclosures published on the web by various Public Authorities under the government of India as well as the State Governments. It is an initiative taken by the Department of Personnel and Training, Ministry of Personnel, Public Grievances and Pensions.

Controversies

The Right to information in India has been mired with controversies ranging from their use in political battles, asking for educational degrees of political rivals, or cases of blatant refusals to provide information on high-profile projects to allegations of misuse by civil society. The backlash against RTI by the state hampered the citizen's right to know.

Attacks on RTI activists and protection suggestions

Commonwealth Human Rights Initiative (CHRI) data points to over 310 cases across India where people were either attacked, physically or mentally harassed or had their property damaged

because of the information they sought under RTI. The data throws up over 50 alleged murders and two suicides that were directly linked with RTI applications filed. R.T.I. Act 2005 applies to both central as well as state governments. It also covers the acts and functionaries of the public authorities.

There is a consensus that there is a need to amend the RTI Act to provide for the protection of those seeking information under the Act. The Asian Centre for Human Rights recommends that a separate chapter, "Protection of those seeking information under the (RTI) Act", be inserted into the Act.

Protection measures suggested include:

Mandatory, immediate registration of complaints of threats or attacks against RTI activists on the First Information Report and placing such FIRs before the magistrate or judge of the area within 24 hours for issuance of directions for protection of those under threats and their family members, and periodic review of such protection measures.

Conducting inquiry into threats or attacks by a police officer not below the rank of Deputy Superintendent of Police/Assistant Commissioner of Police to be concluded within 90 days and we also use RTI and get its benefit.

Intellectual property rights

Many civil society members have recently alleged the subversion of the right to information Act by the invocation of Intellectual Property rights argument by the government agencies from time to time.

Most notable are:

The Right to Information denied by RBI on Demonetization citing Intellectual Property Laws.

The Right to Information Denied by Uttar Pradesh Irrigation Department after more than 8 months of a wait on under construction Gomti Riverfront Development Project. A group of researchers requested for Environment Impact and Project Report on the project which is flagged for negative impacts, tax money wastage by environmental scientists and research reports.

Banned people from filing RTI

Gujarat State Information Commission banned 10 people from filing RTI queries, citing that these people were "harassing government officials" by filing multiple queries with "malafide

intentions”. This was the first time in Gujarat that a ban on filing RTI inquiries took place, noted NGO Mahiti Adhikar Gujarat Pahel, also stating that no provision in the act allowed for the blacklisting of applicants.

Rejection of RTIs

Scholars argue that the Right to Information Act's original intent to make government transparent and accountable is faltering as RTI requests are rejected and the bureaucratic systems are bogged down by thousands of requests.

Many RTIs are rejected because the bureaucratic requirements (including the technocratic language used) of filing are too onerous and legalistic for ordinary citizens. Sixty percent of the RTI appeals made to Information Commissioners in Delhi are rejected for a variety of reasons, including that appeals are not typed or not written in English, or lack an index of the papers attached or a list of dates. This bureaucratic barrier, worse for those without access to higher education or information, makes the right to information inaccessible. Many citizens have to seek out NGOs, RTI activists, or lawyers, to file their RTIs.

Benefits

Many activists view the Right to Information Act as a final liberation from British colonialism; they describe the RTI law as “a tool for empowering ordinary citizens and changing the culture of governance by making it transparent, less corrupt, participatory, and accountable”. They also note that RTI requests provide strategy and substance for activists on a broad range of social issues, including “land and environmental rights, social security benefits, the working of financial institutions, political party financing reform, civic infrastructure, and even public-private partnerships”.

Exempted organisations

As per section 24 of the Act, intelligence and security organisations, both central and state, are exempted from the RTI Act except in cases of corruption or human rights violation. Such central organisations are listed in schedule 2 of the Act¹ The schedule has been amended four times, in September 2005, March 2008 October 2008 and May 2021.

Intelligence Bureau

1. Research and Analysis Wing including its technical wing, Aviation Research Centre
2. Directorate of Revenue Intelligence
3. Central Economic Intelligence Bureau
4. Directorate of Enforcement
5. Narcotics Control Bureau
6. Special Frontier Force
7. Border Security Force
8. Central Reserve Police Force
9. Indo-Tibetan Border Police
10. Central Industrial Security Force
11. National Security Guard
12. Assam Rifles
13. Sashastra Seema Bal
14. Directorate General of Income-tax (Investigation)
15. National Technical Research Organisation
16. Financial Intelligence Unit, India
17. Special Protection Group
18. Defence Research and Development Organisation
19. Border Roads Organisation
20. National Security Council Secretariat (secretariat of the National Security Council, in the Cabinet Secretariat)

Women Empowerment

Women Empowerment is the progression of women, accepting and including them in the decision-making process. It also means providing them with equal opportunities for growth and development in society, and disapproving gender bias.

Article 15(3) mentions the welfare of women and children and can be stated as “Nothing in this article shall prevent the State from making any special provision for women and children.”

The Ministry for women and child development has collaborated with Facebook on November 19, 2019, to enhance digital literacy and online safety for women and children in India. The campaign categorized under the Global Literacy Program is named “We Think Digital”.

Women and children are a vital part of Indian society. Also, these are the most vulnerable sections of India.

List of Major Women Empowerment schemes in India

The important women empowerment schemes in India are listed below:

Women Empowerment scheme	Launch Year	Objectives
Beti Bachao Beti Padhao Scheme	2015	<ul style="list-style-type: none"> • To prevent gender-biased sex selective elimination • To ensure survival & protection of the girl child • To ensure education and participation of the girl child
One-Stop Centre Scheme	2015	<ul style="list-style-type: none"> • To provide support and assistance to women affected by violence, both in private and public spaces. • To Facilitate/Assist in filing First Information Report (FIR/NCR) • To provide psycho-social support and counselling to women/girl

Women Helpline Scheme	2016	<ul style="list-style-type: none"> • To provide toll-free 24-hours telecom service to women affected by violence. • To facilitate crisis and non-crisis intervention through referral to the appropriate agencies such as police/Hospitals/Ambulance services/District Legal Service Authority (DLSA)/Protection Officer (PO)/OSC. • To provide information about the appropriate support services, government schemes, and programs available to the woman affected by violence, in her particular situation within the local area in which she resides or is employed.
UJJAWALA	2016	<ul style="list-style-type: none"> • To prevent the trafficking of women and children for commercial sexual exploitation. • To facilitate the rescue of victims from the place of their exploitation and place them in safe custody. • To provide rehabilitation services with both immediate and long-term to the victims by providing basic amenities/needs such as shelter, food, clothing, medical treatment including counseling, legal aid and guidance, and vocational training.
Working Women Hostel	1972-73	<ul style="list-style-type: none"> • To promote the availability of safe and conveniently located accommodation for working women. • To provide accommodation to children of working women, up to the age of 18 years for girls and up to the age of 5 years for boys.

SWADHAR Greh	2018	<ul style="list-style-type: none"> • To cater to the primary need for shelter, food, clothing, medical treatment, and care of women in distress. • To provide women with legal aid and guidance.
Support to Training and Employment Programme for Women (STEP)	1986-87	<ul style="list-style-type: none"> • To provide skills that give employability to women. • To benefit women in the age group of 16 and above in the country.
Nari Shakti Puraskar	2016	<ul style="list-style-type: none"> • To strengthen the place of women in society. • To facilitate institutions that work towards the progress and development of women in society.
Mahila Shakti Kendras (MSK)	2017	<ul style="list-style-type: none"> • To create an environment for women where they have access to healthcare, quality, education, guidance, employment, etc. • To facilitate these opportunities at the block and district level in the country.
NIRBHAYA	2012	<ul style="list-style-type: none"> • To facilitate safety and security for women at various levels. • To ensure strict privacy and confidentiality of women's identity and information. • Provision for real-time intervention as far as possible

Mahila E-Haat	2016	<ul style="list-style-type: none"> • To facilitate entrepreneurship opportunities online for women. • To educate women on various aspects of online selling and helping them establish their venture.
Mahila Police Volunteers	2016	<ul style="list-style-type: none"> • An MPV will serve as a public-police interface in order to fight crime against women. • The broad mandate of MPVs is to report incidences of violence against women such as domestic violence, child marriage, dowry harassment and violence faced by women in public spaces.

The government of India has taken the safety and empowerment of women and children into serious consideration. The growing injustice towards women had to be minimised, and these schemes are the solutions to the major problems related to women in India. Aspirants should also know that Women Empowerment Essay is a probable choice in UPSC Mains. So making use of these schemes, aspirants can easily draft a good Women Empowerment Essay.

There are multiple other Government Schemes in India launched for the betterment of people in the society and for the overall development of the country. Aspirants can visit the linked article and learn in detail about the various schemes and campaigns introduced by the Government.

Women Empowerment in India – Recent News

1. Speaking on the 25th Anniversary of the Fourth World Conference on Women, Union Minister for Women and Child Development Smriti Irani said at the United Nations that India recognises the centrality of gender equality and women's empowerment in all aspects of developmental agenda. The minister for Women and Child Development Smriti Irani highlighted that more than 200 million women have been brought into the formal banking system through the Government's Financial Inclusion Initiative. Innovative use of digital technologies has provided equal opportunity for women to access insurance, loans, and social assistance.

2. Microsoft on Wednesday announced that it has collaborated with the National Skill Development Corporation (NSDC) to impart digital skills to more than one lakh underserved women in India. This initiative is an extension of Microsoft's partnership with NSDC to provide digital skills to over 1 lakh youth in the country. The programme will curate a series of live training sessions and digital skilling drives to help create opportunities for young girls and women, particularly first-time job seekers and those whose jobs may have been impacted by COVID-19, to join the future workforce
3. Women's empowerment in India has received more attention in recent years, and one NGO is working to help disadvantaged Indian women achieve financial independence with one specific method: an all-women cab company. The Azad Foundation's Women on Wheels program empowers impoverished women in India by providing them with a stable source of income and a safe environment where women can travel without fear of being harassed.

Human rights

In practice, 'human rights' are defined as encompassing all aspects of valuable human existence that establish that every human being is an equal member of the human family. Human dignity is the essence of human rights. A broad understanding of this aspect and a respect and recognition of the limits of an individual's dignity define the true scope of human rights.

Aspects of human rights

People have rights simply because they are human.

All people have the right to lead a dignified human life.

And these rights shall not be denied to all people on the basis of caste, colour, creed and sex.

Human rights are universal

Human rights take no account of nationality, race, sex or colour. All people belonging to all countries, all colors, castes and religions are entitled to the same rights in all religions. Developed and developing countries in all continents of the world must guarantee the same rights to all their citizens.

Human rights treat all people equally

It follows the concept that “All human beings are born free and equal in rights and dignity”. Therefore, while respecting their different cultures and traditions, political affiliations, sexuality, social base, status, etc., they (all human beings) are entitled to the same opportunities and treatment.

Governments must work to provide equal opportunities to all people in the country. And providing the same opportunities as above to certain sections of the society, for example, women children and the differently abled may also require additional work.

These rights essentially belong to individuals

The meaning of this is that they are related to each other according to the relationship between the state and an individual. As a result, it is the responsibility of the state to create a society where every individual can fully enjoy and exercise his or her rights.

Human rights, fundamental principles of humanity

- These rights are considered fundamental to the development of human personality and human dignity.
- Some examples of such rights are the right to life, freedom from slavery, and freedom from torture.
- Not limited to national boundaries
- They emphasize certain ideals that the promotion and protection of human rights are not confined to national boundaries but universal. Human rights entail that states have an obligation to fulfill aspects such as the promotion and protection of respect for these human rights.

Important days for human rights

- 1215 – Mahasasanam
- 1776 – American Declaration of Independence and Bill of Rights
- 1787 – Constitution of the United Nations
- 1789 – French Declaration of the Rights of Man
- 1946 – UN Convention on Human Rights Commission
- 1948 – Universal Declaration of Human Rights
- 1949 – Geneva Convention

- 1950 – European Convention on Human Rights and Fundamental Freedoms
- 1961 – European Social Charter
- 1966 – International Covenant on Economic, Social and Cultural Rights (ICCSC): Civil and Political; International Covenant on Civil Rights (ICCPR): and (first) the International Convention on Inhuman or Degrading Treatment or Punishment (UNCAT)
- Program of Action and Vienna Declaration adopted at the 1993 World Conference on Human Rights

Human Rights in Indian Constitution

- The Constitution of India formally recognizes the importance of human rights. Its part-third also guarantees certain fundamental rights: these include the right to equality, the right to freedom of religion, the right to education and cultural rights, and the right to constitutional remedies.
- Article 32 recognizes the right to constitutional remedy in the form of original judicial review by the Supreme Court of India for the enforcement of these fundamental rights. It is to protect individuals against encroachment on their human rights.
- Part IV of the Constitution of India contains guidelines for governmental policies. These are the principles of government administration that the government should adhere to while formulating its policies. These include the following duties of the government.
- Preserving a social order to promote the well-being of the people: social justice, right to work, education and provision for humane cycles; advancing the interests of vulnerable population groups; duty to raise standards of living and nutritional quality of food; and improving public health; protecting and improving the environment; protecting and improving ecology and wildlife; Other obligations are emphasized by the Guidelines.
- In addition to this, Article 51U (Part 4U of the Constitution) contains a wide range of fundamental duties of every citizen to strengthen the guarantee of fundamental rights.
- Article 226 empowers the High Court to exercise its powers for the same purpose in addition to Article 32 which empowers the Supreme Court to enforce fundamental rights.

- This duty to protect and enforce human rights is a fundamental duty of the High Judiciary under constitutional mandate. The rule of law, like judicial review, is a fundamental aspect of our constitutional law.
- The role played by the Supreme Court of India in the expansion of human rights is highly commendable. In this way, Article 21 of the Constitution is known to be the most effective section.
- The Supreme Court of India has held in numerous cases that compensation under Article 21 should be awarded when rights such as the right to protection of childhood, the right to social security, the right to a healthy environment and the right to human dignity are violated.
- The influence of the Universal Declaration of Human Rights of 1948 was felt throughout the drafting of the Constitution of India (Parts 3 and 4).
- India has in some respects given reluctance to both formal agreements, starting with the Universal Declaration of Human Rights

Indian Polity: Recent Issues

Citizenship Amendment Act 2019: Why are people opposing it?

Those who oppose the CAA feel that the new provisions are against the secular foundations of the Indian Constitution. They believe the Amendments made are ethically wrong.

There are also apprehensions in some sections that the Citizenship Amendment Act 2019, followed by the National Register of Citizens (NRC) is to alter the voters' profile and majority sentiments in favour of the ruling party.

Natives of north-east India, who are most affected by the problems of illegal migration, are against the whole idea of giving citizenship to illegal migrants, irrespective of their religion.

Government's Clarification on Citizenship Amendment Act 2019

The Ministry of Home Affairs (MHA) has released a clarification of the Central Government on the issue. The questions and answers published by the Press Information Bureau (PIB) are reproduced below.

Does the CAA affect any Indian citizen?

No, it has absolutely nothing to do with any Indian citizen in any way. The Indian citizens enjoy fundamental rights conferred on them by the Constitution of India. No statute, including the CAA, can abridge or take them away. There has been a misinformation campaign. The CAA does not affect any Indian citizens, including Muslim citizens.

Who does the CAA apply to?

It is relevant only for Hindu, Sikh, Jain, Buddhist, Parsi and Christian foreigners, who have migrated from Pakistan, Bangladesh, and Afghanistan into India up to 31.12.2014, on account of persecution faced by them due to their religion. It does not apply to any other foreigners, including Muslims migrating to India from any country, including these three countries.

How does it benefit Hindu, Sikh, Jain, Buddhist, Parsi and Christian foreigners hailing from these three countries?

If their travel documents like passport and visa are not in order or are not available, they can apply for Indian citizenship if they were persecuted back home. The CAA creates this legal right for such migrants. Secondly, they get a faster route for Indian citizenship through the Naturalisation Mode. The minimum residency requirement in India would be only 1+5 years instead of 1+11 years as applicable for all other categories of foreigners.

Does this mean that Muslims from Pakistan, Bangladesh, and Afghanistan can never get Indian citizenship?

No, the present legal process of acquiring Indian citizenship by any foreigner of any category through Naturalization (Section 6 of the Citizenship Act) or through Registration (Section 5 of the Act) stays operational. The CAA does not amend or alter it in any manner whatsoever. Hundreds of Muslims migrating from these three countries have been granted Indian citizenship during the last few years. If found eligible, all such future migrants shall also get Indian citizenship, irrespective of their numbers or religion.

In 2014, after the settlement of Indo-Bangladesh boundary issues, 14,864 Bangladeshi citizens were given Indian Citizenship when their enclaves were incorporated into the territory of India. Thousands of these foreigners were Muslims.

Will illegal Muslim immigrants from these three countries be deported under the CAA?

No, the CAA has absolutely nothing to do with the deportation of any foreigner from India. The deportation process of any foreigner irrespective of his religion or country is implemented as per the mandate of the Foreigners Act, 1946 and/or The Passport (Entry into India) Act, 1920. These two laws govern entry, stay movement within India and exit from India of all foreigners irrespective of their religion or country.

Therefore, the usual deportation process would apply to any illegal foreigner staying in India. It is a well-considered judicial process that is based on a proper inquiry by the local police or administrative authorities to detect an illegal foreigner. It is ensured that such an illegal foreigner has been issued a proper travel document by the embassy of his country so that he can be duly received by officials of his country when he is deported.

In Assam, the process of deportation happens only after the determination of such a person as a “foreigner” under The Foreigners Act, 1946. Then he becomes liable for deportation. Therefore, there is nothing automatic, mechanical or discriminatory in this exercise. The state governments and their district-level authorities enjoy the power of the Central Govt. under Section 3 of the Foreigners Act and Section 5 of The Passport (Entry into India) Act, 1920 to detect, detain & deport any illegal foreigner.

Can Hindus facing persecution on grounds of religion in countries other than these 3 countries apply under the CAA?

No, they will have to apply through the usual process to get Indian Citizenship just like any other foreigner for either registration or naturalization as a citizen of India. They would get no preference under The Citizenship Act, 1955, even after the CAA.

Does the CAA also cover other forms of persecution – on grounds of race, gender, membership of a political or social group, language, ethnicity etc.?

No, the CAA is a very focused law that deals specifically with foreigners of six minority community groups hailing from three neighbouring countries that have their distinct state religion. Any foreigner persecuted abroad on any account may apply for registration or naturalization as a citizen of India like any other foreigner if he fulfills the minimum qualifications laid down in The Citizenship Act, 1955.

Does the CAA gradually exclude Indian Muslims from the citizenship of India?

The CAA does not apply to any Indian citizen at all. All Indian citizens enjoy the fundamental rights guaranteed by the Constitution of India. CAA is not meant to deprive any Indian citizen of his citizenship. Rather it is a special law to enable certain foreigners facing a particular situation in three neighbouring countries to get Indian citizenship.

CAA will be followed by NRC and all migrants except Muslims will be given citizenship and Muslims will be sent to detention camps?

The CAA has nothing to do with NRC. The legal provisions regarding NRC have been part of The Citizenship Act, 1955 since December 2004. Also, there are specific statutory rules of 2003 to operationalize these legal provisions. They govern the process of registration of Indian citizens and the issuance of national identity cards to them. These legal provisions have been on the statute books since the last 15-16 years. The CAA has not altered them in any way whatsoever.

Consumer Protection Forum

Structure and Functions consumer protection forum: -

- The Consumer Protection Act, 1986 provides for a 3-tier structure of the National and State Commissions and District Forums for speedy resolution of consumer disputes.
- It is quasi-judicial forum.
- Each District Forum is headed by a person who is or has been or is eligible to be appointed as a District Judge
- Each State forum is headed by a person who is or has been a Judge of High Court.
- A written complaint can be filed before the District Consumer Forum/State Commission/ National Commission in respect of defects in goods and or deficiency in service.
- However, no complaint can be filed for alleged deficiency in any service that is rendered free of charge or under a contract of personal service.
- The remedy under the Consumer Protection Act is an alternative in addition to that already available to the aggrieved persons/consumers by way of civil suit.
- In the complaint/appeal/petition submitted under the Act, a consumer is not required to pay any court fees but only a nominal fee.

Appeals

- If a consumer is not satisfied by the decision of a District Forum, he can appeal to the State Commission. Against the order of the State Commission a consumer can come to the National Commission.
- In order to help achieve the objectives of the Consumer Protection Act, the National Commission has also been conferred with the powers of administrative control over all the State Commissions by calling for periodical returns regarding the institution, disposal and pendency of cases.

Ambit of Consumer Protection act: -

- The provisions of this Act cover 'goods' as well as services. The goods are those which are manufactured or produced and sold to consumers through wholesalers and retailers.
- The services are in the nature of transport, telephone, electricity, housing, banking, insurance, medical treatment, etc.

Complaint allowed in respective consumer forum: -

- The District CDRC will entertain complaints where the value of goods and services does not exceed Rs 1 crore.
- The State CDRC will entertain complaints when the value is more than Rs 1 crore but does not exceed Rs 10 crore.
- Complaints with a value of goods and services over Rs 10 crore will be entertained by the National CDRC.